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WORKMEN'S INSURANCE AND COMPENSATION SERIES

WORKMEN'S COMPENSATION LEGISLATION
OF THE UNITED STATES AND CANADA
AS OF JULY 1, 1926



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WORKMEN'S COMPENSATION LEGISLATION OF THE UNITED STATES AND CANADA AS OF JULY 1, 1926

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 some form of workmen's compensation for industrial accidents is practically universal, and while the various enactments show considerable variations in the industries covered, the amount of compensation provided, and the methods by which compensation payments are secured, all 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 European 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.

¹ See text and footnotes on p. 3 for other bulletins on the subject of workmen's compensation.

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 of 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. The complete establishment of the constitutionality of compensation laws on the one hand and the great volume to which decisions by the courts and rulings of boards and commissions have grown on the other, cause a practical omission of this portion of previous bulletins. The abridgment of certain portions of the laws has also seemed feasible and desirable, especially those parts that relate to procedure, inasmuch as interest centers mainly on the benefit features of the acts. Therefore the present volume will set forth in analytic form the main provisions of the laws, by the aid of comparable statements in tables and charts, and the latest text, abridged in part, as amended to the end of June, 1926.

PART I.—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 and special analytical studies have been given in separate bulletins.⁴

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 JUNE 30, 1926

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	Nebraska.....	1911	1913
Alaska.....		1915	Nevada.....		1911
Arizona.....		1912	New Hampshire.....		1911
Arkansas.....	1919		New Jersey.....	1910	1911
California.....		1911	New Mexico.....		1917
Colorado.....	1911	1915	New York.....	1909	1910
Connecticut.....	1907	1913	North Dakota.....	1911	1919
Delaware.....	1911	1917	Ohio.....	1910	1911
District of Columbia*		1919	Oklahoma.....		1915
Georgia.....		1920	Oregon.....	1911	1913
Hawaii.....		1915	Pennsylvania.....	1911	1915
Idaho.....		1917	Philippine Islands.....		1905
Illinois.....	1905	1911	Porto Rico.....	1913	1916
Indiana.....	1913	1915	Rhode Island.....		1912
Iowa.....	1911	1913	South Dakota.....		1917
Kansas.....		1911	Tennessee.....	1913	1919
Kentucky.....	1915	1914	Texas.....	1911	1913
Louisiana.....	1912	1914	Utah.....	1915	1917
Maine.....		1915	Vermont.....	1913	1915
Maryland.....	1913	1912	Virginia.....	1916	1918
Massachusetts.....	1903	1911	Washington.....	1910	1911
Michigan.....	1911	1912	West Virginia.....	1911	1913
Minnesota.....	1909	1913	Wisconsin.....	1909	1911
Missouri.....	1910	1919	Wyoming.....		1915
Montana.....	1910	1915	United States.....	1910	1916

* Public employees only.

† Voluntary.

‡ Law declared unconstitutional.

§ Appointed by the governor.

• Rejected on referendum.

† Two laws, one (compulsory) declared unconstitutional.

¹ Recent action relating to employees' liability and workmen's compensation, September, 1910.

² Workmen's compensation and insurance: Laws and bills, 1911. January, 1911.

³ Workmen's compensation laws of the United States and foreign countries. Bul. No. 126. December, 1913. 477 pp.

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

Workmen's compensation laws of the United States and foreign countries. Bul. No. 203. January, 1917. 961 pp.

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

Workmen's compensation legislation of the United States and Canada, 1919. Bul. No. 272. January, 1921. 1211 pp.

Workmen's compensation legislation of the United States and Canada, 1920 to 1922. Bul. No. 332. June, 1923. 260 pp.

Comparison of workmen's compensation laws. Bul. No. 240, May, 1918, 106 pp.; Bul. No. 275, 1920. 140 pp.; Bul. No. 301, April, 1922, 194 pp.; Bul. No. 379, January, 1925, 15 pp. charts.

NUMBER OF WORKMEN'S COMPENSATION COMMISSIONS AND LAWS, BY YEARS

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	(¹)	1911.....	12	10	1917.....		5
1905.....	1		1912.....	1	4	1918.....		1
1907.....	2		1913.....	7	7	1919.....	1	4
1908.....		¹ 1	1914.....		2	1920.....		1
1909.....	3	1	1915.....	3	9			
1910.....	8	1	1916.....	1	1	Total.....	40	47

¹ Philippine Islands.¹ United States.

The 40 commissions above accounted for operated in 32 jurisdictions, while laws have been enacted by the legislatures of 43 States, the Territories of Alaska and Hawaii, the Philippine Islands, and Porto Rico, and by Congress for the civil employes of the Federal Government and for the employes of the government of the District of Columbia. Therefore not every law has been preceded by a commission; 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. Indeed, the United States commission considered only a statute relating to railroad employes, as to whom no law has yet been enacted. 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 employes 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 1892 (22 Stat. p. 57) provision was made for certain employes of the Life-Saving Service who might suffer from accidental injuries or 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 mail 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 employes of the department.

In 1908 a more general law for Federal employes 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 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.⁵ An act of the same legislature made quite similar provisions for coal and clay miners in Allegany and Garrett 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.⁶

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 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, though in its essential features it was held to be a valid exercise of the law making power.⁷

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. 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.

⁵ 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.

⁶ Act No. 1416; see Bul. No. 71, p. 394.

⁷ For the law in full see Bul. No. 85, pp. 658-661.

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.⁸

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, 1910,⁹ 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 and 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 additional States in 1917, one in 1918, four in 1919, besides the inclusion of public employees of the District of Columbia, and one in 1920, marks the present bounds of compensation legislation. Of these, two of the laws of 1918, one in 1919, and the Arizona law of 1925, provide for a State insurance system, though in only one of them is this system exclusive. The Missouri enactment of 1919 was rejected by a referendum vote, as was one of 1923. A new enactment (1925) was voted on in November, 1926, and sustained, coming into effect as to compensation on January 9, 1927.

⁸ This act is given in Bul. No. 01, pp. 1066-1070; amendments enacted in 1912 appear in Bul. No. 111, pp. 88, 89.

⁹ Repealed, ch. 615, Acts of 1922.

The following table shows in chronological order the States, etc.,¹⁰ that have enacted compensation laws:

STATES 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 ²	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	Dist. of Columbia ¹	July 11, 1919	July 1, 1919
New York ³	Dec. 10, 1913	July 1, 1914	Alabama.....	Aug. 23, 1919	Jan. 1, 1920
Maryland.....	Apr. 16, 1914	Nov. 1, 1914	Georgia.....	Aug. 17, 1920	Mar. 1, 1921
Louisiana.....	June 18, 1914	Jan. 1, 1915	Missouri ³	Apr. 30, 1925	Nov. 16, 1926

¹ Public employees only.

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

³ The law of Missouri was 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 five States in the southeastern portion of the Union that are at present without compensation laws. 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. A bill for an act entitled "Longshoremen's and harbor workers' compensation act" passed the Senate June 3, 1926, and is in the hands of the House Judiciary Committee for consideration when Congress convenes in its second session.

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 (amended 1925), provides specifically for the enactment of a compensation law. Amendments in favor of such legislation were

¹⁰ In the discussion that follows the word "State" will be used to include all jurisdictions, Territorial and other.

adopted in 1911 in California, in 1912 in Ohio (again amended, 1923), in 1913 in New York and Vermont, in 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

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 also to 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 establishment 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. In several States amendments have been made at every session of the legislature since the original enactment.

These changes liberalize the laws by reducing the waiting time, increasing the amount of benefits paid, either by percentage increases, raising the maximum, or both, and by increased medical aid. There are also some extensions of inclusions or coverage, while occupational diseases have been recognized as compensable until at the present time there are 12 States and the Federal Government caring for such injuries. The percentage of wages paid as compensation is now 65 in 4 States and 66½ in 12, besides the Federal statutes; so that 24 States, as against 20 at the beginning of the year 1920, pay 60 per cent or more.

In 1920, 16 States fixed the maximum weekly payments at \$12 or less. Now no State has a maximum less than \$12 for temporary total disability, and only 6 have as low a standard as that, while 13 pay \$18 or more, as against 5 at the earlier date. The waiting time is now less than one week in 9 jurisdictions, one week in 28, and more than one week in 10, while at the earlier date only 4 laws fixed a waiting time of less than one week, 22 of one week, and 20 of more than one week.

Another change that indicates a recognition of the previous (and in many cases continuing) inadequacy of relief consists of amendments making permanent partial disability payments additional to the payments for temporary total disability, or the healing time. Such changes have been made comparatively recently in Colorado, Georgia, Hawaii, and New Mexico; while in New York, if the healing time is protracted beyond specified periods, the schedule for partial disability payments is correspondingly extended. The restriction on term and amount of payments by way of medical relief has been raised or eliminated in a few States in recognition of the importance of adequate treatment to restore the injured man to his employment. In two States new requirements as to insurance have been made.

In most States (32) the employer and employee may exercise a choice as to accepting the provisions of the compensation law. Election by the employer is presumed in a majority of the States, but in 10¹¹ positive action is required. Where the employer rejects the law, actions for damages may be brought without the customary common-law defenses. Where he elects to accept the provisions of the law, the acceptance by the employee is taken for granted, in the absence of rejection, except in Kentucky, where positive acceptance is required. In New Hampshire the employee may make his choice of remedy after the injury has been received. If the employer has accepted and the employee rejects the law, actions for damages are subject to the common-law defenses, except in 2 States (New Jersey and Pennsylvania), where the defenses are abrogated absolutely.

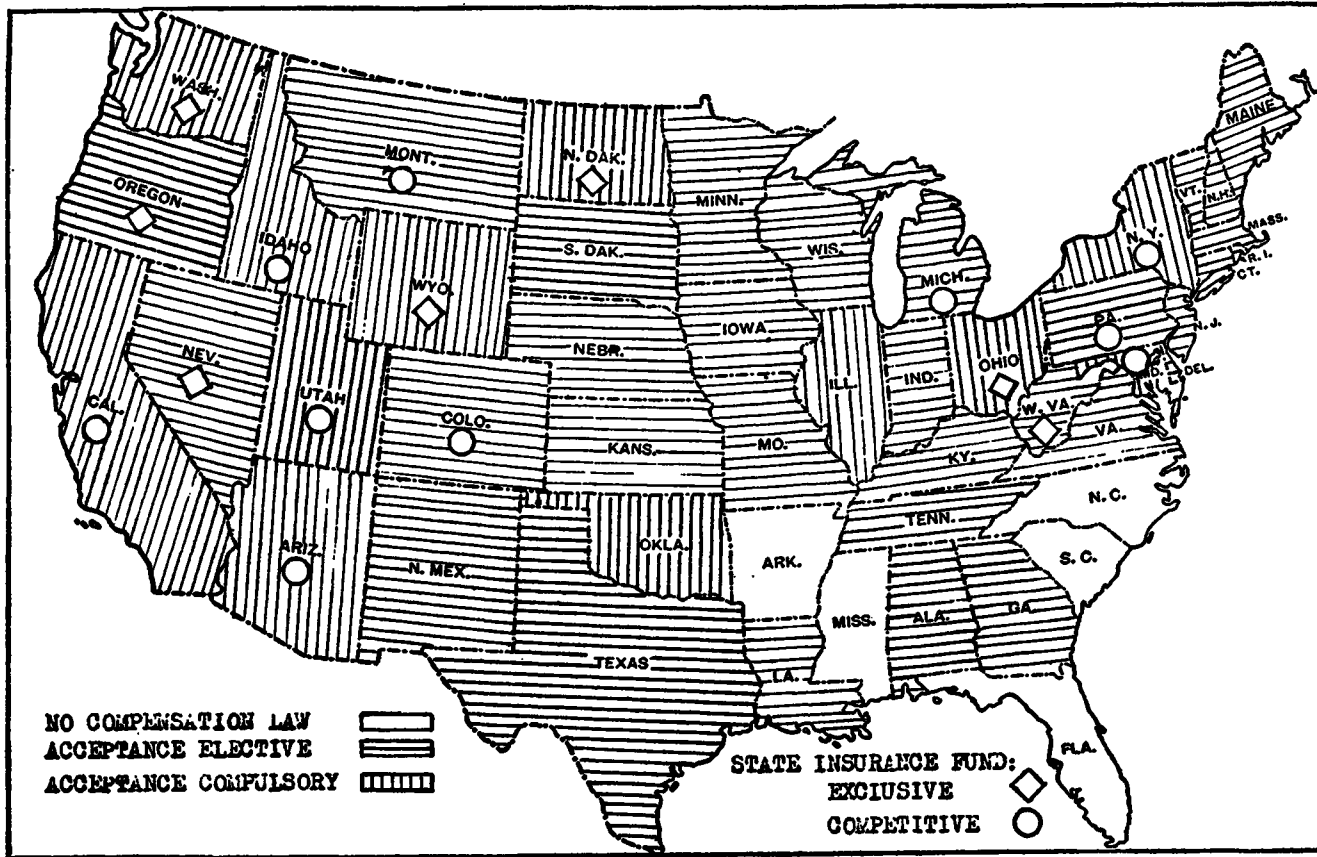
¹¹ Kentucky, Maine, Massachusetts, Michigan, Montana, Nevada, New Hampshire, Rhode Island, Texas, and West Virginia.

The laws are compulsory in 14 States, neither employer nor employee having the option of choosing another remedy, except in Arizona, where a workman may elect prior to the injury not to come under the act. Suit is permitted in a number of States if the employer has failed to insure or permits premiums to remain unpaid.

No law is of complete coverage, and the terms "elective" and "compulsory" apply to the laws in regard to the occupations said to be covered by the acts. Employers in other occupations than those so classed as "covered" may generally accept the terms of the acts, but forfeit no defenses by failure to do so. Such inclusion is designated as "voluntary" in the chart presented later, and may require the joint positive action of both employer and employee.

The following map indicates the extent of compensation legislation in the United States, and whether its acceptance is elective or compulsory; also what States have insurance funds managed by State officials, and whether exclusive or competing with other insurance carriers.

An analysis of the law of each State, in comparable form, is presented on the succeeding pages.



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 not in the usual course of the employer's trade or business. Public employment: Not covered unless employer elects.

Compensation for death:

(a) Expenses of last sickness and burial, in addition to required medical, etc., treatment, 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 to \$15, according to number of dependents: minimum, \$5, or actual wages. Total period, 300 weeks including disability payments, if any; 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, or actual wages.

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 1917, chapter 44; new act, 1923, chapter 98; approved May 4; in effect August 2, 1923; amended 1925, chapter 63.

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

Industries covered.—All private employments in which five or more persons are employed, unless election to the contrary is made; domestic service, agriculture, and the operation of railroads as common carriers excepted.

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

Compensation for death:

- (a) If married, \$3,900 to widow, \$780 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, \$3,900 to any minor orphan, and \$780 additional for each child under 16; no total to exceed \$7,800.
- (b) If unmarried, and dependent parent or parents, \$1,560 to each.
- (c) If no dependents, funeral expenses not to exceed \$195, and other expenses, if any, to same amount.

Compensation for disability:

- (a) Reasonably necessary medical and hospital treatment for not more than one year, for which employer may deduct \$2.50 per month from wages of each employee for separate fund.
- (b) Permanent total: \$4,680 to workman alone; \$6,240 if married, \$780 additional for each child under 16, posthumous child, or child over 16, dependent by reason of physical or mental incompetency; total not to exceed \$7,800. If no wife or children, but dependent parents, \$780 for each.
- (c) Temporary total disability: 50 per cent of weekly wages during its continuance.
- (d) Permanent partial disability: Fixed sums for specified injuries in lieu of other payments, varying with conjugal condition and number of children, maximum \$6,240.

Revision of benefits.—Readjustment must be made if within two years an injury develops or proves to be such as to warrant a higher award from that 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 1913, chapter 7; new act, 1925, chapter 83; approved March 24, 1925; in effect January 7, 1926 (on declaration of constitutionality).

Injuries compensated.—All personal injuries causing disability for more than seven days, or death, due to accident, arising out of or in the course of the employment, not purposely self-inflicted.

Industries covered.—All having in service three or more workmen regularly employed in the same business or in or about the same establishment, except agricultural workers not employed in the use of machinery, and domestic servants; elective as to excepted employments.

Persons compensated.—Private employment: All employees in industries covered, except casual and not in the usual course of trade or business of the employer. Public employment: Included except elective officials and those receiving more than \$2,400 annual salary.

Compensation for death:

(a) Burial expenses, not to exceed \$150.

(b) To the widow or wholly dependent widower, 35 per cent of the average wage until death or remarriage, 15 per cent additional for each child under 18 years of age. If one orphan child, 25 per cent, 15 per cent additional for each other child. If none of the above, and a wholly dependent parent, 25 per cent, 15 per cent additional if two. If dependent brothers or sisters under 18, 25 per cent of wage if one, 35 per cent if more than one. No total may exceed 66 $\frac{2}{3}$ per cent of wages.

(c) To partial dependents such proportion of foregoing benefits as the amount contributed bears to the average wage of the deceased, for not over 100 months.

(d) If no dependents, \$850 to a rehabilitation fund.

Widows remarrying receive two years' benefits in one sum. Payments to minors cease at 18, or if over 18 and incapable of self-support, on becoming capable.

Compensation for disability:

(a) Medical, surgical, and hospital treatment and supplies, including artificial members, for 90 days; one year if commission directs. One-half costs, not over \$1 per month from each employee, may be deducted from wages.

(b) For total disability, 65 per cent of wages for not over 100 months, if temporary, with \$10 monthly additional if a dependent or dependents in the United States; if permanent, 65 per cent of wages for life.

(c) For partial disability, 65 per cent of the wage loss for not over 60 months if temporary; schedule for specific injuries, in addition to temporary total disability payments. Special rule for hernias.

Revision of benefits.—Awards may be revised on application if change of circumstances warrant.

Insurance.—Required in the State fund, stock or mutual company, or proof of financial ability to pay direct compensation. Public employees must be insured in the State fund.

Security of payments.—Insurers are primarily liable to a workman or his beneficiaries. Notice to the employer is notice to the insurer; insolvency does not relieve insurer. The award, when docketed in the office of a county clerk, is a lien upon the real property of the employer situated in that county for a period of 8 years.

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

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, 1910, chapter 471; 1923, chapters 90, 161, 379, 381; 1925, chapters 300, 354, 355, 383.

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.

Compensation for death:

(a) The reasonable expense of burial, not exceeding \$150.

(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, not exceeding \$150. 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; amended 1923, chapters 200, 201, 202, 203; 1925, chapter 182.

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 10 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, excluding those 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.

Compensation for death:

- (a) Burial expenses, not to exceed \$125.
- (b) To persons wholly dependent, including acknowledged illegitimate children, 50 per cent of the weekly wages for six years, \$12 maximum, \$5 minimum, total not to exceed \$3,750. If death occurs from any cause during receipt of disability benefits, any unaccrued and unpaid remainder goes to dependents, not to exceed \$3,750.
- (c) If only partial dependents survive, 50 per cent of the weekly wages, \$12 maximum, \$5 minimum, for such part of six years as required to pay amount of award. If death occurs from any cause during the receipt of disability benefits, partial dependents shall receive proportionate amounts of the unpaid award, not to exceed \$3,750.
- (d) If no dependents, funeral expenses, not over \$125.
- (e) 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 incapacitated. Payments lapsing for any reason go to surviving dependents, if any. Benefits to aliens are one-fourth the amounts payable to citizens.

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, \$12 maximum; full wages if less than \$5.
- (c) For permanent total disability, 50 per cent of average weekly wages, maximum \$12, minimum \$5, for life.
- (d) For permanent partial disability, 50 per cent of the weekly wage decrease, \$12 maximum: total not to exceed \$3,120. 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, not exceeding \$500.
- (e) For temporary partial disability, 50 per cent of wage loss during disability; maximum \$12, minimum \$5, aggregate maximum \$1,560. 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, 1915, chapter 228; 1917, chapter 368; 1918, chapter 284; 1919, chapter 142; 1921, chapters 148, 306; 1925, chapter 247.

Injuries compensated.—All injuries arising out of and in the course of employment, disability of more than seven 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; others may elect.

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.

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.

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 \$21 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 \$21 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 addition to compensation for temporary total disability.

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

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, 1919, chapter 203; 1921, chapter 186; 1923, chapter 206.

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, except employees of city of Wilmington.

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 30 days, unless refused by the employee, but not to exceed \$100; board may direct additional amount.

(b) For total disability, for not over 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, 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.

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 59.

GEORGIA

Date of enactment.—August 17, 1920; in effect March 1, 1921. Amended, 1922, pages 77, 185; 1923, page 92; 1925, page 282.

Injuries compensated.—Personal injuries by accident arising out of and in course of the employment, causing death or disability for more than 7 days, not due to the injured employee's willful misconduct, intoxication, violation of safety provisions, or the willful act of a third person not due to the employment.

Industries covered.—All where 10 or more persons are employed, excepting agriculture and domestic service, common carriers using steam power, and institutions operated as public charities, all in the absence of contrary election. Small establishments may make election to come under the act.

Persons compensated.—Private employment: All employees in establishments covered, except casual employees. Public employment: Employees of municipal corporations and political subdivisions of the State.

Compensation for death:

- (a) Burial expenses not to exceed \$100.
- (b) To persons wholly dependent, 85 per cent of the benefits provided for total disability for 300 weeks.
- (c) To persons partly dependent, a payment proportionate to the decedent's contribution to their support.

Payments continue for not over 300 weeks from the date of injury, \$12.75 maximum, the total not to exceed \$5,000. They cease on the remarriage of a widow or widower, or on a child reaching the age of 18 unless incapacitated for earning.

Payments to nonresident aliens, other than in Canada, may not exceed \$1,000.

Compensation for disability:

- (a) Necessary medical attention for not more than 30 days, the cost not to exceed \$100.
- (b) For total disability, one-half the weekly wages, not more than \$15 nor less than 4, or full wages for not more than 350 weeks; the total not to exceed \$5,000.
- (c) For partial disability, 50 per cent of the wage loss, not more than \$12 per week, for not more than 300 weeks; fixed periods for specified injuries, in lieu of all other compensation except for a period of not over 10 weeks' total disability.

Any weekly payment may be commuted to a lump sum after 26 weeks if the parties agree and the commission approves.

Revision of benefits.—The commission may at any time review an award or agreement, either on its own motion or on application of either party.

Insurance.—Insurance in a licensed stock or mutual company, or a reciprocal association, is required unless satisfactory proof is given to act as a self-insurer.

Security of payments.—Evidence of insurance must be filed, policies must inure directly to beneficiaries, payments have same preference as wage debts, and are exempt from assignment, attachment, etc.

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

HAWAII

Date of enactment.—April 28, 1915; in effect July 1, 1915; amended, 1917, No. 227; 1923, No. 249.

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.

Compensation for death:

(a) \$100 funeral expenses.

(b) Forty 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. Maximum benefits, \$5,000.

Compensation for disability:

(a) Reasonable surgical, medical, and hospital services during disability.

(b) For total disability, 60 per cent of weekly wages, \$5 minimum, \$20 maximum, for not longer than 312 weeks; total not to exceed \$5,000. If wages are less than \$5, full wages will be paid unless disability is permanent, when \$5 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 for specified injuries in addition to total or partial disability benefits.

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. Amended 1921, chapters 217, 220; 1925, chapter 129.

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, range laborers, and employment by charitable organizations. Exempted industries included by written agreement of both parties.

Persons compensated.—Private employment: All employees except casual, outworkers, 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.

Compensation for death:

- (a) Burial expenses not to exceed \$200.
- (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; if no spouse or child, 25 per cent to one dependent parent or 20 per cent to each if both are dependent; other dependents may receive benefits within the 55 per cent limits.
- (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, additional allowances for wife and children, total not to exceed \$16 per week.
- (c) For partial disability, 55 per cent of the wage loss for not more than 150 weeks; nor more than the amounts allowed for total disability; schedule for designated permanent partial disabilities, ranging from 3 to 200 weeks, in addition to 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 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 1915, page 400; 1917, pages 490, 505; 1919, page 538; 1921, page 446; 1923, page 354; 1925, page 378.

Injuries compensated.—Accidental injuries, including certain occupational diseases, 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.

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, \$2,000, and if two or more children, \$2,100) nor more than \$3,750 (to a widow with one child under 16, \$4,100 and if two or more children, \$4,350).
- (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, and \$300 to a second injury fund.

Compensation for disability:

- (a) Medical, surgical, and hospital services as reasonably required to effect a cure.
- (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, \$7.50 minimum, \$14 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 \$14 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 \$7.50 per week is to be increased according to the number of children, the total not to exceed \$14. The maximum weekly payment of \$14 is similarly increased, the total not to exceed \$19.
- (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 are subrogated to 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, 1917, chapters 63, 81, 165; 1919, chapter 57, 71; 1923, chapter 76.

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, unless entitled to municipal pensions.

Compensation for death:

- (a) \$100 for funeral expenses, if death from the injury occurs within 300 weeks.
- (b) Fifty-five 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 1917, chapters 188, 270, 336, 409, 418; 1919, chapter 220; 1923, chapters 17, 206; 1924, (codification); 1925, chapter 162.

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 officials, and policemen, and firemen entitled to benefits from pension funds.

Compensation for death:

- (a) Reasonable expenses of the employee's last sickness and burial, not to exceed \$150; if no dependents, \$250.
- (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 or full wages, if less, 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.

Nonresident aliens receive one-half benefits.

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 insurer must settle directly with the beneficiary. Payments are exempt from garnishment, attachment, or execution.

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 1913, chapter 216; 1917, chapter 26; 1919, chapter 222.

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.

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, not less than \$6 nor more than \$12 per week.

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 1918, chapter 176; 1920, chapter 37; 1922, chapter, 50; 1924, chapter 70; 1920, chapter 193.

Injuries compensated.—Personal injuries by accident arising out of and in course of employment, including injuries due to inhalation of mine gas, or smoke or any kind of gas, causing incapacity for more than seven days, or death within two years, not self-inflicted, or due to intoxication or willful misconduct. Results of preexisting 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. Operators of grain and seed threshers or hullers are included.

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.

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; board may increase to \$200.
- (b) For total disability, 65 per cent of average weekly wages, not more than \$15 nor less than \$5, for eight years, total not to exceed \$6,000.
- (c) For partial disability, 65 per cent of the weekly wage loss, not to exceed \$15, 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, 1916, No. 243; 1918, Nos. 38, 39; 1920, Nos. 234, 244, 247; 1922, No. 43; 1924, Nos. 21, 216; 1926, No. 85.

Injuries compensated.—Personal injury by accident arising out of and in course of employment causing disability for more than one week, or death within one 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.

Compensation for death:

- (a) \$100 expenses of burial and not over \$50 contingent expenses.
- (b) To widow or dependent widower alone, 32½ per cent of weekly wages, 46¼ per cent if 1 child, and 65 per cent if 2 or more. If 1 child alone, 32½ per cent, 46¼ per cent for 2, and 65 per cent if 2 or more. For 1 dependent parent, 32½ per cent; for 2, 65 per cent; if 1 brother or sister, 32½ per cent and 11 per cent additional for each other. The total in no case may exceed 65 per cent of the weekly wages, \$3 or full wages minimum payment, \$20 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 \$250 in value.
- (b) For total disability, 65 per cent of the weekly wages, \$20 maximum, \$3 minimum, unless the wages are less than \$3, then full wages, for not more than 400 weeks.
- (c) For partial disability, 65 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 approved 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 six months they may be reviewed by the court on application of either party.

Insurance.—Employees under the act must insure, give bond, or qualify as self-insurers.

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; amended 1921, chapter 222; 1925, chapter 201.

Injuries compensated.—Injuries arising out of and in course of employment, causing disability for more than 7 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, employes 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.

Compensation for death:

- (a) To persons wholly dependent, 66 $\frac{2}{3}$ per cent of weekly wages for 300 weeks, \$6 minimum, \$18 maximum, not over \$4,000 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.

Alien dependents residing outside the United States or Canada receive one-half benefits.

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, 66 $\frac{2}{3}$ per cent of the wages for not more than 500 weeks, \$6 minimum, \$18 maximum, total not to exceed \$4,200.
- (c) For partial disability, 66 $\frac{2}{3}$ per cent of the weekly wage loss, not over \$18, for not more than 300 weeks. For specified injuries causing permanent partial disability, 66 $\frac{2}{3}$ per cent of the wages for various fixed periods, then compensation on basis of wage loss, if any, for not more than 300 weeks in all.

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

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

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

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

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

MARYLAND

Date of enactment.—April 16, 1914; in effect Nov. 1, 1914. Amended 1916, chapters 86, 368, 379, 597, 713; extra session, 1917, chapter 6; 1920, chapter 456; 1922, chapters 303, 321, 359; 1924, chapters 217, 832, 341, 364, 583.

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

Industries covered.—Extra hazardous (enumerated list); others by joint election of employers and employees, including farm and domestic labor.

Persons compensated.—Private employment: All in industries covered except casual employees. Public employment: Workmen employed for wages in extra hazardous work, unless the municipality makes other equal or better provision, and officers and enlisted men of State militia.

Compensation for death:

- (a) Funeral expenses, not over \$125.
- (b) To persons wholly dependent, 66⅔ per cent of the weekly wages, not over \$18 nor less than \$8 per week unless the wages were less, for eight years; not more than \$5,000 nor less than \$1,000.
- (c) To persons partly dependent, 66⅔ per cent of the weekly wages, not over \$18 per week, for such portion of eight years as the commission may fix, the amount not to exceed \$3,000.
- (d) If no dependents, funeral expenses not over \$125, unless there is sufficient estate to defray same.
- (e) Widow on remarriage receives one year's benefits if outstanding; payments to children cease on reaching the age of 16 years, unless incapacitated.

Compensation for disability:

- (a) Medical, surgical, etc., expenses, not above \$500 in value.
- (b) For total disability, 66⅔ per cent of weekly wages, \$8 minimum, \$18 maximum, during its continuance, total not to exceed \$3,000. If wages are less than \$8, full wages will be paid.
- (c) For temporary partial disability, 50 per cent of weekly wage loss, \$18 maximum, total not over \$3,500; for specified maimings, 66⅔ per cent of the weekly wages, in addition to other payments, for specific periods, \$8 minimum, \$18 maximum, total not over \$3,750; other permanent injuries, 50 per cent of wage loss, total not over \$3,000.

Where the injured employee is a learner, with prospect of increase in 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 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, 1912, chapter 571; 1913, chapters 48, 448, 568, 696, 746; 1914, chapters 338, 708; 1915, chapters 123, 275, 314; 1916, chapters 72, 90; 1917, chapters 198, 240, 269; 1918, chapters 113, 119; 1919, chapters 197, 198, 204, 205, 226, 272, 299; 1920, chapters 223, 324; 1921, chapter 310; 1922, chapters 368, 402, 537; 1923, chapters 125, 139, 163; 1924, chapters 207, 434; 1925, chapter 267; 1926, chapter 190.

Injuries compensated.—Injuries, including diseases, arising out of and in the course of employment causing incapacity for 7 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.

Compensation for death:

- (a) The reasonable expense of burial, not exceeding \$150. If dependents survive, this sum shall be deducted from the compensation payable.
- (b) To a widow alone, \$10 weekly for not more than 400 weeks; \$12 if one child, \$14 if two children, and \$16 if more than two.
- (c) To other 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.
- (d) 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. In no case may the total payment exceed \$4,000.

If no dependents, \$100 to second injury fund.

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 1913, Nos. 50, 79, 156, 259; 1915, Nos. 104, 153, 170, 171; 1917, Nos. 41, 206, 235, 249; 1919, Nos. 64, 110; 1921, Nos. 60, 173, 180.

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.

Compensation for death:

- (a) The reasonable expense of the last sickness and burial, not exceeding \$200 in addition to any medical services.
- (b) 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.
- (c) If only partial dependents survive, such proportion of the above as the amount of previous contributions bears to such earnings. 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 \$7,000.
- (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.

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; revised March 15, 1921; in effect June 1, 1921. Amended 1923, chapters 91, 279, 282, 300, 408; 1925, chapters 161, 175, 219.

Injuries compensated.—Occupational diseases (list), and accidents arising out of and in 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, including commercial threshermen and balers, except common carriers by steam railroad and farm and domestic service, in the absence of contrary election by employers; farmers may elect.

Persons compensated.—Private employment: All employees, in the absence of contrary election, except those whose work is casual and not in the usual course of the employer's business. Public employment: Included, except persons elected or appointed for regular terms.

Compensation for death:

(a) One hundred and fifty dollars funeral expenses.

(b) To a widow alone, 40 per cent of monthly wages of deceased, increasing to 66 $\frac{2}{3}$ per cent if three 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.

Widow on remarriage receives lump sum not to exceed two years' benefits if no children under 18; otherwise sum goes to child or children.

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

(d) When no dependents survive, expenses of last sickness and burial, and \$200 into second injury fund.

Maximum weekly payment \$20, minimum \$8, unless wages are less, then full wages.

Payments continue not over 300 weeks except to widow or child; to child, cease at 18 unless incapacitated; to others, cease on death or marriage; maximum in any case, \$7,500.

Compensation for disability:

(a) Reasonable medical and surgical treatment, not exceeding 90 days unless further treatment is ordered on request of employee.

(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 wages, not over \$10,000.

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

(e) For specified permanent partial disabilities, 66 $\frac{2}{3}$ per cent of wages for fixed periods, in addition to other payments, maximum of 400 weeks; for other permanent partial disabilities, not over 300 weeks. Payments for disability may not be more than \$20 nor less than \$8, unless wages were less, then full wages.

Lump sums may be substituted for periodical payments on consent of the industrial commission.

Revision of benefits.—No provision. Beneficiaries dissatisfied with the termination of payments may secure a hearing on the subject of continuance.

Insurance.—Required in some authorized company unless exempted on a showing of financial ability.

Security of payments.—Insured workmen have equitable lien on any policy coming due. Payments are made directly to claimants in case of employer's incapacity. Claims have same preference as unpaid wages.

Settlement of disputes.—By industrial commission, appeal to supreme court on questions of law.

MISSOURI

Date of enactment.—April 30, 1925. Effective: November 16, 1926. [Deferred by referendum.]

Injuries compensated.—Injuries by accident arising out of and in the course of employment causing disability for more than 3 days, or death within 300 weeks, unless due to employee's intentional self-inflicted injury.

Industries covered.—All where employer has 10 or more employees, or less than 10 if declared hazardous, except farm labor and domestic servants, provided employer fails to reject. Employers not included may elect to accept act.

Persons compensated.—Private employment. All employees in industries covered, except those earning over \$3,600 per annum, casual employees and outworkers. Public employment: Only if act is adopted by law or ordinance.

Compensation for death:

- (a) Burial expenses not to exceed \$150, and if not otherwise covered, \$250 for expenses of last sickness.
- (b) To total dependents, two-thirds of average annual earnings multiplied by 300, in weekly installments, less any disability payments.
- (c) To partial dependents on above basis, in proportion to decedent's contributions, but only when there are no total dependents. The maximum weekly payment is \$20 and minimum \$6. Payments to children cease at 18, unless physically or mentally incapacitated.

Compensation for disability:

- (a) Such medical, surgical, and hospital, etc., treatment as may be reasonably required for first 60 days, not exceeding \$250 in value, unless extended by commission.
- (b) For temporary total disability, two-thirds of wages for not over 400 weeks; if permanent, at same rate for 300 weeks, then 25 per cent of earnings for life.
- (c) For temporary partial disability, two-thirds of wage loss, for not over 100 weeks.
- (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 period, in lieu of all other compensations; for disfigurements in an amount not to exceed \$1,000.
- (e) Except where otherwise limited the maximum weekly payment is \$20 per week and the minimum \$6.

The commission may commute the compensation to payment by 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 counterclaim, or any liability for any debt, except approved attorneys' fees, 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 1919, chapters 95, 100; 1921, chapters 196, 254; 1925, chapters 117, 121.

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.

Compensation for death:

- (a) One hundred and fifty dollars for funeral expenses if death occurs within six months of injury.
- (b) To beneficiaries (widow, widower, child or children under 18, or invalid child above 18), or to major dependents (father or mother) if no beneficiaries, 50 per cent of wages of deceased; if none of above, to minor dependents (brothers or sisters under 18), 30 per cent. Non-resident aliens other than beneficiaries receive nothing unless otherwise provided by treaty, and beneficiaries but 40 per cent of a normal benefit if nonresident at the time of the injury (sec. 2015; 50 per cent in sec. 2804), unless treaty contravenes; nothing if law of alien's country would bar citizens of United States from benefits. Term of payments may not exceed 400 weeks, \$15 maximum, \$7 minimum; if wages less than \$7, then full wages. Payments cease on remarriage of widow or widower, or when child, brother, or sister reaches the age of 18, unless an invalid.

Compensation for disability:

- (a) Medical and hospital services during first six months after happening of injury, not over \$500 in value, unless there is a hospital contract; special operating fee of \$50 for hernia.
- (b) For temporary total disability, 50 per cent of wages during disability, \$15 maximum, \$7 minimum, unless wages are less than \$7, when full wages will be paid, for not more than 300 weeks.
- (c) For permanent total disability, same scale as above for 500 weeks.
- (d) For partial disability, 50 per cent of the wage loss, not over \$7.50 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 \$15 per week nor less than \$7 per week unless wages are less, then full wages, in lieu of all other compensation.

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 1917, chapter 85; 1919, chapter 91; 1921, chapter 122.

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, except those whose work is but casual and not in the usual course of the employer's business, and outworkers. Public employment: All persons employed by the State, or any governmental agency created by it, not elected or appointed for a regular term.

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 or full wages nor more than \$15 per week, during dependency, but not exceeding 350 weeks.
- (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 18 years, unless they are physically or mentally incapacitated from earning.

Compensation for disability:

- (a) Medical and hospital services as and when needed.
- (b) For total disability, 66⅔ per cent of the weekly wages, but not more than \$15 nor less than \$6 per week or full wages, for 300 weeks; thereafter, for life or while disability last 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 addition to 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 insure 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 24, 1911, in effect July 1, 1911. New act, March 15, 1913; in effect July 1, 1913. Amended 1915, chapter 190; 1917, chapter 233; 1919, chapter 176; 1921, chapters 161, 218; 1923, chapter 106; 1925, chapters 61, 114, 168.

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.

Compensation for death:

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

(b) To widow or dependent widower, 30 per cent of the average monthly wages, with 15 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, 60 per cent of above.

No excess of wages above \$120 per month shall be considered.

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 six months; may be extended an additional year by the industrial commission; employer may deduct one-half the cost of an "accident benefit fund," not more than \$1 per month, from each employee's wages.

(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; \$30 additional if services of a constant attendant are required.

(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 other payments.

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. Amended 1923, chapter 91.

Injuries compensated.—Any injury to an employee arising out of and in the course of employment causing disability of over one week, 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 live or more persons; work about lines or cables charged with electricity; operations dangerously near explosives used in the industry, or to a steam boiler owned and operated by the employer; and work in or about any quarry, mine, or foundry; provided the employer elects.

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

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) Reasonable medical and hospital services during the first 14 days after injury.
- (b) For total disability, a sum not exceeding 50 per cent of average weekly earnings.
- (c) 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 \$15 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 1913, chapter 174; 1914, chapter 244; 1919, chapter 93; 1921, chapters 85, 230; 1922, chapter 245; 1923, chapter 49; 1924, chapters 124, 159; 1925, chapter 163; 1926, chapter 31.

Injuries compensated.—Injury by accident arising out of and in the course of employment causing disability of over 7 days, or death, unless intentionally self-inflicted or due to intoxication, and designated occupational diseases.

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

Persons compensated.—Private employment: All employees except casual. 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.

Compensation for death:

(a) The expense of the last sickness not exceeding \$100, and not exceeding \$150 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 except to dependents under 16, to whom payments continue. Compensation not to be less than \$8 or full wages, not more than \$17 per week.

Payments to all dependents cease at death, to widows on remarriage, and to orphans on reaching the age of 16.

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

Compensation for disability:

(a) Medical, surgical as necessary, and hospital services, not exceeding \$100 in value, which may be extended on application to bureau.

(b) For temporary disability 66⅔ per cent of wages, payable during disability, but not beyond 300 weeks.

(c) For permanent total disability, 66⅔ per cent of wages during such disability, not beyond 400 weeks.

(d) For certain specific injuries (mutilations, etc.) producing partial but permanent disabilities, 66⅔ per cent of wages during fixed periods, in addition to payments for any period of total disability.

Compensation is paid from the date of the injury if disability lasts more than 7 weeks.

All weekly payments are subject to a minimum of \$8 per week or full wages if less, and a maximum of \$17 per week.

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 is made either party may demand a revision of benefits on the ground of change of condition.

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 provision does not apply to farm laborers or domestic service.

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

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

NEW MEXICO

Date of enactment.—March 13, 1917; in effect June 8, 1917. Amended 1919, chapter 44; 1921, chapter 184.

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

Compensation for death:

(a) Seventy-five dollars for funeral expenses if death occurs as a proximate result.

(b) Forty 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 receive 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 10 days, not over \$150 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.

(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, not over \$500.

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

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.

Securities 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

Date of enactment.—December 16, 1913; in effect July 1, 1914. Revised April 18, 1922; in effect July 1, 1922. Amended several acts each year.

Injuries compensated.—Accidental injuries arising out of and in course of employment, causing disability for more than one week, or death, unless caused by the willful intention of the injured employee or by his intoxication while on duty; also disfigurements and specified occupational diseases.

Industries covered.—“Hazardous employments,” extensive list; all other employments in which four or more workmen or operatives are regularly employed, domestic and farm labor excepted. Employments not listed, including employments not for gain, may be brought under the act by voluntary action.

Persons compensated.—Private employment: All employees in industries covered. Public employment: Included. Nonresident beneficiaries limited to wife, children, and dependent parents.

Compensation for death:

(a) Two hundred dollars for funeral expenses.

(b) To a widow or dependent widower alone, 30 per cent of wages, 10 per cent additional for each child under 18; orphans and dependent grandchildren, brothers or sisters under 18 receive 15 per cent each; dependent parents or grandparents, 25 per cent each. Aggregate payments in no case may 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, grandchildren, brothers, and sisters cease at 18, and to parents when dependence ceases.

No wages in excess of \$150 per month are considered in computing benefits.

If no dependents, \$1,000 to special funds.

Compensation for disability:

(a) Medical and surgical treatment, apparatus, and hospital services as required, costs to be approved by the commission.

(b) For total disability, 66 $\frac{2}{3}$ per cent of wages during continuance, limited to \$3,500 in temporary cases.

(c) For partial disability, 66 $\frac{2}{3}$ per cent of wage loss, total not over \$3,500 if temporary; for specified permanent partial disabilities, 66 $\frac{2}{3}$ per cent of wages for fixed periods, plus fixed healing time; separate provision for disfigurements; also allowance for rehabilitation.

Payments may not be more than \$20 nor less than \$8 per week unless wages are less, then full wages.

If disability lasts more than 49 days, compensation is payable from date of injury.

Periodical payments may be commuted to one or more lump sums if the board deems it advisable in the interests of justice.

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

Insurance.—Required in State fund or approved company, or proof of financial ability to make payments (securities may be required).

Security of payments.—Insurance enforceable directly for benefit of claimants; insolvency of employer no release to insurer. Payments have same preference as unpaid wages, without limit as to amount.

Settlement of disputes.—Settled by State Industrial board, limited appeal to courts.

NORTH DAKOTA

Date of enactment.—Approved March 5, 1919; effective July 1, 1919, chapter 162. Amended special session of 1919, chapter 73, and each year.

Injuries compensated.—Injuries arising in the course of the employment causing disability for more than seven days or death within six 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.

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, and executives receiving more than \$2,400 per year. Public employment: All employees of the State or any political subdivision thereof.

Compensation for death:

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

(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% 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% 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 is, then such amount as not to exceed in all 66% 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 more than one, 30 per cent, to be equally divided, to continue for eight years or until death, marriage, or termination of dependency.

To partial dependents, 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% per cent of the average weekly wages during disability.

(c) For temporary partial disability, 66% per cent of the loss of earning capacity, during disability.

(d) For permanent partial disability, 66% 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 payment is \$20, minimum \$6, or full wages.

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 each session.

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 three or more persons regularly in the same business; also establishments with less than three 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.

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 \$18.75 weekly, for eight years, not less than \$2,000 nor more than \$6,500.
 - (c) If only partial dependents survive, a proportionate sum, not to exceed \$18.75 weekly, for such period, not over eight years, as the industrial commission may determine, not over \$6,500 in all.
 - (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 unusual 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 \$18.75 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 \$18.75 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 limitations as noted above. Special provision for disfigurement.

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.

The commission may commute future payments to one or more lump sums under special circumstances.

Revision of benefits.—The industrial commission may from time to time make such changes 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 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 1919, chapter 14; 1923, chapter 61.

Injuries compensated.—Personal injuries causing disability for more than five 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. Fatal injuries not covered.

Industries covered.—"Hazardous" (enumerated list and general clause), in which two or more persons are employed for pecuniary gain, 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.

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. Special provision for hernia.
- (b) For temporary total disability, 66⅔ per cent of average weekly wages for not more than 300 weeks.
- (c) For permanent total disability, 66⅔ per cent of average weekly wages for not more than 500 weeks.
- (d) For partial disability, 66⅔ per cent of wage loss for not more than 300 weeks; for specified permanent injuries, 66⅔ 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 non-residents 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 each session.

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.

Payments are exclusively from a State fund, for which the employer deducts 1 cent from employee's daily earnings, and himself contributes 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.
- (c) To orphans under 16 years of age (daughters 18), a monthly payment of \$15 each.
- (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, \$35, and \$8 additional for each child until 16 years of age. In case of death during total disability, from whatever cause, death benefits are payable to widow, widower, or children.
- (c) For temporary total disability, 40 to 66% per cent of monthly wages during disability, maximum \$97, minimum \$30 if single, or \$40 if dependent spouse, unless wages are less.
- (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 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.

Settlements 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 1917, Nos. 57, 359, 395; 1919, Nos. 277, 306, 310, 441, 455; 1921, Nos. 67, 342; 1923, Nos. 29, 432.

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.

Compensation for death:

- (a) One hundred dollars funeral expenses.
- (b) Forty 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 40 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, except 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, until age 16. 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, \$12 maximum, \$6 minimum, or full wages, total not to exceed \$5,000.
- (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, \$12 maximum, \$6 minimum, or full wages.

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 awards 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 the workmen's compensation board, with appeal to courts.

PORTO RICO

Date of enactment.—April 13, 1916; in effect July 1, 1916. Amended, 1917, No. 9. New act, February 25, 1918; in effect July 1, 1918, amended 1919, Nos. 61, 62; 1920, No. 1; 1921, No. 61; 1925, No. 102.

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, for more than seven days, 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. Designated occupational diseases included.

Industries covered.—All industries except domestic service.

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.

Compensation for death.—A compensation of one 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.

Compensation for disability:

- (a) Medical attendance, medicines and subsistence as may be prescribed, also hospital services when necessary.
- (b) For temporary disability an amount equal to one-half the weekly wages, not less than \$3 nor more than \$15, 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, the severity of the injury, and the probabilities of life.
- (d) For permanent partial disability, according to a fixed schedule, other injuries to be compensated according to a corresponding disability named in the schedule, no payment to exceed \$2,000.

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, 1913, chapter 987; 1915, chapter 1268; 1917, chapter 1534; 1919, chapter 1795; 1920, chapter 1900; 1921, chapters 2086, 2005; 1926, chapter 764.

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 one week, 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. Excepted employments may accept act.

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 \$3,000 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, not including members of organized fire and police departments.

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 \$6 nor more than \$14 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 eight weeks after the injury, to cost not over \$150.
- (b) For total incapacity, a weekly payment equal to one-half the wages, but not less than \$7 nor more than \$16 per week, during such incapacity, but not for longer 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 nor less than \$4 per week, during such incapacity, and not for longer 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 eighth 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.

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 each session.

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 agricultural and domestic service, in the absence of contrary election; compulsory as to commercial threshing of grain. 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.

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 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.

Dependents not residents of the United States at the time of death receive nothing.

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 \$15 nor less than \$7.50, unless earnings are less, then full wages, until four years' earnings are paid, not to exceed \$3,000.

(c) For partial disability 50 per cent of the wage loss, not over \$15 weekly, for not longer than six years; for specified injuries payments are to be made of 55 per cent of the wages for fixed periods, in addition to the amount paid during any period of total disability.

(d) For serious and permanent disfigurement not giving rise to other awards, an 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 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. Amended 1923, chapter 84.

Injuries compensated.—Injury by accident arising out of and in course of the employment, causing disability for more than one week, 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 five or more persons, except common carriers while engaged in interstate commerce and domestic and agricultural service. Small employers and the State and its municipalities may elect.

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.

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.
- (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 (apparently) cease upon their reaching the age of 18 years; to other dependents, on death or marriage; not over 400 weeks.

The maximum weekly compensation is \$15 per week and the minimum \$5, unless wages are less than \$5, when full wages are paid.

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 permanent total disability, 50 per cent of wages for not to exceed 530 weeks, reduced to \$5 per week after 400 weeks, with maximum total of \$5,000.
- (d) For temporary partial disability, 50 per cent of wage loss for not over 100 weeks.
- (e) 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.

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

Payments may not exceed \$15 per week nor be less than \$5, unless wages are less, 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; State fund for coal mining.

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 1917, chapter 103; 1921, chapter 115; 1923, chapter 177.

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.

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 \$7 nor more than \$20, 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 four 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 \$7 nor more than \$20 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 \$20 per week, but not exceeding 300 weeks, or for both partial and total disability, 401 weeks.
- (d) For certain specific injuries (mutilations, etc.), compensation equal to 60 per cent of the average weekly wages of the injured person, for fixed periods, not less than \$7 nor more than \$20 per week, in lieu of all other compensation; proportionate for others, including disfigurement.

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.—Employees 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 1919, chapter 63; 1921, chapter 67; 1923, chapters 44, 64; 1925 chapters 73, 80.

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

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; benefits may be extended indefinitely in discretion of commission.

(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, 20 per cent of a death benefit into the State treasury for a second-injury and total-dependents' fund.

Nonresident aliens, except in Canada, receive one-half benefits.

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 six years, not to exceed \$5,000: \$16 maximum, \$7 minimum, or actual wages.

(d) For partial disability, 60 per cent of the weekly wage loss, not over \$16 per week, for not more than six years, nor \$5,000. 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 each session.

Injuries compensated.—Personal injury causing disability for more than seven days, 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 employees: All except elective, and those receiving in excess of \$2,000 annually.

Compensation for death:

- (a) One hundred dollars for funeral expenses if death occurs within two years.
- (b) Thirty-three and one-third 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; to orphans, 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, \$15 maximum, \$6 minimum, or full wages, total not to exceed \$4,000.
- (c) For partial disability, 50 per cent of wage loss, maximum \$10, for not more than 260 weeks.
- (d) For certain specified injuries, 50 per cent of weekly wages, but not more than \$15 nor less than \$6, or full wages, for designated periods, following the period of total disability, the total not to exceed 260 weeks. Special provisions for hernia.

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, chapter 400; in effect January 1, 1919. Amended each session.

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 10 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.

Compensation for death:

- (a) Burial expenses not exceeding \$100; if no dependents, \$150.
 - (b) To persons wholly dependent a weekly payment equal to one-half the average weekly wages of the deceased; \$12 maximum, \$6 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 \$4,500.

Compensation for disability:

- (a) Necessary medical attention for the first 60 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 \$12 nor less than \$6 per week, for not more than 500 weeks, the total not to exceed \$4,500.
- (c) For partial disability, one-half the wage loss, not more than \$12 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, maximum \$12, minimum \$6. Disfigurement not over 60 weeks.

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 (none provided for), 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 insure 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, 1011; in effect October 1, 1911. Amended, each year.

Injuries compensated.—Injuries causing disability for more than three 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 employers 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.

Compensation for death:

(a) Expenses of burial not to exceed \$100 if unmarried, \$150 if widow or child survives.

(b) To widow or invalid widower, a monthly payment of \$35 with additional sums for each child under 16; \$12.50 for first, \$7.50 for second, and \$5 for each other child.

A widow receives in addition to monthly payments a lump sum of \$250.

(c) If no parent survives, a monthly payment of \$25 to each child under 16 years of age, the total not to exceed \$75 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. 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. Employees contribute one-half to medical aid fund.

(b) For permanent total disability: (1) If unmarried, \$35 per month; (2) if wife or invalid husband, but no child, \$40 a month; if husband is not an invalid, \$20; (3) if married, or a widow or widower with child or children under 16 years, \$12.50 for first, \$7.50 for second, and \$5 a month additional for each other child; if constant attendance is required, \$25 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 loss of earning power, if over 5 per cent.

(e) For specified permanent partial disabilities, lump sums up to \$2,400, in lieu of other payments, other disabilities to be compensated proportionately; parents of an unmarried injured minor receive in addition 10 per cent of the award to such minor.

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; appeal as in other civil cases.

WEST VIRGINIA

Date of enactment.—February 22, 1913; in effect October 1, 1913. Amended 1915, chapter 9; extra session 1915, chapter 1; 1919, chapter 131; 1923, chapter 58; 1925, chapter 68.

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, persons not legally employed, and the officers and managers of corporations. Public employment: Included, except elective officials.

Compensation for death:

- (a) Reasonable funeral expenses, not to exceed \$150.
- (b) To the widow or invalid widower, \$30 per month, and \$5 per month additional for each child under the age of 16 years; orphans, \$10 each per month.
- (c) To other persons wholly dependent, if no widow, invalid widower, or child under the age of 16 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, 66⅔ per cent of the earnings, not to exceed \$7 per week for such portion of 3 years as the commissioner may determine; if the parents were only partially dependent or deceased was under 16 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 16 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, surgical, and hospital services, not exceeding \$800; special treatment to reduce percentage of total disability maximum, \$600.
- (b) For temporary total disability, during such disability, 66⅔ 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, 66⅔ per cent of wages for periods varying with degree of disability (from 2 to 85 per cent, with special schedule for maimings), periods ranging from 8 to 340 weeks; above 85 to 100 per cent disability, 66⅔ 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 \$8 minimum, \$16 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 8, 1911; in effect same date. Amended each session.

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

Industries covered.—All, if employer elects; election presumed if three or more employees, agriculture and railroads excepted; railroads accept by joint election. Compulsory as to State and its municipalities.

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

Compensation for death:

- (a) The reasonable expense of burial, not exceeding \$200.
- (b) To persons wholly dependent, a sum equal to four years' earnings, but not to exceed a total disability benefit. Annual earnings, \$1,400 maximum. \$525 minimum.
- (c) If only partial dependents survive, a sum not to exceed two years' earnings or four times contribution during preceding year.

All payments to be made in weekly installments equal to 65 per cent of average earnings. Benefits for death reduced 15 per cent if due to intoxication, and increased a like amount if due to employer's failure to comply with a law or lawful order.

Dependence of children ceases at 18, unless incapacitated.

If no total dependents, four years' earnings, \$1,000 maximum, must be paid to a special dependency fund.

Compensation for disability:

- (a) Medical, surgical, and hospital treatment for 90 days, and for such additional time as will in the judgment of the commission lessen period of compensation; artificial members are also to be supplied.
- (b) For total disability, 65 per cent of the average weekly earnings during such disability for not over 1,000 weeks for employees under 31 years of age, reduced for older employees.
- (c) For permanent partial disability due to major injuries, a proportionate amount of a total disability indemnity, in addition to healing time; for specified lesser injuries a sum equal to 65 per cent of average weekly wages for fixed periods, ranging from 5 to 50 weeks, in lieu of other payments, unless healing period is prolonged.
- (d) For serious permanent disfigurement compensation may be allowed, not exceeding one year's earnings.

In case of temporary or partial disability the aggregate compensation for a single injury shall not exceed four years' earnings; permanent total disability payments run from 280 to 1,000 weeks, according to age of injured person. Compensation is reduced 15 per cent if injury was due to intoxication, and increased in like amount if due to the employer's failure to comply with a law or lawful order.

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

For certain maimings, employer pays \$150 into second injury fund.

Revision of benefits.—The commission may change any order or award within 20 days if a mistake is discovered; appeals to court within 30 days.

Insurance.—Required in approved companies or proof of financial ability.

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

Settlement of disputes.—By the industrial commission; limited review by the courts.

WYOMING

Date of enactment.—Chapter 124, February 27, 1915; in effect April 1, 1915. Amended, 1917, chapter 69; 1919, chapter 117; 1925, chapter 124.

Injuries compensated.—Personal injury causing disability for more than 7 days, or death, as a result of employment and not due to the culpable negligence of the injured employee or to the willful act of a third person due to reasons personal to such employee or because of his employment.

Industries covered.—Extrahazardous (enumerated list); interstate railroads, domestic service, agriculture and stock raising are excepted.

Persons compensated.—Private employment: All employees in industries covered; persons whose employment is purely casual and not for the purpose of the employer's business, clerical workers not exposed to the hazards of the employment, and officials excepted. Public employment: All employees in classes of employment designated; sheriffs, constables, and their deputies are expressly excluded.

Compensation for death:

(a) \$150 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 \$120 per year, until the age of 16 is reached for each boy, and 18 for each girl, the total for children not to exceed \$3,600. If there are dependent parents and no spouse and no boy under 16, or girl under 18, a sum not exceeding \$1,000.

Payments to nonresident alien beneficiaries are limited to 33¼ per cent of the amounts above provided, and only the widow, sons under 16 years of age, daughters under 18, and parents are considered.

Compensation for disability:

(a) In cases of total disability and permanent partial disability, medical attention and care in a hospital, maximum \$300, unless other arrangement exists.

(b) For permanent total disability, lump sum of \$4,000 if single or with wife or invalid husband, and a sum equal to \$120 per year for each son under 16, and each daughter under 18, the total for children not to exceed \$4,000.

(c) For temporary total disability, \$50 per month if single, \$60 if married, and \$7.50 monthly for each child under 16, the total monthly payment not to exceed \$90, and the aggregate not to exceed the amount payable if the disability were permanent.

(d) For permanent partial disability, fixed lump sums, from \$150 to \$1,500, for specified injuries in addition to other payments; others in proportion.

No payments are made for the first 7 days unless disability continues for more than 21 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. Amended 1919, chapter 7, sec. 11; 1922, chapter 219; 1924, chapter 261; 1926, Public Act No. 432.

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, including diseases proximately caused by the employment.

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

Persons compensated.—All civil employees of the United States, of the District of Columbia except policemen and firemen, and employees of the Panama Railroad Co.

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.

COMPARISON OF COMPENSATION AND INSURANCE SYSTEMS

Insurance of the employer's liability to pay compensation is recognized as an essential feature of the system in all but three⁵ jurisdictions. This may be effected through private insurance (stock or mutual companies), self-insurance (proof of solvency, with or without the giving of a bond or other security), or by insurance in State funds, which may be exclusive or competitive.

The following table shows for each compensation State whether compensation is compulsory or elective, and the forms of insurance provided for by the various laws. This table relates only to private employments; for while public employments are covered in whole or in part in most States, and compulsorily in some where the law is elective as to private employments, the subject is of less general interest and complexity.

TABLE 1.—COMPENSATION AND INSURANCE SYSTEMS

State	Compensation compulsory (14) or elective (32)	Insurance required in—	
		State fund: Exclusive (4) or competitive (11)	Private companies (34) or by self-insurance (35)
Alabama.....	Elective.....		
Alaska.....	do.....		
Arizona.....	Compulsory *.....	Competitive.....	Either.....
California.....	do.....	do.....	Do.....
Colorado.....	Elective.....	do.....	Do.....
Connecticut.....	do.....		Do.....
Delaware.....	do.....		Do.....
Georgia.....	do.....		Do.....
Hawaii.....	Compulsory.....		Do.....
Idaho.....	do.....	Competitive.....	Do.....
Illinois.....	do.....		Do.....
Indiana.....	Elective.....		Do.....
Iowa.....	do.....		Do.....
Kansas.....	do.....		Do.....
Kentucky.....	do.....		Do.....
Louisiana.....	do.....		Do.....
Maine.....	do.....		Do.....
Maryland.....	Compulsory.....	Competitive.....	Do.....
Massachusetts.....	Elective.....		Private companies.....
Michigan.....	do.....	Competitive.....	Either.....
Minnesota.....	do.....		Do.....
Missouri.....	do.....		Do.....
Montana.....	do.....	Competitive.....	Do.....
Nebraska.....	do.....		Do.....
Nevada.....	do.....	Exclusive.....	
New Hampshire.....	do.....		Self-insurance.*.....
New Jersey.....	do.....		Either.....
New Mexico.....	do.....		Do.....
New York.....	Compulsory.....	Competitive.....	Do.....
North Dakota.....	do.....	Exclusive.....	
Ohio.....	do.....		Self-insurance.†.....
Oklahoma.....	do.....		Either.....
Oregon.....	Elective.....	Exclusive.....	
Pennsylvania.....	do.....	Competitive.....	Do.....
Porto Rico.....	Compulsory.....	Exclusive.....	
Rhode Island.....	Elective.....		Do.....
South Dakota.....	do.....		Do.....
Tennessee.....	do.....	Competitive*.....	Do.....
Texas.....	do.....		Private companies.....
Utah.....	Compulsory.....	Competitive.....	Either.....
Vermont.....	Elective.....		Do.....
Virginia.....	do.....		Do.....
Washington.....	Compulsory.....	Exclusive.....	
West Virginia.....	Elective.....	do.....	Self-insurance.†.....
Wisconsin.....	do.....		Either.....
Wyoming.....	Compulsory.....	Exclusive.....	

* As to employers.
 † Compulsory as to coal mining.
 ‡ Self-insuring employers must contribute to maintenance of State fund system.
 § Employers accepting the act must furnish proof of solvency or give bond; no other provision as to insurance.
 ¶ Coal mining only.
 * Alabama, Alaska, and Kansas.

Of the 43 States requiring insurance, 19 have provisions for a State fund, though in Tennessee this is by a separate act limited to coal mining only. In 8 of these the fund is exclusive, acceptance of the system being also compulsory in 5 of this group. In Ohio and West Virginia approved risks may be carried by the employers themselves, but under condition that contribution is made to the State fund system. In 11 States the system is competitive.

Of the 34 States permitting insurance in private companies, all but 2 (Massachusetts and Texas) permit self-insurance as well; and of the number permitting self-insurance (35), all but 3 (New Hampshire, Ohio, and West Virginia) also permit private insurance. Indeed it would seem that employers in New Hampshire are free to take out private insurance, and that there is both statutory and administrative weakness in the lack of more definite requirements that insurance be secured.

The somewhat anomalous provisions of the Idaho statute seem to contemplate an exclusive State fund, but with an option for self-insurance and the deposit of a surety bond or guaranty contract as one means of satisfying the industrial accident board as to the security of payments. The reports of the board indicate, however, that the system is competitive in practice, and that approved private companies are admitted to do business in the State.

A sort of State mutual system, supervised by the State but managed by the employers, is provided for in 3 States (Kentucky, Massachusetts, and Texas), but these are, in effect, only private competing organizations.

SCOPE OR COVERAGE

No law undertakes to cover all employments. Various restrictive provisions are employed, the most important numerically being the exclusion of agriculture and domestic service. Interstate commerce is exempt by reason of the exclusive action of Congress, though its law creates liability, and does not provide compensation. Laws that apply only to "hazardous" or "extrahazardous" employments exclude others, thereby distinguished as "nonhazardous." Casual employments are usually exempted, and those not for gain frequently.

HAZARDOUS EMPLOYMENTS

States whose laws apply only to hazardous employment are 12 in number—Illinois, Kansas, Louisiana, Maryland, Missouri (when there are less than 10 employees), Montana, New Hampshire, New Mexico, Oklahoma, Oregon, Washington, and Wyoming. Enumeration is made in the laws, but it is not complete in several, a blanket clause being used in some, while in others the commission or board may make additions. The principal industrial employments, with the exception of interstate transportation, are uniformly included in these lists.

NUMERICAL EXEMPTIONS

Employers of less than a stipulated number of employees, are exempt from the operation of the laws of 23 States. Voluntary acceptance is generally provided for, as is the case in regard to employments not classed as hazardous. The following table shows

the list of States in which the number of employees determines coverage:

TABLE 2.—STATES MAKING NUMERICAL EXEMPTIONS, BY MINIMUM REQUIREMENTS

Employers are exempt who have less than—							
2 employees (1)	3 employees (6)	4 employees (3)	5 employees (6)	6 employees (2)	10 employees (2)	11 employees (2)	16 employees (1)
Oklahoma.	Arizona. Kentucky. Ohio. Texas. Utah. Wisconsin.	Colorado. New Mexico. New York. ¹	Alaska. Connecticut. Delaware. Kansas. New Hampshire. Tennessee.	Maine. Rhode Island.	Georgia. Missouri.	Vermont. Virginia.	Alabama.

¹ Numerical exemption applies only in case of nonhazardous employments.

AGRICULTURE AND DOMESTIC SERVICE

The exclusion of agriculture is universal among the compensation laws of the United States except in Hawaii and New Jersey; and of domestic service except in New Jersey. Voluntary acceptance of the laws in these occupations is quite generally provided for, though in some cases it appears that their exclusion is intended to be absolute. Threshing grain, etc., is specifically included in Kentucky, Minnesota, and South Dakota (separate act).

PUBLIC EMPLOYMENT

Employees in the service of the State and its subdivisions and municipalities are included generally in 27 States; in several of these the inclusion is compulsory where the law is elective as to private undertakings. The States are: Arizona (if receiving not over \$2,400), California, Colorado, Connecticut, Hawaii, Idaho (if receiving not over \$2,400), Illinois, Indiana, Louisiana, Maine, Michigan, Montana, Nebraska, Nevada, New Jersey (if receiving not over \$1,200), New York, North Dakota, Ohio, Oregon, Pennsylvania, Porto Rico, Rhode Island, South Dakota, Utah, Virginia, West Virginia, and Wisconsin.

In 13 States there is a partial inclusion of public employees (Alabama, Delaware, Georgia, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Minnesota, Oklahoma, Vermont, Washington, and Wyoming).

Public employees are excluded in six States (Alaska, Missouri, New Hampshire, New Mexico, Tennessee, and Texas) though in Missouri and Tennessee the law authorizes an affirmative acceptance of its provisions by the State, its counties and municipal corporations.

OTHER EXCLUSIONS

Employees whose employment is but casual and (sometimes "or") not in the usual course of the employer's trade or business are quite generally excluded, while outworkers are mentioned in a few laws. Exclusion of employees receiving above a designated wage or salary is provided in a few States as follows: Hawaii (\$36 per week), Missouri (\$3,600 per year), North Dakota (executive officers receiv-

ing more than \$2,400 per year), Porto Rico (\$1,500 per year), Rhode Island (\$3,000 per year), and Vermont (\$2,000 per year).

The abrogation of the common-law defenses in suits against non-electing employers does not apply to logging operations under the law of Maine. Clerical and other occupations not subject to the hazards of the employment are excluded in a few States.

OCCUPATIONAL DISEASES

No law in its original enactment made specific provision for compensating occupational diseases. The dominant idea of accident has given way by degrees, however, until at the present time 12 States and the Federal Government provide compensation, either for occupational diseases generally or for designated diseases of this class. The Federal statute and that of North Dakota include under the term "injury" any "disease proximately caused by the employment"; while that of California compensates for "any injury or disease arising out of the employment." The other laws are generally more restrictive in their terms. The States recognizing occupational diseases as entitled to compensation are California, Connecticut, Hawaii, Illinois (in certain employments, by separate act), Massachusetts (by court decision), Minnesota (list), New Jersey (list), New York (list), North Dakota (list), Ohio (list), Porto Rico (list), Wisconsin, and the United States. The law of Kentucky also, by recent amendment, includes "injuries or death due to the inhalation in mines of noxious gases or smoke, commonly known as 'bad air,' and also shall include the injuries or death due to the inhalation of any kind of gas."

ELECTION

In 22 of the 32 elective States, election is presumed in the absence of active rejection, this presumption affecting both employer and employee. In 10 States the employer must take positive action, but if he acts the employee's acceptance is presumed, except in Kentucky, where he must sign an acceptance. In 7 of these (Kentucky, Maine, Michigan, Montana, Nevada, New Hampshire, and Rhode Island) acceptances are filed with designated State authorities; while in the other 3 (Massachusetts, Texas, and West Virginia) the act of insuring signifies election.

Inducement to election is offered by the abrogation of the common-law defenses where the employer rejects the law, and by continuing them in effect where a rejecting employee sues an employer who has accepted it. Exceptions to this are the laws of New Jersey and Pennsylvania, which abrogate the defenses absolutely, without regard to the acceptance or rejection of the act.

SUITS FOR DAMAGES

Actions for damages are generally forbidden where both parties have accepted the act, but in New Hampshire (an elective State) the employee may, after his injury, choose which remedy he will pursue. Where, under an elective law, the employer has accepted the act, a rejecting employee may sue, but the employer retains the common-law defenses, except in New Jersey and Pennsylvania. Upon failure of an employer to provide the insurance required by the act

or his default in premiums, the employee may, in 24 States,⁶ bring action for damages with the common-law defenses removed. Suit may be brought also in 9 States⁷ if there is "intent" or "deliberate intent" on the part of the employer to injure, or if the injury is due to his gross negligence or willful misconduct. No suits are permitted in 16 States.⁸

WAITING TIME

Most laws require a minimum duration of disability as a condition to the payment of compensation benefits. This does not apply to medical and hospital relief, which is to be provided at once. Two States require no waiting time. Conflicting provisions of the South Dakota statute call for 10 days' waiting time on the one hand, and for compensation from date of injury on certification of disability on the other. In practice the latter provision is said to prevail.

In several States the waiting time is compensated for if the disability continues for a specified term; or a part may be taken up in each of certain consecutive weeks until all is compensated for.

The following table shows the waiting time required in each State; also the number of weeks of disability required for the payment of compensation from date of injury, shown in the figure in parenthesis following the name of the State:

TABLE 3.—WAITING TIME REQUIRED BY EACH STATE, AND TERM REQUIRED FOR FULL PAYMENT

No waiting time (2)	3 days (5)	5 days (1)	1 week (31)	10 days (4)	2 weeks (4)
Oregon. South Dakota.*	Maryland. Missouri (4). Utah. Washington. United States.	Oklahoma.	Alaska (3). Arizona (2). California. Connecticut (4). Georgia. Hawaii. ^b Idaho. ^c Illinois (4). Indiana. Kansas. Kentucky. Louisiana (6). Maine. Massachusetts (4). Michigan (6). Minnesota (4). Nebraska (6). Nevada (1). New Hampshire (1). New Jersey (7). New York (7). North Dakota (1). Ohio. Porto Rico. Rhode Island (4). Tennessee (6). Texas. Vermont. West Virginia. Wisconsin (3). Wyoming (3).	Colorado. New Mexico. Pennsylvania. Virginia (6).	Alabama (4). Delaware (4). Iowa. ^d Montana (6).

* By administrative construction of conflicting provisions.

^b From first day of disability in case of partial disability, but no adjudication until after two weeks.

^c One-third taken up in each of fifth, sixth, and seventh weeks of disability.

^d From date of injury in case of permanent partial disability; in other cases, one-third is taken up in each of fifth, sixth, and seventh weeks of disability.

^e Arizona, California, Connecticut, Delaware, Indiana, Iowa, Kentucky, Maryland, Michigan, Montana, Nebraska, Nevada, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, West Virginia, and Wyoming.

^f Arizona, Kentucky, Maryland, Oregon, Porto Rico, Texas, Utah, Washington, and West Virginia.

^g Alabama, Alaska, Colorado, Hawaii, Idaho, Illinois, Kansas, Louisiana, Maine, Massachusetts, Minnesota, New Jersey, New Mexico, Vermont, Virginia, and Wisconsin.

COMPENSATION SCALE

The amounts actually payable under the acts are determined by three factors, the rate (usually a percentage of the wages), term, and (in most States) a fixed maximum weekly or total payment, or both.

PER CENT OF WAGES

In all but two States (Washington and Wyoming) the amount of compensation is based upon wages. A few States, however, provide fixed lump sums or pensions for certain injuries, but apply the percentage system to all others. In most of the States the prescribed percentage remains uniform for all injuries. A few States have varying percentages for different types of injuries, and in several the percentage varies with conjugal condition and number of children.

Using as a basis the rates for temporary total disability, it appears that 50 per cent of the employees' wages is allowed in compensation in 16 States (Alabama (60 per cent if two or more children), Alaska, Colorado, Connecticut, Delaware, Georgia, Illinois (65 per cent if three or more children), Montana, New Hampshire, New Mexico, Oregon (40 to 66 $\frac{2}{3}$ per cent, according to number of dependents), Porto Rico, Rhode Island, Tennessee, Vermont, and Virginia); 55 per cent in 3 States (Idaho (increased 5 per cent for each child, total payments not over \$16 weekly), Indiana, and South Dakota); 60 per cent in 8 States (Hawaii, Iowa, Kansas, Michigan, Nevada, Pennsylvania, Texas, and Utah); 65 per cent in 5 States (Arizona, California, Kentucky, Louisiana, and Wisconsin); and 66 $\frac{2}{3}$ per cent in 12 States (Maine, Maryland, Massachusetts, Minnesota, Missouri, Nebraska, New Jersey, New York, North Dakota, Ohio, Oklahoma, and West Virginia), and also under the Federal statute.

MAXIMUM TERM AND AMOUNT

It is obvious that the reduction of a workman's income by one-half, or even by one-third, the most liberal percentage provision, leaves a large proportion of his loss uncompensated. But to restrict further the burden on the employer, even though it transfers it necessarily to the injured employee and his family, the term of payment is not fixed by the period of disability in most States, but by an arbitrary maximum; death benefits likewise rarely continue for the period of their probable need.

The following table shows for the various States the maximum period and amount of benefits in case of death, permanent total disability, and partial disability. The limitations are in many cases more restrictive for temporary total disability than for permanent total disability, though, where the latter is compensated for life, the former is as a rule compensated during its continuance. In a few cases the rates for temporary disability are higher than for permanent disability. The provisions as to partial disability here reproduced are distinct from those contained in the schedules found in most laws.

TABLE 4.—MAXIMUM PERIODS AND MAXIMUM AMOUNT OF COMPENSATION PAYABLE IN CASE OF DEATH, PERMANENT TOTAL DISABILITY, AND PARTIAL DISABILITY

State	Death		Permanent total disability		Partial disability	
	Weeks	Amount	Weeks	Amount	Weeks	Amount
Alabama.....	800	\$5,000	550	\$5,000	300	-----
Alaska.....	-----	7,800	-----	7,800	-----	\$0,240
Arizona.....	Death or remarriage.	-----	Life.	-----	During disability.	-----
California.....	-----	5,000	Life.	-----	-----	1,240
Colorado.....	312	3,750	Life.	-----	During disability.	3,120
Connecticut.....	312	-----	520	-----	520	-----
Delaware.....	285	-----	475	4,000	285	-----
Georgia.....	300	5,000	350	5,000	300	-----
Hawaii.....	312	5,000	312	5,000	312	5,000
Idaho.....	400	-----	Life.	-----	150	-----
Illinois.....	-----	4,850	Life.	-----	416	-----
Indiana.....	300	5,000	500	5,000	300	-----
Iowa.....	300	-----	400	-----	225	-----
Kansas.....	-----	3,800	416	-----	416	-----
Kentucky.....	335	4,000	416	6,000	335	4,000
Louisiana.....	300	-----	400	-----	300	-----
Maine.....	300	4,000	500	6,000	300	-----
Maryland.....	416	5,000	Life.	5,000	-----	8,750
Massachusetts.....	500	4,000	500	4,000	During disability.	4,000
Michigan.....	300	-----	500	7,000	500	-----
Minnesota.....	Death or remarriage. ¹	-----	Life.	10,000	300	-----
Missouri.....	300	-----	4 300	-----	100	-----
Montana.....	400	-----	500	-----	150	-----
Nebraska.....	350	-----	Life.	-----	300	-----
Nevada.....	Death or remarriage.	-----	Life.	-----	200	-----
New Hampshire.....	-----	3,000	300	-----	300	-----
New Jersey.....	3 300	-----	400	-----	500	-----
New Mexico.....	300	-----	520	-----	150	-----
New York.....	Death or remarriage.	-----	Life.	-----	During disability.	3,500
North Dakota.....	Death or remarriage.	-----	Life.	-----	During disability.	-----
Ohio.....	416	6,500	Life.	-----	During disability.	3,750
Oklahoma.....	Not covered.	-----	500	-----	300	-----
Oregon.....	Death or remarriage.	-----	Life.	-----	104	-----
Pennsylvania.....	3 300	-----	500	5,000	300	-----
Porto Rico.....	-----	4,000	-----	4,000	-----	2,000
Rhode Island.....	300	-----	500	5,000	300	-----
South Dakota.....	-----	3,000	Life.	3,000	312	-----
Tennessee.....	400	-----	550	5,000	300	-----
Texas.....	360	-----	401	-----	300	-----
Utah.....	312	5,000	Life.	-----	312	5,000
Vermont.....	260	3,500	260	4,000	200	-----
Virginia.....	300	4,500	500	4,500	300	-----
Washington.....	Death or remarriage.	-----	Life.	-----	-----	2,400
West Virginia.....	Death or remarriage.	-----	Life.	-----	340	-----
Wisconsin.....	-----	5,000	1,000	-----	During disability.	-----
Wyoming.....	-----	5,600	-----	8,000	-----	1,500
United States.....	Death or remarriage.	-----	Life.	-----	During disability.	-----

¹ For life if 70 per cent or more disabled.

² To orphans or abandoned children till 16.

³ Maximum \$7,500.

⁴ Then 25 per cent of annual earnings for life.

⁵ To minor dependents till 16.

There is quite apparent a tendency to recognize the greater economic loss in case of a permanent total disability than in case of death. Death benefits continue in eight States⁹ and under the Fed-

⁹ Arizona, Minnesota, Nevada, New York, North Dakota, Oregon, Washington, West Virginia.

eral law for life or until remarriage, while 18 States¹⁰ and the Federal Government pay life benefits for permanent total disability. The significance of the latter provision is qualified in a few States by the limitation on the total amount payable, as \$3,000 in South Dakota and \$5,000 in Maryland. Measured by these, the \$10,000 fixed in Minnesota has the merit of comparative liberality, but its provisions would be exhausted in 500 weeks at the maximum allowed rate of \$20 per week. This period is equaled in eight other States¹¹ establishing limitations and exceeded in four.¹² But here again a comparative liberality in term of payment is affected by the maximum amount payable, which does not exceed \$5,000 except in two States (\$6,000 in Maine and \$7,000 in Michigan).

Except in two States,¹³ death benefits are a percentage of the employees' wages; in six there is the requirement that the total shall not exceed three or four years' earnings.¹⁴ Minimum periods are 260 weeks (Vermont) and 285 weeks (Delaware). Thirteen States¹⁵ pay for 300 weeks, seven¹⁶ for from 312 to 360 weeks, and six¹⁷ from 400 to 500 weeks. In Delaware, New Jersey, and Pennsylvania payments to certain minors continue to the age of 16, regardless of the expiration of the period fixed.

WEEKLY MAXIMUM AND MINIMUM

Another leveling feature of most laws is the establishment of a weekly maximum and minimum. The former may prevent the higher paid employee from securing the full proportion of his earnings that the percentage provision would indicate, while the minimum named is often affected by a qualification that if the wages received are less than such minimum the amount of the actual wages shall be paid as a benefit. The result of the various restrictions has been computed as placing upon the injured worker about 50 per cent of the burden of industrial accidents in the most favorable States and from 65 to 80 per cent in those less favorable.

In most cases the actual maximum and minimum payments are named, but in a few it is the basic wage that is noted, payments being computable therefrom. No maximum or minimum provision is fixed in two States (Alaska and Arizona). Under the provisions for temporary total disability five States¹⁸ have a maximum of \$12, two¹⁹

¹⁰ Arizona, California, Colorado, Idaho, Illinois, Maryland, Minnesota, Missouri, Nebraska, Nevada, New York, North Dakota, Ohio, Oregon, South Dakota, Utah, Washington, West Virginia.

¹¹ Indiana, Maine, Massachusetts, Michigan, Oklahoma, Pennsylvania, Rhode Island, Virginia.

¹² Alabama, Connecticut, New Mexico, Tennessee.

¹³ Alaska and Wyoming.

¹⁴ Three years, in California, Kansas, New Hampshire; four years, in Illinois, South Dakota, Wisconsin.

¹⁵ Alabama, Georgia, Indiana, Iowa, Louisiana, Maine, Michigan, Missouri, New Jersey, New Mexico, Pennsylvania, Rhode Island, and Virginia.

¹⁶ Colorado, Connecticut, Hawaii, and Utah, 312 weeks; Kentucky, 335; Nebraska 350; Texas, 360.

¹⁷ Idaho, Montana, Tennessee, 400 weeks; Maryland and Ohio, 416; Massachusetts, 500.

¹⁸ Colorado, New Mexico, Pennsylvania, Tennessee, Virginia.

¹⁹ Indiana, \$13.20; Michigan, \$14.

of over \$12 and under \$15, twelve²⁰ of \$15, five²¹ of \$10, one²² of \$17, three²³ of \$18, while twelve²⁴ permit amounts above \$18 per week. Monthly maximums are prescribed in Nevada (\$72), Oregon (\$97), Wyoming (\$90), and by the Federal law (\$66.67).

PARTIAL DISABILITY

Temporary partial disability is usually compensated for by the payment of a fixed percentage of the wage loss, the term and amount, both weekly and total, being limited. The term and maximum amount fixed by the various statutes are presented in the table on page 66.

Permanent partial disabilities are dealt with in two ways—one by paying a percentage of the wage loss, the other by payments for fixed periods for specified injuries. The two methods exist side by side in most States, all the laws but that of New Hampshire and the Federal statute having schedules of greater or less fullness, while injuries not included therein are compensated on a percentage basis. In all but three States the schedule payments are weekly amounts based on wages; while in these three (Alaska, Washington, and Wyoming) the payments are fixed sums. In Wisconsin weekly periods are fixed only for "lesser permanent partial" injuries, major injuries being compensated on the basis of percentage of permanent total disability.

Schedule provisions may provide for payments in addition to the period of total disability (healing period), or they may cover the entire allowance for the injury other than medical aid. Such payments are exclusive in 19 States,²⁵ and are in addition to the healing period in 25.²⁶ In Massachusetts compensation is paid for the term of total disability, and also for partial disability after the schedule period; the same is true in Rhode Island, subject to a maximum term of 300 weeks. In Maine the schedule payment is in lieu of temporary total disability payments, but subsequent partial disability is compensated to extend not more than 300 weeks from the date of the injury. In New York the schedule payments are normally in lieu of all other payments, but if the period of temporary total disability is protracted beyond designated periods, the schedule period is extended correspondingly. In Georgia a uniform period of 10 weeks is allowed as healing time.

The following table shows the number of weeks' payments provided by the laws of the several States for the injuries specified:

²⁰ Alabama, Delaware, Georgia, Iowa, Kansas, Kentucky, Montana, Nebraska, New Hampshire, Porto Rico, South Dakota, and Vermont.

²¹ Idaho, Massachusetts, Rhode Island, Utah, West Virginia.

²² New Jersey.

²³ Maine, Maryland, and Oklahoma.

²⁴ Wisconsin, \$18.20; Ohio, \$18.75; Illinois, \$19; Hawaii, Louisiana, Minnesota, Missouri, New York, North Dakota, and Texas, \$20; California, \$20.83; Connecticut, \$21.

²⁵ Alabama, Alaska, California, Delaware, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Missouri, Montana, New York, Oklahoma, Pennsylvania, Tennessee, Texas, West Virginia, and Wisconsin.

²⁶ Arizona, Colorado, Connecticut, Georgia, Hawaii, Idaho, Illinois, Maryland, Massachusetts, Minnesota, Nebraska, Nevada, New Jersey, New Mexico, North Dakota, Ohio, Oregon, Porto Rico, Rhode Island, South Dakota, Utah, Vermont, Virginia, Washington, and Wyoming.

TABLE 5.—NUMBER OF WEEKS FOR WHICH COMPENSATION IS PAYABLE FOR SPECIFIED INJURIES IN THE SEVERAL STATES

State	Loss of—													
	Arm (at shoulder)	Hand	Thumb	Index finger	Middle finger	Ring finger	Little finger	Leg (at hip)	Foot	Great toe	Other toe	Sight of one eye	Hearing, one ear	Hearing, both ears
Ala. ¹	200	150	60	35	30	20	15	175	125	30	10	100	---	150
Ariz. ²	260	217	65	39	30	22	17	217	179	30	11	108	87	260
Calif. ³	246	186	42	34	25	25	16	206	166	34	---	125	---	---
Colo. ⁴	208	104	35	18	13	7	9	208	104	18	4	104	35	139
Conn. ⁵	208	156	38	38	30	25	20	182	130	35	13	104	62	156
Del. ¹	194	158	60	35	30	20	15	194	135	30	10	113	---	---
Ga. ¹	260	150	60	35	30	20	15	175	125	30	10	100	---	150
Hawaii ⁶	312	244	60	46	30	25	15	288	205	38	10	128	60	312
Idaho ⁷	200	150	30	20	15	12	9	180	125	15	6	100	35	115
Ill. ¹	200	150	60	35	30	20	15	175	125	30	10	100	---	---
Ind. ¹	250	200	60	40	35	30	20	200	160	60	20	150	---	100
Iowa ¹	225	150	40	30	25	20	15	200	125	25	15	100	50	150
Kans. ¹	210	150	60	37	30	20	15	200	125	30	10	110	25	100
Ky. ¹	200	150	60	45	30	20	15	200	125	30	10	100	---	---
La. ¹	200	150	50	30	20	20	20	175	125	20	10	100	---	---
Me. ¹	150	125	50	30	25	18	15	150	125	25	10	100	---	---
Md. ²	200	150	50	30	25	20	15	175	160	25	10	100	50	100
Mass. ¹	50	50	12	12	12	12	12	50	50	12	12	50	---	---
Mich. ¹	200	150	60	35	30	20	15	175	125	30	10	100	---	---
Minn. ²	209	175	60	35	30	20	15	200	160	30	10	100	52	156
Mo. ¹	232	175	60	45	35	35	22	207	160	40	14	118	44	168
Mont. ¹	200	150	30	20	15	12	9	200	125	15	6	100	---	120
Nebr. ⁸	225	175	60	35	30	20	15	215	150	30	10	125	60	100
Nev. ³	260	217	65	39	30	22	17	217	173	30	11	108	87	260
N. J. ¹	200	150	60	35	30	20	15	175	125	30	10	100	40	160
N. Mex. ⁹	150	110	30	20	15	10	12	140	100	15	8	100	35	135
N. Y. ⁴	312	244	75	46	30	25	15	288	206	38	16	160	---	150
N. Dak. ²	312	280	60	42	36	24	18	286	208	38	16	130	---	---
Ohio ¹	200	150	60	35	30	20	15	175	125	30	10	100	---	---
Okln. ¹	250	200	60	35	30	20	15	175	160	30	10	100	---	---
Oreg. ¹	416	329	104	69	39	35	26	381	277	43	17	175	156	416
Pa. ¹	215	175	60	35	30	20	15	215	160	---	---	125	---	---
R. I. ¹	100	75	25	15	12	12	12	100	75	12	12	75	---	---
S. Dak. ²	200	150	50	35	30	20	15	180	125	30	10	100	---	---
Tenn. ¹	200	150	60	35	30	20	15	175	125	30	10	100	---	150
Tex. ¹	200	150	60	45	30	21	15	200	125	30	10	100	---	150
Utah ¹	200	160	30	20	15	12	9	180	125	15	6	100	---	---
Vt. ¹	170	140	40	25	20	15	10	170	120	20	10	100	43	170
Va. ¹	200	150	60	35	30	20	15	175	125	30	8	150	50	---
W. Va. ¹	240	200	80	40	28	20	20	240	140	40	16	132	---	---
Wis. ¹	---	---	---	35	25	15	16	---	---	25	8	---	---	---

¹ Payments under this schedule are exclusive of or in lieu of all other payments.
² Payments under this schedule are in addition to payments for temporary total disability during the healing period.
³ Compensation varies with occupation and age. Figures given are for laborer, 45 years of age.
⁴ Payments cover total disability. Partial disability based upon wage loss may be compensated at end of periods given for not over 300 weeks in all.
⁵ Payments unless this schedule are in addition to payments for temporary total and permanent partial disability.
⁶ In lieu of other payments unless period of temporary total disability exceeds fixed periods for each class of injury.

MEDICAL BENEFITS

All compensation States now provide medical benefits. In 9 States²⁷ and under the Federal law neither time nor amount is limited. The period is without limit in 8 other States which limit

²⁷ California, Connecticut, Hawaii, Idaho, Nebraska, New York, North Dakota, Porto Rico, and Washington.

the amount, while the time but not the amount is limited in 11 States. However, time or amount or both may be increased in the discretion of the commission in 19 States, so that there are but 9 States²⁸ in which both items are absolutely restricted.

The provision is generally without cost to the workman, but in Alaska the employer may deduct \$2.50 per month, in Arizona and Nevada, one-half the cost, not over \$1 per month, and in Washington one-half the cost, from the employee's wages to maintain a medical fund.

The following table presents the facts in more detail:

TABLE 6.—MAXIMUM PERIODS AND AMOUNTS OF MEDICAL SERVICE UNDER VARIOUS COMPENSATION LAWS

State	Maximum period	Maximum amount	State	Maximum period	Maximum amount
Alabama	60 days	\$100	Nevada	6 months ¹	Unlimited. ²
Alaska	1 year	Unlimited. ²	New Hampshire	14 days	Unlimited.
Arizona	90 days ¹	Unlimited. ²	New Jersey	Unlimited	¹ \$100
California	Unlimited	Unlimited.	New Mexico	10 days	150
Colorado	60 days	200	New York	Unlimited	Unlimited.
Connecticut	Unlimited	Unlimited.	North Dakota	do.	Unlimited.
Delaware	30 days ¹	¹ 100	Ohio	do.	¹ 200
Georgia	do	100	Oklahoma	60 days ¹	¹ 100
Hawaii	Unlimited	Unlimited.	Oregon	Unlimited	¹ 250
Idaho	do.	Unlimited.	Pennsylvania	50 days	¹ 100
Illinois	8 weeks ¹	¹ 200	Porto Rico	Unlimited	Unlimited.
Indiana	30 days ¹	Unlimited.	Rhode Island	8 weeks	150
Iowa	4 weeks	¹ 100	South Dakota	12 weeks	150
Kansas	50 days	150	Tennessee	30 days	100
Kentucky	90 days ¹	¹ 100	Texas	4 weeks ¹	Unlimited.
Louisiana	Unlimited	250	Utah	Unlimited	¹ 500
Maine	30 days ¹	¹ 100	Vermont	2 weeks	100
Maryland	Unlimited	500	Virginia	60 days	Unlimited.
Massachusetts	2 weeks ¹	Unlimited.	Washington	Unlimited ¹	Unlimited.
Michigan	90 days	Unlimited.	West Virginia	do.	800
Minnesota	do ¹	Unlimited.	Wisconsin	90 days ¹	Unlimited.
Missouri	60 days ¹	250	Wyoming	Unlimited	300
Montana	6 months	500	United States	do.	Unlimited.
Nebraska	Unlimited.	Unlimited.			

¹ Additional service in special cases or at discretion of commission.

² Employees contribute.

ADMINISTRATION AND SETTLEMENT OF CLAIMS

The desirability of an administrative agency charged specifically with the supervision of the compensation laws is recognized by all but nine States²⁹ having such laws. In these States the agreements between the parties may be without supervision, or there may be provision for approval by the court (commissioner of labor in Rhode Island). Disputes are settled by the courts, though arbitrators are provided for in Kansas. Summary procedure is generally directed, but a jury trial may be demanded in certain cases. Appeals to courts, usually limited to questions of law, are provided for in practically all jurisdictions.

ACCIDENT REPORTING AND PREVENTION

Nothing is more striking in connection with the subject of accident reporting than its lack of uniformity. The importance of complete

²⁸ Alabama, Colorado, Kansas, Montana, New Mexico, Rhode Island, South Dakota, Tennessee, and Vermont.

²⁹ Alabama (limited supervision by compensation commissioner), Alaska, Kansas, Louisiana, New Hampshire, New Mexico, Rhode Island (commissioner of labor exercises certain functions), Tennessee and Wyoming (fund is supervised by State treasurer).

reports, showing causes, nature, severity, and costs has been too little recognized, even among those charged with the administration of the laws; while the employer has been too prone to minimize or disregard the occurrence of accidents except as an unfortunate incident and a possible source of an action for damages. The necessity of securing complete data for purposes of safety engineering, as well as for the determination of fair and adequate insurance rates is, however, gaining recognition, but much yet remains to be done before actually comparable reports from the various States are available.

Only 21 States³⁰ call for reports of all accidents, while 9 require reports of those causing disability of one day³¹ or more than one day.³² Other periods prescribed are: More than two days, Pennsylvania; one week, Georgia (or requiring medical, etc., aid) and Rhode Island; more than one week, Illinois and Virginia; 10 days, Colorado; and over two weeks, Alabama. In four States³³ reports are to be made as directed or required by the authorities. The States³⁴ whose compensation laws contain no provisions for reports of accidents have other laws on the subject, limited, however, to coal mines, except in Louisiana, which requires reports of accidents causing disability of two weeks or more where women and children are employed. In Tennessee, besides the reports by coal operators in the State fund, mine operators generally and employers in mills, factories, etc., must report, the former to the chief mine inspector, and the latter to the inspector of factories and workshops.

Existing deficiencies in the compensation laws in regard to accident reporting and prevention are offset to some extent by the fact that most States, and in particular those of industrial importance, have inspection agencies for factories, mines, etc., which are charged with duties of prevention, chiefly by way of enforcing safety statutes, though some may also prescribe standards. Though some development appears in the direction of combining compensation administration with the enforcement of labor laws generally, the present situation is one of distributed rather than consolidated responsibility. However, the agency that administers compensation laws is also given certain powers as to safety devices, at least of inspection, in 18 States.³⁵

NONRESIDENT ALIEN DEPENDENTS

The reopening of the question of discriminatory treatment of alien nonresident dependents came with the enactment of compensation laws. The rule had become almost universal under the liability system, that they should have the same status as residents or citizens of the States; but of the 22 State compensation laws on the statute books at the close of the year 1913 nearly one-third (7) made discriminations unfavorable to such claimants, while in 1916, of 35

³⁰ Arizona, California (involving time loss or medical aid), Delaware, Maine, Maryland, Massachusetts, Michigan, Montana, Nevada, New Jersey, New York, North Dakota, Ohio, Oklahoma, Oregon, Porto Rico, South Dakota, Tennessee (in coal mines in State fund), Utah, Washington, Wisconsin, and Wyoming.

³¹ Connecticut, Hawaii, Idaho, Minnesota, and Vermont (or requiring medical aid).

³² Indiana, Iowa, Kentucky, and Texas.

³³ Kansas, Nebraska, New Hampshire, and West Virginia.

³⁴ Alaska, Arizona, Louisiana, and New Mexico.

³⁵ Arizona, California, Colorado, Hawaii, Idaho, Indiana, Maryland, Montana, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Utah, Vermont, West Virginia, and Wisconsin.

States nearly one-half (17) effected discriminations. At the present time, of 46 States 27 have provisions more or less discriminatory, so that an increasing tendency in the direction of less favorable treatment is recognizable. This may be by way of exclusion (4 States³⁶), reduced benefits (17 States³⁷), permitting commutations to lump sums in reduced amounts (3 States³⁸), restricting possible beneficiaries to persons of designated relationship, a provision that may exist alone or in connection with reduced benefits (10 States³⁹), or the presumption of dependency may be destroyed (California).

In 8 States,⁴⁰ nonresident aliens are placed on the same footing as residents, while in 10⁴¹ they are not mentioned. In 4 of these latter (Indiana, Massachusetts, North Dakota, and Rhode Island) they have been included by administrative or court action, as is the case with the Federal employees' statute.

A number of States except residents of Canada from their discriminatory provisions, or declare such provisions subject to conflicting terms of any treaty, or deny all benefits to aliens whose national laws would exclude citizens of the United States in like circumstances.

The Supreme Court of Kansas held a provision of the State law that limited benefits to \$750 except to residents of Canada to be in conflict with the treaty with Italy, and also with the equal protection clause of the fourteenth amendment, so that it could not stand (*Vietti v. Fuel Co.* (1921), 109 Kans. 179, 197 Pac. 881). An inferior court of Pennsylvania found the law of that State restricting benefits to two-thirds the normal award also in conflict with the treaty with Italy, and therefore ineffective. The Supreme Court of the State upheld the law, however (*Liberato v. Royer* (1924), 281 Pa. 227, 126 Atl. 257); and this decision was affirmed by the Supreme Court of the United States (*Id.* (1926), 46 Sup. Ct. 373), on the ground that the treaty dealt only with remedies for injuries and death due to the employer's negligence, a factor not involved in compensation legislation; and as the act providing compensation is elective and the workman had accepted, there was no conflict with the treaty in question. A now abrogated provision of the law of New Jersey excluded nonresident aliens, and was so enforced (*Gregutis v. Waclark Wire Works*, 91 Atl. 98, 92 Atl. 354).

A conspectus of the items discussed in the foregoing pages is given in the accompanying chart.

³⁶ Alabama, Hawaii, New Mexico, and South Dakota.

³⁷ Alaska, Arizona, Colorado, Delaware, Georgia, Idaho, Iowa, Kansas, Kentucky, Maine, Montana, Nevada, Pennsylvania, Utah, Virginia, Washington, and Wyoming.

³⁸ Maryland, Nebraska, and New York.

³⁹ Delaware, Kentucky, Maryland, Nebraska, New York, Oregon, Pennsylvania, Washington, West Virginia, and Wyoming.

⁴⁰ Connecticut, Illinois, Michigan, Minnesota, Ohio, Tennessee, Texas, and Wisconsin.

⁴¹ Indiana, Louisiana, Massachusetts, Missouri, New Hampshire, New Jersey, North Dakota, Porto Rico, Rhode Island, and Vermont.

PRINCIPAL FEATURES OF LAWS OF THE UNITED STATES RELATIVE TO WORKMEN'S COMPEN-

[Chart Revised July 2, 1926]

ATION AND INSURANCE

State	Employments covered		Insurance	How election is made		Defenses abrogated if employer does not elect	Suits for damages after election by both employer and employee	Special contracts	Injuries covered	Waiting time	Compensation benefit			Death (a) Dependents (b) No dependents	Total disability (a) Permanent (b) Temporary	Partial disability	Medical and surgical aid	Nonresident alien dependents	Time for notice and claim	(a) By whom administered (b) How claims are settled	Accident reports required	Accident-prevention work by—(a) Compensation commission. (b) Other agencies	State
	Private	Public		By employer	By employee						Per cent of wages	Maximum and minimum weekly compensation payments	Maximum period										
Alabama. No. 345. Approved Aug. 22, 1918. In effect Jan. 1, 1920.	Electric, as to all employments except those having less than 10 employees, casual employments not in usual course of employer's business. Voluntary, as to employments having less than 10 employees.	Electric, as to employments of State. Voluntary, as to employments of county, city, town, village, or school district.	Not required.	Presumed in absence of written notice filed with court and posted in establishment.	Presumed in absence of written notice to employer and filed with court.	Assumed risk, fellow service, and contributory negligence, unless employee is guilty of willful misconduct as defined.	Not permitted.	Approved substitute schemes permitted if approved by court.	Personal injuries by accident arising out of and in course of employment unless due to intoxication, willful misconduct, intention to injure self or another, indicated by third party for personal reasons, or willful failure to use safety appliances, or other safety laws or rules.	2 weeks. None if disability continues for 4 weeks or more.	Death, 20 to 60 per cent. Disability, 50 to 60 per cent.	Maximum, \$15. Minimum, \$5, or actual wages.	Permanent total disability, 350 weeks. Other cases, 300 weeks.	(a) Expenses of last sickness and burial, maximum, \$100; 20 to 40 per cent of wages for 300 weeks; maximum, \$12 to \$15; minimum, \$5, or actual wages; not over \$5,000. (b) Expenses of last sickness and burial, maximum, \$100.	(a) 80 to 60 per cent of wages for 400 weeks; maximum, \$12 to \$15; minimum, \$5, or actual wages; not over \$5,000. (b) 50 to 60 per cent of wages during disability; not over 300 weeks; maximum, \$12 to \$15; minimum, \$5, or actual wages.	50 to 60 per cent of wage loss during disability for not over 300 weeks; maximum, \$12 to \$15. Specified injuries, 50 to 60 per cent of wages for fixed periods; maximum, \$12 to \$15; minimum, \$5, or actual wages.	Reasonable medical, surgical, and hospital service for 60 days; maximum, \$100; charges limited to prevailing rates.	Excluded.	Notice to employer within 5 days; no compensation if after 90 days. Claim in 1 year.	(a) Courts; limited supervision by compensation commissioner. (b) Direct settlements between parties if in "substantial" conformity with law; court may approve a less amount if in interest of employee. Disputed cases settled by courts.	All electing employers must report all accidents of over 3 weeks' disability to compensation commissioner within 15 days; supplementary report after 60 days or upon termination of disability.	(a) No provision. (b) Chief mine inspector. ¹	Alabama.
Alaska. Ch. 71. Approved Apr. 20, 1915. In effect July 28, 1915. Amended, 1917. New act, ch. 58, 1922. In effect Aug. 2, 1923. Amended, 1923.	Electric, as to all employments having 5 or more employees, except domestic service, agriculture, dairying, and common carrier railroads.	No provision.	Not required.	Presumed in absence of written notice filed with United States commissioner.	Presumed in absence of written notice to employer and filed with United States commissioner.	Assumed risk, fellow service, and contributory negligence, unless willful or due to intoxication.	Not permitted.	Waivers forbidden.	Personal injuries by accident arising out of and in course of employment unless directly due to intoxication or willful intention to injure self or another.	1 week. None if disability continues for 3 weeks or more.	50 per cent for temporary total disability. Fixed lump sums in other cases.	No provision.	Not fixed.	(a) \$3,360 to widow or minor's plus; \$780 to each child under 18 and to dependent parent maximum, \$7,500. If single, \$1,500 to each dependent parent. (b) \$195 maximum for burial expenses; \$125 for other expenses between accident and death.	Lump sums based upon schedule for permanent total disability proportioned to loss of earning capacity; maximum, \$5,240. Specified injuries, lump sums, varying with number of dependent persons; lump sums for certain disfigurements.	Reasonably necessary medical, surgical, and hospital treatment for not over 1 year.	Three-fourths benefits.	Notice in 120 days; claim in 2 years.	(a) Courts. (b) Voluntary agreement; disputed cases settled by courts.	No provision.	(a) No commission. (b) Mine inspector (who is also ex officio labor commissioner). ¹	Alaska.	
Arizona. Ch. 14 (extra session). Approved June 9, 1912. In effect Sept. 1, 1912. New act, ch. 53, 1923. In effect Jan. 7, 1925.	Compulsory, as to all establishments having 3 or more workmen except farm labor not using machinery and domestic servants. Voluntary, as to other employments.	Included, except elective officials and those with over \$2,400 salary.	Employers must insure in State fund or private company, or provide self-insurance.	Presumed in absence of written notice filed with commission.	Presumed in absence of written notice to employer, filed with commission.	Assumed risk, fellow service, and contributory negligence, unless willful or due to intoxication.	Permitted if employer fails to insure.	Waivers forbidden.	Personal injuries by accident arising out of and in course of employment, not purposely self-inflicted.	1 week. None if disability continues 2 weeks.	Death, 25 to 65 1/2 per cent. Disability, 65 per cent.	No provision.	Not fixed.	(a) 65 per cent of wages for life. (b) Same for not over 100 months; \$10 monthly added if dependents in United States.	65 per cent of wage loss during disability, for not over 60 months. Schedule for specific injuries in addition to other payments.	Medical, surgical, and hospital aid for 90 days; 1 year if commission directs.	60 per cent of normal benefits.	Injury to be reported at once; claim in 1 year.	(a) Industrial commission. (b) By commission on application. Appeal to supreme court.	Employers under the act and attending physicians must report all injuries to workmen.	(a) Industrial commission. (b) Mine inspector. ¹	Arizona.	
California. Ch. 399. Approved Apr. 6, 1911. In effect Sept. 1, 1911. New act, ch. 176, 1913. Amended, 1915. New act, ch. 138, 1917. In effect Jan. 1, 1918. Amended, 1919, 1923, 1925.	Compulsory, as to all establishments except farm labor, domestic service, and casual employments not in usual course of employer's business. Voluntary, as to excepted employments.	Included, except elective officials and those with over \$2,400 salary.	Employers must insure in State fund or private company, or provide self-insurance.	Presumed in absence of written notice to employer, filed with commission.	Presumed in absence of written notice to employer, filed with commission.	Assumed risk, fellow service, and contributory negligence, unless willful or due to intoxication.	Permitted if employer fails to insure risk.	Waivers forbidden.	Personal injuries arising out of and in the course of employment or intentionally self-inflicted; includes injuries to artificial limbs. Occupational diseases included.	1 week.	65 per cent.	Maximum, \$20.83. Minimum, \$4.17.	Permanent total disability, life. Temporary disability, 240 weeks.	(a) 65 per cent of wages for 240 weeks, then 40 per cent for life. (b) 65 per cent of wages during disability; not over 240 weeks, nor 3 years' earnings, nor \$5,000.	If permanent, 65 per cent of wages for 240 weeks, then 40 per cent for life. If temporary, 65 per cent of wage loss during disability; not over 240 weeks nor 3 years' earnings, nor \$5,000. Disfigurement compensable.	Reasonable medical, surgical, and hospital treatment for 60 days; maximum, \$200; no time limit in case of hernia; additional allowance for dental service, maximum, \$100.	No presumption of dependency.	Notice in 30 days; claim in 6 months for disability; 1 year for death, 2 years if any settlement for less than a statutory award has not been approved by the commission.	(a) Industrial accident commission. (b) Voluntary agreement approved by commission; disputed cases referred to one or more referees; review by commission; rehearing in certain cases; appeal to courts upon questions of law.	All employers, attending physicians, and insurers must report all injuries involving time loss or medical aid to industrial accident commission. Fatal injuries must be reported immediately.	(a) Industrial accident commission. (b) Bureau of labor statistics. ¹	California.	
Colorado. Ch. 170. Approved Apr. 10, 1915. In effect Aug. 1, 1915. Amended, 1917. New act, ch. 210, 1919. Amended, 1923, 1925.	Electric, as to all employments except those having regularly less than 4 employees, farm labor, domestic service, and casual employments not in usual course of employer's business. Voluntary, as to excepted employments.	Compulsory, as to all employments except elective officials and members of National Guard.	Electing employers must insure in State fund or private company, or provide self-insurance.	Presumed in absence of written notice to commission; notice of rejection to be posted.	Presumed in absence of written notice to employer and to commission.	Assumed risk, fellow service, and contributory negligence, unless willful.	Not permitted.	Waivers forbidden, but approved hospital fund may be maintained.	Personal injuries accidentally sustained arising out of and in the course of employment and not intentionally self-inflicted.	10 days.	50 per cent.	Maximum, \$12. Minimum, \$5, or actual wages.	Death, 312 weeks. Permanent total disability, life.	(a) Burial expenses, not over \$125; 50 per cent of wages for 6 years; maximum, \$12; minimum, \$5, or actual wages; maximum, \$125. (b) Reasonable burial expenses; maximum, \$125.	If permanent, a sum proportionate to a total disability benefit, not over \$1,120; fixed for specified injuries; all payments, 60 per cent of wages, maximum, \$12, minimum, \$5, or actual wages; all in addition to temporary total. If temporary, 50 per cent of wage loss during disability; maximum, \$12; not over \$1,500 in all. Disfigurement, maximum, \$500.	Reasonable medical, surgical, and hospital treatment for 60 days; maximum, \$200; no time limit in case of hernia; additional allowance for dental service, maximum, \$100.	One-fourth benefits.	Notice in 2 days; claim in 6 months; 1 year in case of death.	(a) Industrial commission. (b) Admitted liability with statement of amount may be submitted to commission; no settlement final until approved; disputes heard by commission, commissioner, or a referee; review and court appeal provided for.	All employers must report all compensable accidents within 10 days to industrial commission.	(a) Industrial commission. (b) Department of labor and factory inspection; inspectors of coal mines; bureau of mines. ¹	Colorado.	
Connecticut. Ch. 138. Approved May 29, 1913. In effect Jan. 1, 1914. Amended, 1915, 1917, 1919, 1921, 1922.	Electric, as to all employments except those having regularly less than 5 employees, casual employments, and casual employments, not for purpose of employer's trade or business. Voluntary, as to excepted employments.	Electric, as to the State and all public corporations having regularly 5 or more employees. Voluntary, as to others.	Electing employers must insure in private company, or provide self-insurance.	Presumed in absence of written notice.	Presumed in absence of written notice.	Assumed risk, fellow service, and contributory negligence.	Permitted if employer fails to insure risk.	Approved schemes may be substituted if benefits equal those of act. Physically defective employees may waive right to compensation.	Personal injuries arising out of and in course of employment unless due to willful and serious misconduct or intoxication. Occupational diseases included.	1 week. None if disability continues longer than 4 weeks.	50 per cent.	Maximum, death, \$18; disability, \$21. Minimum, \$5.	Death, 312 weeks. Disability, 520 weeks.	(a) Burial expenses, \$100; 50 per cent of wages for 312 weeks; maximum, \$18; minimum, \$5. (b) Burial expenses, \$100.	50 per cent of wage loss during disability, not over 520 weeks; weekly maximum, \$21. Specified injuries, 50 per cent of wages for fixed periods; weekly maximum, \$21; minimum, \$5; in addition to temporary total.	Such medical, surgical, or hospital treatment as deemed reasonable by attending physician; charges limited to prevailing rates. Special provision for seamen on United States vessels.	Included.	Notice at once; claim in 1 year; 2 years for due cause shown.	(a) Board of 5 compensation commissioners in charge of separate districts. (b) Voluntary agreement approved by commissioner; disputed cases settled by commissioner; appeals to courts.	Assenting employers must report all injuries of 1 day's disability weekly to compensation commissioner.	(a) No provision. (b) Department of labor and factory inspection. ¹	Connecticut.	
Delaware. Ch. 233. Approved Apr. 2, 1917. In effect Jan. 1, 1918. Amended, 1919, 1921, 1922.	Electric, as to all employments except those having less than 6 employees, farm labor, and casual employments not in usual course of employer's business.	Compulsory, as to employees of major companies, or provide self-insurance.	Electing employers must insure in private company, or provide self-insurance.	Presumed in absence of printed notice to employees posted in plant, and filed with board.	Presumed in absence of written notice to employer and filed with board.	Assumed risk, fellow service, and contributory negligence.	Permitted if employer fails to insure risk.	Approved substitute schemes permitted if benefits equal those of act. Waivers forbidden.	Personal injuries by accident arising out of and in course of employment unless due to willful intention to injure self or another, intoxication, failure to use safeguards, violation of law, recklessness, or caused by third party for personal reasons.	2 weeks. None if disability continues for 4 weeks or more.	Death, 15 to 60 per cent. Disability, 50 per cent.	Death: Weekly basic wage, maximum, \$35; minimum, \$10. Disability: Maximum, \$15; minimum, \$5, or actual wages.	Permanent total disability, 475 weeks. Others, 285 weeks.	(a) Expenses of last sickness and burial, maximum, \$100; 15 to 16 per cent of wages for 285 weeks basic wage, maximum, \$35, minimum, \$10. (b) Expenses: last sickness and burial, maximum, \$100.	50 per cent of wage loss for not over 285 weeks; maximum, \$15. Specified injuries, 50 per cent of wages for fixed periods; maximum, \$15; minimum, \$5, or actual wages.	Reasonable medical, surgical, and hospital treatment for 30 days; maximum, \$100. Board may increase time and amount.	One-half benefits; to widows and children only.	Notice in 14 days; if in 30 days, not barred except as to extent employer was prejudiced; bar absolute after 90 days. Claim in 1 year.	(a) Industrial accident board. (b) Voluntary agreement approved by board; disputed cases settled by board after hearing; appeal to courts.	All assenting employers must report all accidents to industrial board within 10 days; supplementary report upon termination of disability.	(a) Industrial accident board. (b) No provision.	Delaware.	
Georgia. Page 167. Approved Aug. 17, 1913. In effect Mar. 1, 1921. Amended, 1922, 1923, 1925.	Electric, as to all employments having 10 or more employees, except those not in the usual business of the employer, farm labor, domestic service, common carriers using steam power, and institutions operated as public charities. Voluntary, as to excepted employments.	Compulsory, as to municipal corporations and political subdivisions of the State.	Electing employers must insure or provide self-insurance; the terms of policies are subject to approval by the commission.	Presumed in absence of written notice filed with the commission and posted in the establishment.	Presumed in absence of written notice to employer, with copy to commission.	Assumed risk, fellow service, and contributory negligence.	Not permitted.	Waivers forbidden.	Any injury by accident arising out of and in the course of employment, not including diseases except those resulting from the accident not injured by third persons for personal reasons, or due to willful misconduct, intent to injure self or another, intoxication, or willful failure to use a safety appliance or observe law or regulation.	7 days.	Death, 42 1/2 per cent. Disability, 50 per cent.	Total disability: Maximum, \$15; minimum, \$4, or full wages if less than \$1. Partial disability: maximum, \$12 weekly; for specified injuries, same as for total disability. Death, maximum, \$12.75.	(a) Burial expenses, not over \$100; 50 per cent of total disability benefit for 300 weeks; week maximum, \$12.75; total not over \$5,000. (b) Expenses of last sickness and burial, not to exceed \$100.	50 per cent of wage loss, not over \$12 per week, not more than 300 weeks, including any period of total disability. Specified injuries, 50 per cent of wages for fixed periods after not more than 10 weeks' allowance for total disability, if any; maximum, \$15; minimum, \$4, or actual wages if less.	Necessary medical attention, not more than 30 days; maximum, \$100, charges limited to those for other persons of like standing. Continued treatment may be offered and must be accepted unless the commission orders otherwise. Special provision for surgical operations for hernia.	One-half benefits, not over \$1,000, except to residents of Canada.	Notice immediately; barred after 80 days unless reasonable excuse and employer shows not to be prejudiced by delay; claim in 1 year.	(a) Industrial commission. (b) Agreement after 14 days, approved by commission; disputes or disagreements settled by commission after hearing, subject to review or limited appeal to courts.	Assenting employers must report within 10 days all accidents causing disability for 7 days, or requiring medical and surgical aid; supplementary report on termination of disability.	(a) No provision. (b) Commissioner of commerce and labor. ¹	Georgia.		
Hawaii. No. 221. Approved Apr. 26, 1914. In effect July 1, 1915. Amended, 1917, 1922.	Compulsory, as to all industrial employments carried on for gain, except casual employments, those not in usual course of employer's business, and those requiring more than \$20 a week from any one employer.	Compulsory, as to all employees except elective officials or employees receiving more than \$1,500 a year.	Employers must insure in private company, or provide self-insurance.	Presumed in absence of written notice.	Presumed in absence of written notice.	Assumed risk, fellow service, and contributory negligence.	Not permitted.	Waivers forbidden.	Personal injuries by accident arising out of and in course of employment unless due to willful intention to injure self or another, or to intoxication. Occupational diseases included.	1 week. None in case of partial disability.	Death, 25 to 60 per cent. Total disability, 60 per cent. Partial disability, 50 per cent.	Death: Basic wage, maximum, \$25; minimum, \$5. Total disability: Maximum, \$20; minimum, \$5, or actual wages if disability is temporary. Partial disability: Maximum, \$12.	312 weeks.	(a) Burial expenses, \$100; 25 to 60 per cent of wages for 312 weeks basic wage, maximum, \$25, minimum, \$5, or actual wages; total not over \$5,000. (b) Burial expenses, \$100.	50 per cent of wages during 37, not over 312 weeks; maximum, \$20, minimum, \$5, or actual wages; total not over \$5,000. (b) 50 per cent of wages if disability is temporary; total, \$5,000.	Medical, surgical, and hospital service, such as the nature of the injury requires; charges limited to prevailing rates.	Excluded.	Notice as soon as practicable; claim in 3 months; not required if aid or compensation has been voluntarily given.	(a) Industrial accident board for each county. (b) Voluntary agreement approved by board; disputed cases settled by board or by arbitration committee; review by full board; appeal to courts.	All employers must report all injuries of 1 day's disability or more as soon as practicable to industrial accident board; supplementary report at termination of disability or after 60 days.	(a) No provision. (b) No provision.	Hawaii.	

¹ Not provided for in compensation law.

PRINCIPAL FEATURES OF LAWS OF THE UNITED STATES RELATIVE TO WORKMEN'S COMPENSATION A

FD INSURANCE—Continued

State	Employments covered		Insurance	How election is made		Defenses abrogated if employer does not elect	Suits for damages after election by both employer and employee	Special contracts	Injuries covered	Waiting time	Compensation benefit				Total disability (a) Permanent (b) Temporary	Partial disability	Medical and surgical aid	Nonresident alien beneficiaries	Time for notice and claim	(a) By whom administered (b) How claims are settled	Accident reports required	Accident-prevention work by—(a) Compensation commission. (b) Other agencies	State
	Private	Public		By employer	By employee						Per cent of wages	Maximum and minimum weekly compensation payments	Maximum period	(a) Dependents (b) No dependents									
Idaho. Ch. 51. Approved Mar. 16, 1917. In effect Jan. 1, 1918. Amended, 1921, 1923.	Compulsory, as to all employments conducted for gain except farm and domestic service, outworkers, casual employment and charitable institutions. Voluntary, as to excepted employments.	Compulsory, as to all employments except elective officials, and those receiving salary over \$2,400.	Employers must insure in State fund or private companies, or provide self-insurance.				Not permitted.	Approved substitute schemes permitted if benefits equal those of act; waivers forbidden.	Personal injuries by accident arising out of and in course of employment, unless due to willful intention to injure self or another, or intoxication.	1 week; compensated fifth to seventh weeks if disability continues.	Death, 25 to 55 per cent. Disability, 55 per cent.	Death: Maximum, \$12; minimum, \$0, or actual wages; Others, maximum \$10, minimum, \$0.	Death, 400 weeks. Permanent total disability, 400 weeks. Temporary total disability, 400 weeks. Partial disability, 150 weeks.	(c) Burial expenses, maximum, \$200; 45 per cent of wages to widow or dependent widower for 400 weeks, 55 per cent if child or children, maximum, \$12; minimum, \$0, or actual wages. (d) Burial expenses, maximum, \$50; also \$1,000 to administration fund.	(a) 55 per cent of wages for 400 weeks; 60 per cent if married, and 5 per cent for each child; maximum, \$10; minimum, \$0; thereafter, \$0 a week during disability.	65 per cent of wage loss for not over 150 weeks; maximum, \$10. Specified injuries, 55 per cent of wages for fixed periods in addition to other benefits; weekly maximum, \$10. Disfigurement compensation, \$10.	Reasonable medical, surgical, and hospital service; hospital benefit funds permitted in lieu of above. Charges limited to prevailing rates.	One-half benefits, subject to treaty provisions; nothing if law of nation excludes citizens of United States.	Notice as soon as practicable; claim in 1 year.	(a) Industrial accident board. (b) Voluntary agreement approved by board; disputed cases may be submitted to arbitration committee; review by full board; appeal to court upon questions of law.	All employers must report all accidents of 1 day's disability to industrial accident board within 48 hours; supplementary report after 60 days or upon termination of disability.	(a) Industrial accident board. (b) Inspector of mines. ¹	Idaho.
Illinois. P. 314. Approved June 10, 1911. In effect May 1, 1912. New act, p. 235, 1912. Amended, 1916, 1917, 1919, 1921, 1922, 1923.	Compulsory, as to "extrahazardous" employments enumerated; farm labor, and persons not in usual course of employer's business excepted. Voluntary, as to excepted employments.	Compulsory, as to all employments except elective officials, and members of fire departments in cities of 200,000 or more inhabitants.	Employers must insure in private companies, or provide self-insurance.				Not permitted.	Approved schemes permitted if benefits equal those of act. No waiver of provisions of act as to amount of compensation without approval of board.	Accidental injuries arising out of and in course of employment. Occupational diseases in certain occupations included by separate act.	1 week. None if disability continues for 4 weeks or more.	Disability, 50 to 65 per cent.	Maximum, \$14 to \$19. Minimum, \$7.50 to \$11.	Permanent total disability, life. Permanent partial disability, 5 years. Temporary disability, during its continuance.	(a) 50 to 65 per cent of wages until 4 years' earnings are paid; maximum, \$1,200, minimum, \$1,050. (b) Burial expense, maximum, \$150, and \$300 to second injury fund.	(a) 50 to 65 per cent of earnings for 8 years; maximum, \$14 to \$10; minimum, \$7.50 to \$14; thereafter 8 per cent of death benefits for life, minimum, \$10 a month. (b) 50 to 65 per cent of earnings during disability; maximum, \$14 to \$10; minimum, \$7.50 to \$14, in addition to temporary total. Disfigurement, maximum, one-fourth death benefits.	Medical, surgical, and hospital services as reasonably required to effect a cure.	Included.	Notice as soon as practicable, not later than 30 days; claim in 6 months.	(a) Industrial commission. (b) Voluntary agreement, not before 7 days after injury; disputed cases settled by arbitrator or arbitration committee; review by full commission; appeal to courts upon questions of law.	All employers within provisions of act must report all injuries of more than 1 week's disability to industrial commission; fatal accidents at once; others once a month; supplementary report of permanent disability cases.	(a) No provision. (b) Department of labor; mine inspector. ¹	Illinois.	
Indiana. Ch. 106. Approved Mar. 6, 1916. In effect Sept. 1, 1915. Amended, 1917, 1919, 1923.	Compulsory, as to mining. Elective, as to all other employments except farm labor, domestic service, casual employees not in usual course of employer's business, and railroad employees engaged in train service. Voluntary, as to excepted employments.	Compulsory, as to all employments.	Electing employers must insure in private companies, or provide self-insurance.	Presumed in absence of written notice, posted or served, and filed with industrial board.	Presumed in absence of written notice, served on employer and filed with industrial board.	Assumed risk, fellow service, and contributory negligence.	Permitted if employer fails to insure risk.	Approved schemes permitted if benefits equal those of act. All other waivers forbidden.	Personal injuries by accident arising out of and in course of employment unless due to willful misconduct, intentional self-inflicted injury, intoxication, and willful failure to use safety appliances or to obey safety laws, or commission of a crime.	1 week.	Death, total disability, and specified injuries, 55 per cent.	Basic wage, maximum, \$24; minimum, \$10.	Death and partial disability, 300 weeks. Total disability, 500 weeks.	(a) Burial expenses, maximum, \$100; 55 per cent of wages for 300 weeks; basic wage, maximum, \$24; minimum, \$10. Specified injuries, 55 per cent wages for fixed periods; basic wage, maximum, \$24; minimum, \$10; disfigurement, not over 200 weeks.	Necessary medical, surgical, and hospital service for 90 days; 90 days' additional treatment if necessary in opinion of board; charges limited to prevailing rates.	No provision.	Notice in 30 days or benefits will begin from date of notice; claim in 2 years.	(a) Industrial board. (b) Voluntary agreement, not before 7 days after injury, approved by board; disputed cases settled by board or member thereof; review by full board; appeal to courts upon questions of law.	All employers must report all injuries of more than 1 day's disability within 1 week to industrial board; supplementary report after 60 days or upon termination of disability.	(a) Industrial board. (b) No provision.	Indiana.		
Iowa. Ch. 147. Approved Apr. 18, 1913. In effect July 1, 1914. Amended, 1917, 1919, 1923, 1924, 1925.	Elective, as to all employments except farm labor, domestic service, casual employees, those not in course of employer's business, and clerks not subject to hazard of the industry.	Compulsory, as to all employments except firemen and policemen in pension funds.	Electing employers must insure in private companies, or provide self-insurance.	Presumed in absence of notice posted in establishment and filed with industrial commissioner.	Presumed in absence of written notice to employer and industrial commissioner.	Assumed risk, fellow service, and contributory negligence, unless willful and with intent to cause injury.	Permitted if employer fails to insure risk.	Approved schemes permitted, but no reduction of liability allowed. All other waivers forbidden.	Personal injuries arising out of and in course of employment unless due to willful intention to injure self or another, intoxication, or willful act of a third party.	2 weeks; compensated during fifth and seventh weeks if disability continues.	60 per cent.	Death: Maximum, \$15; minimum, \$3. Disability: Maximum, \$15; minimum, \$0, or actual wages.	Death and temporary total disability, 300 weeks. Permanent total disability, 400 weeks.	(a) Burial expenses, maximum, \$100; 60 per cent of wages for 300 weeks; weekly maximum, \$12; minimum, \$0, or full wages. (b) Last sickness and burial expenses, maximum, \$250.	Reasonable medical, surgical, and hospital service for 4 weeks, if requested by employee, court, or commissioner; maximum \$100; \$100 additional in exceptional cases.	One-half benefits; nothing if law of nation excludes citizens of United States.	Notice in 15 days; if in 30 days, not before except as to extent employer was prejudiced; bar absolute after 90 days; claim in 2 years.	(a) Industrial commissioner. (b) Voluntary agreement, not before 12 days after injury, approved by commissioner; disputed cases settled by arbitration committee; review by commissioner; appeal to courts.	All employers must report all accidents of more than 1 day's disability within 48 hours to industrial commissioner; supplementary report after 60 days or upon termination of disability.	(a) No provision. (b) Bureau of labor statistics; mine inspectors. ¹	Iowa.		
Kansas. Ch. 218. Approved Mar. 14, 1911. In effect Jan. 1, 1912. Amended, 1912, 1917, 1919.	Elective, as to "especially dangerous" employments enumerated conducted for gain except those having less than 5 employees, farm labor, and those not in usual course of employer's business; all mines covered. Voluntary, as to excepted employments.	Elective, as to workmen on county and municipal work.	Not required.	Presumed in absence of notice posted in establishment and filed with secretary of state.	Presumed in absence of written notice filed with employer and secretary of state.	Assumed risk, fellow service, and contributory negligence.	Not permitted.	Approved schemes permitted if benefits equal those of act. Blind employees may waive right to compensation or damages.	Personal injuries by accident arising out of and in course of employment except when going to and from work, unless due to intoxication, deliberate intention to cause injury, or willful failure to use safeguards required by law or furnished by employer.	1 week.	Disability, 60 per cent. Specified injuries, 60 per cent.	Disability: Maximum, \$15; minimum, \$0.	Disability, 8 years.	(a) 3 years' earnings; maximum, \$3,000; minimum, \$1,400. (b) Burial expenses, maximum, \$150.	Reasonable medical, surgical, and hospital service for 60 days, if demanded by employee; maximum, \$150.	\$750 maximum except to residents of Canada. ¹	Notice in 10 days; claim in 6 months.	(a) Courts. (b) Voluntary agreement; disputed cases settled by local arbitration committee or by an arbitrator; review by court.	All employers affected by act must report annually to factory inspector "such reasonable particulars as to accidents as State factory inspector may require."	(a) No commission. (b) Department of labor and industry. ¹	Kansas.		
Kentucky. Approved Mar. 23, 1916. In effect Aug. 1, 1916. Amended each session.	Elective, as to all employments except those having less than 3 employees, farm labor, and domestic service. Threshing and mowing teams and teams are within the act. Voluntary, as to excepted employments.	Elective, as to all municipal corporations having 3 or more employees. Voluntary, as to others.	Electing employers must insure in Kentucky Employees' Insurance Association or other private companies, or provide self-insurance.	By writing filed with the commission and posted in the establishment.	By signed notice filed with employer.	Assumed risk, fellow service, and contributory negligence.	Permitted if injury is due to deliberate intention of employer or failure to file evidence to insurance.	Approved schemes permitted if benefits equal those of act.	Personal injuries by accident arising out of and in course of employment, unless self-inflicted, due to willful misconduct or intoxication. Includes injuries due to inhaling gas or smoke in mines, or any kind of gas.	1 week.	65 per cent.	Maximum, \$15. Minimum, \$0.	Death, 335 weeks. Total disability, 8 years. Partial disability, 335 weeks.	(a) Burial expenses, maximum \$75; 65 per cent of wages for 335 weeks; maximum \$12; minimum \$0; total not over \$4,000. (b) Burial expenses, maximum \$75; and \$100 to representative of deceased.	(a) 65 per cent of wages during disability, not over 8 years; weekly maximum \$15, minimum \$5; total not over \$6,000.	Reasonable medical, surgical, and hospital service for 90 days, maximum \$100, unless board fixes other period, when maximum is \$200; same for hernia operation; charges limited to prevailing rates.	One-half benefits; to widows and children only.	Notice as soon as practicable; claim in 1 year.	(a) Workmen's compensation board. (b) Voluntary agreement approved by board; disputed cases settled by board, a member of same, or referee; review by full board; appeal to courts.	All employers subject to act must report all injuries of more than 1 day's disability to workmen's compensation board within 1 week; supplementary report after 60 days or upon termination of disability.	(a) No provision. (b) Mine inspectors; Kentucky Employees' Insurance Association.	Kentucky.	
Louisiana. No. 20. Approved June 18, 1914. In effect Jan. 1, 1915. Amended each session.	Elective, as to "hazardous" employments enumerated, or as agreed upon or determined by court, except employments not conducted for purpose of employer's business. Voluntary, as to other employments.	Compulsory, as to all employments except elective officials.	Employers under act must insure or give bond.	Presumed in absence of written notice to employee.	Presumed in absence of written notice to employer.	Assumed risk, fellow service, and contributory negligence.	Not permitted.	No contract may relieve employer from liability.	Personal injuries by accident arising out of and in course of employment, unless due to willful intention to injure self or another, intoxication, deliberate failure to use safeguards, or breach of safety laws.	1 week. None if disability continues for 6 weeks or more.	Death, 23 1/2 to 65 per cent. Disability, 55 per cent.	Maximum, \$20. Minimum, \$3 or actual wages.	Death, 300 weeks. Permanent total disability, 400 weeks. Temporary total and partial disability, 300 weeks.	(a) Expenses of burial, maximum \$100 and \$50 contingent expenses; 52 1/2 to 65 per cent of wages for 300 weeks; maximum \$20; minimum \$3, or actual wages. (b) Expenses of burial, maximum, \$100, and \$50 contingent expenses.	(a) 65 per cent of wages for 400 weeks; maximum, \$20; minimum, \$3, or actual wages. (b) Same for not over 300 weeks.	Reasonable medical, surgical, and hospital service; maximum, \$250; charges governed by workman's station.	No provision.	Notice in 6 months; proceedings must be begun within 1 year.	(a) Courts. (b) Voluntary agreement approved by court; disputed cases settled by court.	No provision.	(a) No commission. (b) New Orleans factory inspector. ¹	Louisiana.	
Maine. Ch. 206. Approved Apr. 1, 1915. In effect Jan. 1, 1916. Reenacted, 1919; amended, 1921, 1925.	Elective, as to all employments, except those having regularly less than 5 employees, farm labor, domestic service, logging operations, casual employees, and those not in usual course of employer's business. Voluntary, as to exempted employees.	Compulsory, as to all employments of State, counties, and cities, except elective officials. Voluntary, as to towns.	Electing employers must insure in private companies or provide self-insurance.	Writing filed with commission and posted in establishment.	Presumed, if employer elects, in absence of written notice to employer filed with commission.	Assumed risk, fellow service, and contributory negligence.	Not permitted.	Existing approved schemes may be continued; waivers forbidden.	Personal injuries by accident arising out of and in course of employment unless due to willful intention to injure self or another, or intoxication without employer's knowledge.	7 days.	66 2/3 per cent.	Maximum, \$18. Minimum, \$0.	Death, 300 weeks. Total disability, 300 weeks. Partial disability, 300 weeks.	(a) 66 2/3 per cent of wages for 30 weeks, total not over \$4,000 maximum, \$18; minimum, \$0. (b) Expenses of last sickness and burial, maximum, \$200.	(a) 66 2/3 per cent of wages during disability, not over 300 weeks; maximum, \$18; minimum, \$0; total not over \$6,000.	Reasonable medical and hospital service for 90 days, maximum, \$100; additional service in discretion of commissioner.	One-half benefits except to residents of Canada.	Notice in 30 days; claim in 1 year.	(a) Industrial accident commission. (b) Voluntary agreement approved by commissioner; disputed cases settled by commissioner; appeal to court upon questions of law.	All assenting employers must report all accidents promptly to industrial accident commission; insurers must furnish information requested by commissioner or insurance commissioner.	(a) No provision. (b) Department of labor and industry. ¹	Maine.	

¹ Not provided for in compensation law.

² But included by construction of law.

³ Provision held by court to be in conflict with treaty and with fourteenth amendment.

PINCIPAL FEATURES OF LAWS OF THE UNITED STATES RELATIVE TO WORKMEN'S COMPENSATION AND INSURANCE—Continued

State	Employments covered		Insurance	How election is made		Defenses abrogated if employer does not elect	Suits for damages after election by both employer and employe	Special courts	Injuries covered	Waiting time	Compensation benefits				Medical and surgical aid	Nonresident alien beneficiaries	Time for notice and claim	(a) By whom administered (b) How claims are settled	Accident reports required	Accident-prevention work by—(a) Compensation commission. (b) Other agencies	State		
	Private	Public		By employer	By employe						Per cent of wages	Maximum and minimum weekly compensation payments	Maximum period	Death (a) Dependents (b) Nondependents								Total disability (a) Permanent (b) Temporary	Partial disability
Maryland. Ch. 800. Approved Apr. 16, 1914. In effect Nov. 1, 1914. Amended, 1916, 1917, 1920, 1922, 1924.	Compulsory, as to "extrahazardous" employments for gain (list); act does not apply to casual employes, farm labor, domestic service, country blacksmiths, wheelwrights, or similar rural employments. Voluntary, as to works not extrahazardous.	Compulsory, as to all workmen employed for wages and engaged in extrahazardous employments, and State militia. Voluntary, as to other employments.	Employers must insure in State fund or private companies, or provide self-insurance.	By subscribing to State association or insuring in other companies.	Presumed in absence of written notice, if employer insures.	Employers must insure in State fund or private companies, or provide self-insurance.	Permitted if employer failed to insure risk, or accident caused by his deliberate intention.	Waivers forbidden.	Accidental personal injuries arising out of and in course of employment, unless due to willful intention to injure self or another, willful misconduct, or intoxication as the sole cause.	3 days.	66 2/3 per cent.	Maximum, \$18; minimum, \$8, or actual wages.	Death, 416 weeks. Permanent total disability, 116 weeks; temporary total disability, 112 weeks.	(a) Burial expenses, maximum, \$125; 66 2/3 per cent of wages for 8 years; maximum, \$18, minimum, \$8, or full wages, not over \$5,000 nor less than \$1,000. (b) Burial expenses, maximum, \$125, unless estate sufficient to defray same.	(a) 66 2/3 per cent of wages for life; maximum, \$18; minimum, \$8, or actual wages; total not over \$3,000. (b) 66 2/3 per cent of wages for not over 8 years; maximum, \$18, minimum, \$8, or actual wages, total not over \$3,750.	60 per cent of wage loss; maximum, \$18, total not over \$3,000, if permanent, or \$3,500, if temporary. Specified injuries, 66 2/3 per cent of wages for fixed periods; maximum, \$18; minimum, \$8, or full wages, in addition to temporary total; not over \$3,750 in all.	Such medical, surgical, or hospital service, including artificial limbs, as may be required by commission; charges limited to prevailing rates.	Dependent widows, children, and parents only; may commute within one year at three-fourths value, not over \$2,400.	Notice of accident in 10 days; of death in 30 days, unless sufficient reason; claim in 30 days for injury, 1 year for death.	(a) Industrial accident commission. (b) Application by employe to commission which may render award, or appeal to commission, then to courts.	All employers must report all accidents to industrial accident commission at once. Commission may require additional reports.	(a) Industrial accident commission. (b) Board of labor and statistics; mine inspector.	Maryland.
Massachusetts. Ch. 781. Approved July 28, 1911. In effect July 1, 1912. Amended, each year.	Elective, as to all employments, except farm labor, domestic service, and persons not in usual course of employer's business. Voluntary, as to excepted employments.	Compulsory, as to laborers, workmen, and mechanics in Massachusetts. Elective, as to counties, cities, towns, or districts having power of taxation.	Electing private employers must insure in Massachusetts Employees' Insurance Association or other private companies.	By subscribing to State association or insuring in other companies.	Presumed in absence of written notice, if employer insures.	Electing employers must insure in State fund or private companies, or provide self-insurance.	Assumed risk, fellow service, and contributory negligence.	Waivers forbidden.	Personal injuries arising out of and in course of employment, unless due to serious and willful misconduct. (Occupational diseases included by decision of court.)	7 days. None if disability continues more than 4 weeks.	66 2/3 per cent.	Death and specified injuries: Maximum, \$16; minimum, \$4. Others: Maximum, \$16; minimum, \$7.	Death and total disability, 500 weeks; partial disability, no limit.	(a) 66 2/3 per cent of wages for 200 weeks; maximum, \$16; minimum, \$4; total not over \$4,000. (b) Expenses of burial, maximum, \$150; and \$100 to second injury fund.	(a) (b) 66 2/3 per cent of wages for not over 500 weeks; weekly maximum, \$16; minimum, \$7; total not over \$4,000.	66 2/3 per cent of wage loss, maximum, \$16; total not over \$4,000. Specified injuries, 66 2/3 per cent of wages for fixed periods in addition to all wages compensation; maximum, \$16; minimum, \$4.	Reasonable medical, surgical, and hospital service for 2 weeks, or longer, at discretion of board.	No provision.	Notice as soon as practicable; claim in 6 months.	(a) Industrial accident board. (b) Voluntary agreement approved by board; disputed cases settled by number of board; appeal to full board; certain cases taken direct to court upon questions of law.	All employers must report all injuries to board within 48 hours; supplementary report after 60 days or termination of disability; insurers report compensation paid within 60 days after termination of disability.	(a) No provision. (b) Department of labor and industries; Massachusetts Employees' Insurance Association.	Massachusetts.
Michigan. No. 10. Approved Mar. 20, 1912. In effect Sept. 1, 1912. Amended, 1913, 1915, 1917, 1919, 1921.	Elective, as to all employments, except employes not in usual course of employer's business.	Compulsory, as to all employments, except employes not in usual course of employer's business.	Electing employers must insure in State fund or private companies, or provide self-insurance.	Writing filed with industrial accident board.	Presumed in absence of written notice, if employer elects.	Electing employers must insure in State fund or private companies, or provide self-insurance.	Assumed risk, fellow service, and contributory negligence.	Permitted if employer in default on insurance premiums.	Existing schemes may be continued, but reduction in liability allowed; waivers forbidden.	1 week. None if disability continues 6 weeks.	60 per cent.	Maximum, \$14. Minimum, \$7.	Death, 300 weeks. Disability, 500 weeks.	(a) Expenses of last sickness and burial, maximum, \$200; 60 per cent of wages for 300 weeks; maximum, \$14; minimum, \$7. (b) Expenses of last sickness and burial, maximum, \$200.	(a) (b) 60 per cent of wages during disability, for not over 500 weeks; weekly maximum, \$14; minimum, \$7; total not over \$7,000.	60 per cent of wage loss during disability, for not over 500 weeks; weekly maximum, \$14. Specified injuries, 60 per cent of wages for fixed periods; maximum, \$14; minimum, \$7, in lieu of other payments.	Reasonable medical and hospital service, for 30 days.	Included.	Notice in 3 months; claim in 6 months; 2 years if disability develops after 6 months after date of injury.	(a) Department of labor and industry. (b) Voluntary agreement approved by department; disputed cases settled by arbitration committee; appeal to department; certain cases taken direct to court upon questions of law.	All employers must report all injuries to department on eighth day after occurrence; supplemental report of deaths within 14 days.	(a) No provision. (b) Department of labor and industry.	Michigan.
Minnesota. Ch. 467. Approved Apr. 24, 1913. In effect Oct. 1, 1913. Amended, 1915, 1917, 1919. New act, ch. 52, 1921. Amended, 1921, 1923, 1925.	Elective, as to all employments, except farm labor, domestic service, steam railroads, casual employes not in usual course of employer's business. Commercial threshing and hauling included. Voluntary, as to farm labor.	Elective, as to employes of counties, cities, towns, villages, and school districts, except officials.	Electing employers must insure in private companies or provide self-insurance.	Presumed in absence of written notice posted in establishment and filed with commissioner of labor.	Presumed in absence of written notice filed with commissioner of labor.	Electing employers must insure in private companies or provide self-insurance.	Assumed risk, fellow service, and contributory negligence unless willful.	Employer may maintain approved scheme, but may not reduce liability fixed by law.	Personal injuries by accident arising out of and in course of employment, unless intentionally self-inflicted, due to intoxication, or caused by fellow employe for personal reason. Designated occupational diseases included.	1 week. None if disability continues 4 weeks.	Death, 30 to 66 2/3 per cent. Disability, 66 2/3 per cent.	Maximum, \$20. Minimum, \$8, or actual wages.	Death, during dependency. Permanent total disability, life. Temporary total and partial disability, 300 weeks.	(a) Burial expenses, maximum, \$150; 30 to 66 2/3 per cent of wages maximum, \$20; minimum, \$8, or actual wages; total not over \$7,500. (b) Expenses of burial, maximum, \$150; and \$200 to second injury fund.	(a) 66 2/3 per cent of wages; maximum, \$20; minimum, \$8, or actual wages; not over \$10,000 in all. (b) 66 2/3 per cent of wages for not over 300 weeks; maximum, \$20, minimum, \$8, or actual wages.	66 2/3 per cent of wage loss during disability, for not over 300 weeks; maximum, \$20. Specified injuries, 66 2/3 per cent of wages for fixed periods, in addition to temporary total; maximum, \$20, minimum, \$8, or actual wages. Disfigurement, not over 75 weeks.	Reasonable medical and surgical treatment for 30 days; commission may allow additional treatment, if need is shown. Charges limited to prevailing rates.	Included.	Notice in 14 days; if in 30 days not barred except as to extent employer was prejudiced; bar absolute after 90 days. Action must be brought within 6 years.	(a) Industrial commission. (b) Employers are directed to pay compensation according to terms of act, without agreement or order; may not discontinue over protest of beneficiary without notice to commission. Orders issue after hearing, subject to review and appeal to courts.	All electing employers must report fatal and serious accident, within 48 hours, other tabular accidents within 7 days to industrial commission.	(a) No provision. (b) Department of labor and industries; county inspectors of mines.	Minnesota.
Missouri. P. 375. Approved Apr. 30, 1925. In effect: (Deferred by referendum).	Elective, as to all employments where more than 10 are regularly employed, except farm and domestic servants, casual employes, outworkers, and those whose earnings exceed \$3,600 per year; also of 10 or less, if employment found hazardous.	Elective, acceptance by enactment of law or ordinance.	Electing employers must insure in private companies or provide self-insurance.	Presumed in absence of written notice filed with the commission.	Presumed in absence of written notice filed with the commission.	Electing employers must insure in private companies or provide self-insurance.	Assumed risk, fellow service, and contributory negligence.	Permitted if employer fails to secure payment of compensation.	Waivers forbidden.	8 days. None if disability continues more than 4 weeks.	66 2/3 per cent.	Maximum, \$20. Minimum, \$6, or actual wages in case of temporary disability.	Temporary total disability, 400 weeks; permanent, during life.	(a) Burial expenses, maximum \$150; expenses of last sickness maximum, \$250; three hundred times 60 2/3 per cent of weekly earnings, payable weekly; \$2 maximum, \$8 minimum. (b) Expenses of last sickness and burial, as above.	(a) 66 2/3 per cent of wages for 300 weeks; \$20 maximum, \$8 minimum, then 35 per cent of wages for life. (b) 66 2/3 per cent of wages for not over 400 weeks; \$20 maximum, minimum \$6, or actual wages.	66 2/3 per cent of wage loss, maximum, \$20, not over 100 weeks if temporary. Specified injuries, 66 2/3 per cent of wages for fixed periods; maximum, \$20, minimum, \$6, or actual wages, in lieu of all other compensation.	Medical, surgical, and hospital treatment as reasonably required for 60 days, not over \$250, and thereafter within one year, as commission may determine.	No provision.	Notice in 30 days; claim in 6 months.	(a) Workmen's compensation commission. (b) Agreements approved by commission; disputes settled by commission; appeal to court on questions of law.	All employers must report all injuries in 10 days; supplementary report in one month.	(a) No provision. (b) State industrial inspector.	Missouri.
Montana. Ch. 96. Approved Mar. 3, 1915. In effect July 1, 1915. Amended, 1916, 1919, 1922.	Elective, as to hazardous employments; farm labor, domestic service, and casual employes (defined as not in usual course of employer's business) excepted. Voluntary, as to non-hazardous employments.	Compulsory, as to all employments, including those of public contractors.	Electing employers must insure in State fund or private companies, or provide self-insurance; nonhazardous employments in State fund.	Writing filed with board and posted in establishments.	Presumed in absence of written notice to employer and filed with board.	Electing employers must insure in State fund or private companies, or provide self-insurance; nonhazardous employments in State fund.	Assumed risk, fellow service, and contributory negligence unless willful.	Waivers forbidden; hospital fund may be maintained.	Injuries from fortuitous event arising out of and in course of employment.	2 weeks. None if disability continues 6 weeks.	Death, 30 to 50 per cent. Disability, 50 per cent.	Maximum, \$15. Minimum, \$7, or actual wages.	Death, 400 weeks. Permanent total disability, 500 weeks. Temporary total disability, 300 weeks. Partial disability, 150 weeks.	(a) Burial expenses, maximum \$150, 30 to 50 per cent of wage for 400 weeks; maximum, \$15 minimum, \$7, or actual wages. (b) Burial expenses, maximum \$150.	(a) 50 per cent of wages for 500 weeks; maximum, \$15; minimum, \$7. (b) 50 per cent of wages for not over 300 weeks; maximum, \$15; minimum, \$7, or actual wages, in lieu of all other compensation.	60 per cent of wage loss, for not over 150 weeks if permanent, 50 weeks if temporary; maximum, \$7.50. Specified injuries, 50 per cent of wages for fixed periods; maximum, \$15; minimum, \$7, or actual wages, in lieu of all other compensation.	Reasonable medical and hospital service for 6 months; maximum, \$500, unless there is a hospital fund; special operating fee of \$50 in case of hernia.	Excluded unless treaty to contrary, then 40 per cent benefits if treaty permits; none if law of nation excludes citizens of United States.	Notice in 60 days; claim in 6 months.	(a) Industrial accident board. (b) Disputed cases determined by board subject to rehearing on certain specified grounds; limited appeal to courts.	All employers and insurers must report all accidents to industrial accident board; employers not in State fund must report monthly on compensation and medical aid paid.	(a) Industrial accident board. (b) Department of labor and industries (mines and boilers only).	Montana.
Nebraska. Ch. 196. Approved Apr. 21, 1913. In effect Dec. 1, 1914. Amended, 1917, 1919, 1921.	Elective, as to all employments except farm labor, domestic service, outworkers and casual employes not in usual course of employer's business. Voluntary, as to excepted employments.	Compulsory, as to all employments except officials elected or appointed for fixed terms.	Electing employers must insure in private companies, or provide self-insurance.	Presumed in absence of notice posted in establishment and filed with compensation commissioner.	Presumed in absence of notice to employer and filed with compensation commissioner.	Electing employers must insure in private companies, or provide self-insurance.	Assumed risk, fellow service, and contributory negligence unless willful.	Existing schemes may be continued if bene equal those of act. Waivers forbidden.	Personal injuries by accident arising out of and in course of employment, unless due to willful negligence (deliberate and reckless indifference to safety, or intoxication).	1 week. None if disability continues for 6 weeks.	66 2/3 per cent.	Maximum, \$15. Minimum, \$6, or actual wages.	Death, 350 weeks. Permanent total disability, life. Temporary total disability, during its continuance. Partial disability, 300 weeks.	(a) Expenses of burial, maximum \$150; 66 2/3 per cent of wages for 350 weeks; maximum, \$15; minimum, \$6, or actual wages. (b) Expenses of burial, maximum \$150.	(a) (b) 66 2/3 per cent of wages for 300 weeks; maximum, \$15; minimum, \$6, or actual wages; total not over 66 2/3 per cent of wages during disability; maximum, \$12; minimum, \$4.50, or actual wages.	66 2/3 per cent of wage loss for not over 300 weeks; maximum, \$15. Specified injuries, 66 2/3 per cent of wages for fixed periods, in addition to temporary total; maximum, \$15; minimum, \$6, or actual wages; certain disfigurements compensated.	Reasonable medical and hospital service not exceeding the regular charge in similar cases.	Widowers, brothers, and sisters excluded; may commute within one year at two-thirds value.	Notice as soon as practicable; claim in 6 months; bar absolute after 1 year.	(a) Commissioner of labor who is also compensation commissioner. (b) Voluntary agreement filed with commissioner; disputed cases settled by commissioner; appeal to court.	Reports of accidents shall be made as directed by compensation commissioner.	(a) No provision. (b) Bureau of Labor.	Nebraska.
Nevada. Ch. 183. Approved Nov. 24, 1911. In effect July 1, 1911. New act, ch. 111, 1913. Amended, each session.	Elective, as to all employments except farm labor, domestic service, and casual employes not in usual course of employer's business. Voluntary, as to exempted employments.	Compulsory, as to all employments, including those of public contractors.	Electing employers must insure in State fund.	Writing filed with commission; notice of rejection to be posted in establishment.	Presumed in absence of notice to employer and filed with commission.	Electing employers must insure in State fund.	Assumed risk, fellow service, and contributory negligence unless willful.	Waivers forbidden. Hospital fund may be maintained.	Personal injuries by accident arising out of and in course of employment, unless due to willful intention to injure self or another, or sustained while intoxicated.	7 days. Then compensation from date of injury.	Death, 10 to 66 2/3 per cent. Total and temporary partial disability, 60 per cent; permanent partial and specified injuries, 50 per cent.	Death: Maximum basic wage, \$120 a month. Disability: Monthly maximum, \$40 to \$72; minimum, \$30.	Death, during life or until remarriage of widow or dependent widower. Total disability, during its continuance.	(a) Burial expenses, maximum \$150; widow or dependent widower, 30 per cent of wages until death or remarriage; 15 per cent additional for each child; total not over 66 2/3 per cent; monthly maximum basic wage, \$120. Also burial expenses, maximum \$150, in case of death of dependent. (b) Burial expenses, maximum, \$150.	(a) 60 per cent of wages for life; monthly maximum, \$50; minimum, \$30; also \$30 for services of constant attendant, if required; (b) 60 per cent of wages, for not over 100 months; total not over \$7,200; monthly maximum, \$72; minimum, \$30; \$10 additional per month if dependents in United States.	60 per cent of wage loss, for not over 60 months; monthly maximum, \$40. If permanent, 60 per cent of wages for periods proportioned to disability, for not over 60 months; monthly maximum, \$60. Specified injuries 50 per cent of wages for fixed periods in addition to temporary total; monthly maximum, \$60; minimum, \$30. Disfigurement, not over 12 months.	Reasonable medical, surgical, or hospital treatment for 6 months, which may be extended an additional year by commission. Transportation furnished. Charges limited to prevailing rates.	Sixty per cent of benefits.	Notice of injury in 30 days; death in 60 days; claim in 90 days for disability; 1 year for death.	(a) Industrial commission. (b) By commission under rules adopted by it.	All electing employers and physicians must report all accidents to industrial commission.	(a) No provision. (b) Labor commissioner; inspectors of mines.	Nevada.

1 Not provided for in compensation law.

2 But included by construction of law.

PRINCIPAL FEATURES OF LAWS OF THE UNITED STATES RELATIVE TO WORKMEN'S COMPENSATION ACT

D INSURANCE—Continued

State	Employments covered		Insurance	How election is made		Defenses abrogated if employer does not elect	Suits for damages after election by both employer and employee	Special contracts	Injuries covered	Waiting time	Compensation benefit				Medical and surgical aid	Nonresident alien beneficiaries	Time for notice and claim	(a) By whom administered (b) How claims are settled	Accident reports required	Accident-prevention work by—(a) Compensation commission. (b) Other agencies	State		
	Private	Public		By employer	By employee						Per cent of wages	Maximum and minimum weekly compensation payments	Maximum period	Death (a) Dependents (b) No dependents									
New Hampshire. Ch. 168. Approved Apr. 21, 1911. In effect Jan. 1, 1912. Amended, 1922.	Effective, as to "dangerous" employments enumerated, except farm labor or shops having less than 4 employees engaged in manual or mechanical work; applies only to "workmen."	No provision.	Electing employers must give proof of financial ability or file a bond.	Writing filed with commissioner of labor.	By accepting compensation or beginning proceedings under act.	Fellow service, contributory negligence, assumption of risk.	Permitted in lieu of compensation after injury.	No provision.	Injuries by accident arising out of and in course of employment, unless due to willful misconduct, intoxication, or violation of law.	1 week. Then compensation from date of injury.	Disability, 60 per cent.	Disability, maximum, \$15. Minimum, no provision.	Disability, 300 weeks.	(a) 100 times weekly earnings; total not over \$3,000. (b) Expenses of medical attendance and burial; maximum, \$100.	(a) 80 per cent of wages, for not over 300 weeks; maximum, \$15.	80 per cent of wage loss for not over 300 weeks; maximum, \$15.	Reasonable medical and hospital services for 14 days.	No provision.	Notice as soon as practicable and before leaving service; claim in 6 months.	(a) Courts. (b) Voluntary agreement, or by action in equity before superior court.	All employers subject to act must make such reports to commissioner of labor as required by him.	(a) No commission. (b) Bureau of labor. ¹	New Hampshire.
New Jersey. Ch. 98. Approved Apr. 4, 1911. Amended, 1912, 1914, 1919, 1921, 1922, 1923, 1924, 1925, 1926.	Effective, as to all employments except casual employees.	Compulsory, as to all employees, except elective officials or those receiving a salary over \$1,200.	All employers must insure in private companies, or provide self-insurance; employers of farm labor and domestic service exempted.	Presumed in absence of written notice to employees.	Presumed in absence of written notice to employer.	Assumed risk, fellow service, contributory negligence, unless willful. Abrogation does not depend upon rejection of act.	Not permitted.	No substitute agreements valid.	Personal injuries by accident arising out of and in course of employment, unless intentionally self-inflicted, or due to intoxication. Designated occupational diseases included.	7 days. None if disability exceeds 7 weeks.	Death, 35 to 60 per cent. Disability, 66 2/3 per cent.	Maximum, \$17. Minimum, \$3, or actual wages.	Death, 300 weeks, plus disability, 300 weeks. Permanent total disability, 400 weeks. Temporary total and partial disability, 500 weeks.	(a) Burial expenses, maximum, \$100; 35 to 60 per cent of wages for 300 weeks; maximum, \$17; minimum, \$3 or actual wages. (b) Expenses of last sickness, maximum, \$100, and burial expenses, maximum, \$150.	66 2/3 per cent of wages for periods over 500 weeks. Specified injuries, 66 2/3 per cent of wages for fixed periods; maximum, \$17; minimum, \$3, or actual wages; all in addition to temporary total.	Reasonable medical and hospital service; maximum, \$100; in cases requiring unusual treatment bureau may increase amount; special operating fee of \$150 in case of hernia.	No provision.	Notice in 14 days; 30 days, except as employer is prejudiced; but absolute after 90 days; claim in 1 year. Notice of occupational disease in 3 months after last exposure.	(a) Department of labor. (b) Voluntary agreement approved by department; disputed cases settled by department or referee; appeal to courts.	Employers must make immediate report to department of all accidents and occupational diseases. ¹	(a) Department of labor. (b) No provision.	New Jersey.	
New Mexico. Ch. 83. Approved Mar. 13, 1917. In effect June 8, 1917. Amended, 1919, 1921.	Effective, as to "extrahazardous" employments for gain if 4 or more employees; casual employees not in usual course of employer's business excepted, numerical exception does not apply to structural work 10 feet above ground. Voluntary, as to nonhazardous employments.	No provision.	Electing employers must insure in private companies or provide self-insurance.	Presumed in absence of written notice to employees.	Presumed in absence of written notice to employer.	Assumed risk, fellow service, and contributory negligence.	Not permitted.	No provision except that employer may maintain hospital fund.	Injuries by accident arising out of and in course of employment, unless due to intoxication or intentionally inflicted by himself or another.	10 days.	Death, 15 to 60 per cent. Disability, 50 per cent.	Death: Basic weekly wage, maximum, \$30. Disability: Maximum, \$12; minimum, \$6, or actual wages.	Death, 300 weeks; total disability, 320 weeks; no provision.	(a) Burial expenses, maximum, \$75; 15 to 60 per cent of wages for 300 weeks; basic wage, maximum, \$30. (b) Expenses of burial, maximum, \$75, and medical attendance, maximum, \$120.	If permanent, compensation measured by extent of disability. Specified injuries, 60 per cent of wages for fixed periods, in addition to temporary total; maximum, \$12; minimum, \$6 or actual wages. Disfigurement, maximum, \$200.	Reasonable medical, surgical, and hospital service for 10 days; maximum, \$150, unless there is a hospital fund; special operating fee of \$75 in case of hernia.	Excluded.	Notice in 14 days; if prevented, not later than 60 days. Claim in 60 days after compensation refused; 1 year in case of death.	(a) Courts. (b) By interested parties; disputed cases settled by district court. Appeal to supreme court.	No provision.	(a) No provision. (b) Mine inspector. ¹	New Mexico.	
New York. Ch. 614. Approved Dec. 16, 1912. In effect July 1, 1914. Amended each year.	Compulsory, as to enumerated "hazardous" employments, and all other employments having 4 or more workmen or operatives, conducted for gain; farm and domestic services excluded. Voluntary, as to other employments.	Compulsory, as to all employees.	Employers must insure in State fund or private companies, or provide self-insurance.				Permitted if employer fails to insure risk.	Waivers forbidden.	Accidental personal injuries arising out of and in course of employment, unless due to willful intention to injure self or another, or intoxication. Designated occupational diseases included.	1 week. None if disability continues for more than 7 weeks.	Death, 15 to 66 2/3 per cent. Disability, 66 2/3 per cent.	Death: Maximum basic wage, \$150 a month. Disability: Weekly maximum, \$20; minimum, \$3, or actual wages.	Death, during life or until remarriage of widow or dependent widower. Permanent total disability, life. Others, during disability.	(a) Burial expenses, maximum, \$200; widow or dependent widower, 30 per cent of wages until death or remarriage; 10 per cent additional for each child; total not over 66 2/3 per cent; maximum basic wage, \$150 a month. (b) Burial expenses, maximum, \$200, and \$1,000 to create special funds.	66 2/3 per cent of wage loss; total not over \$3,500 if temporary. Specified injuries, 66 2/3 per cent of wages for fixed periods, plus fixed healing time in certain cases; maximum, \$20; minimum, \$3, or actual wages. Disfigurement, maximum, \$3,500.	Such medical, surgical, and hospital service as nature of injury requires. Charges limited to prevailing rates.	Widow, children, and dependent parents only; may be commuted at one-half present worth.	Notice of injury in 30 days; death in 30 days unless excused for cause; claim in 1 year.	(a) Industrial commissioner. (b) Claim submitted to employer or commissioner after 7 days after injury; hearing by commissioner or board on request; appeal to court upon questions of law.	All employers must report all accidents to industrial commission within 10 days; commissioner may require any information.	(a) Department of labor. (b) No provision.	New York.	
North Dakota. Ch. 182. Approved Mar. 5, 1919. In effect July 1, 1919. Amended 1921, 1922, 1923.	Compulsory, as to all employments except executive officers receiving more than \$2,400 per year, farm and domestic service, casual employees not in usual course of employer's business, and any common carrier by steam railroad. Voluntary, as to excepted employments.	Compulsory, as to all employees.	Employers must insure in State fund.				Permitted if employer fails to insure risk.	Waivers forbidden.	Injuries arising in course of employment unless caused by willful intention to injure self or another, including diseases proximately caused by the employment.	1 week. None if disability continues for more than 1 week.	Death, 20 to 66 2/3 per cent. Disability, 66 2/3 per cent.	Death: Basic weekly wage, maximum, \$34; minimum, \$18, but compensation not more than wages. Disability: Weekly maximum, \$20; minimum, \$3, or actual wages if less than \$3.	Death, during life or until remarriage. Disability, during its continuance.	(a) Burial expenses, maximum, \$150; 35 per cent of weekly wages to widow or dependent widower until death or remarriage; 10 per cent additional for each child, total not over 66 2/3 per cent; basic wage, maximum, \$30; minimum, \$15, no compensation to exceed wages. (b) Burial expenses, maximum, \$150.	If temporary, 66 2/3 per cent of wage loss; maximum, \$20. If permanent, 66 2/3 per cent of wages according to schedule of percentage of disability. Disfigurement compensated.	Such medical, surgical, and hospital service as the nature of the injury requires.	No provision. Included by administration.	Claim in 60 days; 1 year if reasonable cause shown.	(a) Workmen's compensation bureau. (b) Bureau has full power to determine all questions within its jurisdiction; appeal to courts.	All employers must report all accidents to bureau within 1 week.	(a) Workmen's compensation bureau. (b) No provision.	North Dakota.	
Ohio. P. 524. Approved June 16, 1911. In effect Jan. 1, 1912. Amended each session.	Compulsory, as to all employments except those having less than 3 employees, and casual employees not in usual course of employer's business. Voluntary, as to employments having less than 3 employees.	Compulsory, as to all employees, except elective officials or firemen and policemen in cities having pension funds.	Employers must insure in State fund or provide self-insurance.				Permitted in case of default on insurance premiums.	Waivers forbidden except in case of blind employees.	Injuries sustained in course of employment, unless purposely self-inflicted. Designated occupational diseases included.	1 week.	66 2/3 per cent.	Maximum, \$18.75; minimum, \$3, or actual wages.	Death, 416 weeks. Permanent total disability, life. Temporary total disability, 312 weeks. Partial disability, during its continuance.	(a) Burial expenses, maximum, \$100; 66 2/3 per cent of wages for 3 years; maximum, \$18.75; minimum, \$3, or actual wages; total not over \$5,000 nor less than \$2,000. (b) Burial expenses maximum, \$150.	66 2/3 per cent of wage loss; maximum, \$18.75; total not over \$3,750. Specified injuries, 66 2/3 per cent of wages for fixed periods in addition to temporary total; maximum, \$18.75. Disfigurement, not over \$3,750.	Such medical and hospital service as commission deems proper; maximum \$200 except in unusual cases.	Included.	Claim for injury or death, in 2 years; for occupational disease, 4 months.	(a) Industrial commission. (b) Commission determines all questions within its jurisdiction; appeal to court.	All employers must report all accidents to industrial commission within 1 week.	(a) Industrial commission. (b) No provision.	Ohio.	
Oklahoma. Ch. 246. Approved Mar. 22, 1918. In effect Sept. 1, 1918. Amended 1919, 1922.	Compulsory, as to "hazardous" employments (enumerated list and general clause) conducted for gain except those having less than 3 employees, farm labor, and employees not engaged in manual or mechanical work.	Compulsory, as to all workmen in hazardous employments employees for wages, except when equivalent schemes are in force.	Employers must insure in private companies or provide self-insurance.				Permitted if employer fails to insure risk.	Approved schemes permitted. Waivers forbidden.	Accidental personal injuries, not fatal, arising out of and in course of employment, and due to willful intention to injure self or another, intoxication, or willful failure to use statutory safeguards.	5 days.	66 2/3 per cent.	Maximum, \$18. Minimum, \$3, or actual wages.	Permanent total disability, 500 weeks. Temporary total and partial disability, 300 weeks.	Fatal accidents not covered.	66 2/3 per cent of wage loss for not over 300 weeks. Specified injuries, 66 2/3 per cent of wages for fixed periods; maximum, \$18; minimum, \$3, or actual wages. Disfigurement, maximum, \$3,000.	Necessary medical, surgical, and hospital service for 60 days; maximum, \$100; period and amount may be increased at discretion of commission; charges limited to prevailing rates. Special provision for hernia.	Fatal accidents not covered.	Notice in 30 days; claim in 1 year.	(a) Industrial commission. (b) Voluntary agreement, after 5 days, approved by commission; disputed cases may be submitted to arbitration committee, or commission may act; appeal to courts.	All employers must report all accidents to industrial commission within 10 days or reasonable time; commission may require any information.	(a) No provision. (b) Department of labor, ¹ inspectors of mines, oil, and gas. ²	Oklahoma.	
Oregon. Ch. 112. Approved Feb. 25, 1912. In effect July 1, 1914. Deferred by referendum. Amended, each session.	Effective, as to enumerated "hazardous" employments except farm labor. Voluntary, as to exempt employment.	Effective, as to all employees.	Electing employers must insure in State fund.	Presumed in hazardous employments in absence of notice posted in establishment and filed with commission.	Presumed in absence of written notice, if employer elects.	Assumed risk, fellow service, and contributory negligence except willful and with purpose of self-injury.	Permitted if injury is due to willful act of employer or in case of default on insurance premiums.	Waivers forbidden.	Personal injuries by accident arising out of and in course of employment, unless due to deliberate intention to injure self.	None.	Monthly pension; amounts not based on wages, except for temporary total disability.	Monthly pension. Minimum: death, \$14; permanent total disability, \$30; no maximum. Temporary total disability, \$30 to \$27. Permanent partial disability, \$25.	Death, during life or until remarriage of widow or invalid widower. Total disability, during its continuance. Temporary partial disability, 104 weeks.	(a) Burial expenses, maximum \$100; widow or invalid widower \$30 a month until death or remarriage; \$8 for each child under 16. (b) Burial expenses maximum, \$100.	If temporary, benefits proportionate to those for total disability for not over 2 years. Specified permanent injuries \$25 a month for fixed periods, in addition to temporary total; others in proportion, but not over 96 months.	Medical, surgical and hospital service and transportation; maximum, \$200; commission may allow additional service.	Parents, spouse, or child only, unless treaty to contrary.	Claim for disability in 8 months; death, 1 year.	(a) Industrial accident commission. (b) Commission settles all questions; appeal to courts.	All employers must report all accidents to industrial accident commission at once.	(a) Industrial accident commission. (b) Bureau of labor statistics. ¹	Oregon.	

¹Not provided for in compensation law.

PRINCIPAL FEATURES OF LAWS OF THE UNITED STATES RELATIVE TO WORKMEN'S COMPENSATION AND INSURANCE—Continued

State	Employments covered		Insurance	How election is made		Defenses abrogated if employer does not elect	Suits for damages after election by both employer and employee	Special contracts	Injuries covered	Waiting time	Compensation benefits				Medical and surgical aid	Nonresident alien beneficiaries	Time for notice and claim	(c) By whom administered (b) How claims are settled	Accident reports required	Accident-prevention work by—(a) Compensation commission. (b) Other agencies	State		
	Private	Public		By employer	By employee						Per cent of wages	Maximum and minimum weekly compensation payments	Maximum period	Death (a) Dependents (b) No dependents									
Pennsylvania. No. 333. Approved June 2, 1915. In effect Jan. 1, 1916. Amended, 1917, 1919, 1921, 1922.	Elective, as to all employments except farm labor, domestic service, casual employees not in usual course of employer's business, and out-workers.	Compulsory, as to all employees, including public contractors.	Electing employers must insure in State fund or private companies or provide self-insurance.	Presumed in absence of notice posted in establishment, given employee, and filed with compensation bureau.	Presumed in absence of written notice to employer and filed with compensation bureau.	Assumed risk, fellow service, and contributory negligence unless due to intoxication or recklessness. Abrogation does not depend upon rejection of act.	Permitted if employer fails to insure risk.	Waivers forbidden.	Personal injuries by accident in course of employment, unless intentionally self-inflicted, or due to intentional act of third party for reasons not connected with the employment.	10 days.	Death, 15 to 60 per cent. Disability, 60 per cent.	Death: Basic wage, maximum, \$20; minimum, \$10. Disability: Maximum, \$12; minimum, \$6, or actual wages.	Death, 300 weeks. Total disability, 500 weeks. Partial disability, 300 weeks.	(a) Expenses of burial, maximum, \$100; 15 to 60 per cent of wages for 300 weeks; basic wage, maximum, \$20; minimum, \$10. (b) Expenses of burial, maximum, \$100.	(a) (b) 60 per cent of wages for not over 500 weeks; maximum, \$12; minimum, \$6, or actual wages; total not over \$5,000.	60 per cent of wage loss for not over 300 weeks; maximum, \$12. Specified injuries, 60 per cent of wages for fixed periods in lieu of other payments; maximum, \$12; minimum, \$6, or actual wages. Disfigurement, 60 per cent of wages, not over 150 weeks.	Reasonable medical, surgical, and hospital service for 90 days; maximum, \$100, except in hospital cases. Charges limited to prevailing rates.	Two-thirds benefits; to widows and children only.	Notice in 14 days; claim in 1 year.	(a) Workmen's compensation board. (b) Voluntary agreement, after 10 days, approved by board; disputed cases settled by referee, appeal to board; cases involving agreed facts settled by board direct; appeal to court upon questions of law.	All subscribers to State fund must report all accidents to workmen's insurance board within 7 days; commissioner of insurance may require insurers to file annual statement of loss experience. All employers (except casual employments) must report all accidents of 2 days' disability to department of labor and industry within 30 days. ¹	(a) Workmen's insurance board as to subscribers to State fund. (b) Department of labor and industry; department of mines. ¹	Pennsylvania.
Porto Rico. No. 19. Approved Apr. 13, 1916. Amended, 1917. New act, No. 10, 1919; in effect July 1, 1919; amended, 1919, 1920, 1921, 1922.	Compulsory, as to all employments except domestic service, nonhazardous clerical occupations, and employees receiving more than \$1,500 a year.	Compulsory, as to employees engaged on public works performed by administration under direction of government, and members of municipal fire corps.	Employers must insure in State fund.				Permitted if injury is caused by gross negligence of employer.	No provision.	Personal injuries by accident or sickness occurring during and because of employment, unless due to intent to commit a crime, to injure one's self or another, to intoxication, the willful criminal act of another, or solely to gross negligence.	7 days.	Temporary total disability, 50 per cent.	Temporary total disability: Maximum, \$18; minimum, \$3.	Temporary total disability, 104 weeks.	(a) Compensation proportioned to earning capacity, number and needs of dependents of deceased; maximum, \$4,000; minimum, \$1,000. (b) No provision.	(a) Compensation proportioned to age and rate of wages; maximum, \$4,000; minimum, \$2,000. (b) 50 per cent of wages during disability, for not over 101 weeks; maximum, \$15; minimum, \$3.	If permanent, compensation proportioned to degree of disability and rate of wages in addition to temporary total; maximum, \$2,000.	Necessary medical attendance and sustenance as prescribed by commission.	No provision.	Claim must be made in 60 days, 120 days if delay due to ignorance or cause out of claimants' control.	(a) Workmen's relief commission. (b) Investigation and awards by commission; appeal to court.	All employers must report all accidents to commission within 5 days.	(a) No provision. (b) Department of agriculture and labor. ¹	Porto Rico.
Rhode Island. Ch. 831. Approved Apr. 20, 1912. Amended, 1913, 1914, 1917, 1919, 1920, 1921, 1926.	Elective, as to all employments except those having less than 6 employees, farm labor, domestic service, casual employees not in usual course of employer's business, and employees receiving over \$3,000 a year. Voluntary, as to excepted employments.	Compulsory, as to employees of municipal fire corps. Elective, as to employees of cities and towns, except fire and police departments.	Electing employers must insure in private companies or provide self-insurance.	Writing filed with commissioner of labor.	Presumed in absence of written notice to employer, copy to be filed with commissioner of labor.	Assumed risk, fellow service, and contributory negligence.	Permitted if employer fails to insure risk.	Approved schemes permitted if benefits equal those of act; waivers forbidden.	Personal injuries by accident arising out of and in course of employment, unless due to willful misconduct, intoxication, or failure to use safeguards, violation of law, or intentionally self-inflicted.	1 week. None if disability continues for more than 4 weeks.	50 per cent.	Total disability: Maximum, \$18; minimum, \$7. Partial disability: Maximum, \$10; minimum, \$4. Death: Maximum, \$14; minimum, \$6.	Death, 300 weeks. Total disability, 500 weeks. Partial disability, 300 weeks.	(a) 50 per cent of wages for 300 weeks; maximum, \$14; minimum, \$6. (b) Expenses of last sickness and burial, maximum, \$200.	(a) 50 per cent of wages for not over 300 weeks; maximum, \$10. Specified injuries, 50 per cent of wages for fixed periods in addition to all other compensation; maximum, \$18; minimum, \$4.	Reasonable medical and hospital service for 8 weeks; maximum, \$150, or \$200, including burial, in fatal cases involving no dependents.	No provision.	Notice in 30 days; claim in 1 year.	(a) Courts; commissioner of labor exercises certain functions. (b) Voluntary agreement approved by commissioner of labor; disputed cases settled by court upon questions of law or equity.	All assenting employers (except public utilities) must report all injuries of 1 week's disability to bureau of labor within 2 weeks, fatal within 48 hours.	(a) No commission. (b) Factory inspector. ¹	Rhode Island.	
South Dakota. Ch. 378. Approved Mar. 18, 1917. Amended, each session.	Elective, as to all employments except farm and domestic service and employees not in usual course of employer's business. Compulsory, as to excepted employments.	Compulsory, as to all employees.	Electing employers must insure in private companies or provide self-insurance.	Presumed in absence of written notice to employees and filed with commissioner.	Presumed in absence of written notice to employer and filed with commissioner.	Assumed risk, fellow service, and contributory negligence.	Probably permitted if employer fails to insure risk.	Approved substitute schemes permitted; waivers forbidden.	Personal injuries by accident arising out of and in course of employment, unless due to willful misconduct, intoxication, failure to use safeguards, violation of law, or intentionally self-inflicted.	None (administrative construction of compulsory filing provisions).	Total disability, 55 per cent. Partial disability, 50 per cent.	Permanent total disability: Maximum, \$18; minimum, \$7.50. Other disability: Maximum, \$15; minimum, \$7.50, or actual wages.	Total disability, during its continuance. Partial disability, 312 weeks.	(a) 50 per cent of wages to equal four times annual earnings; maximum, \$3,000; minimum, \$1,500. (b) Burial expenses, maximum, \$100.	(a) 55 per cent of wages during disability; maximum, \$15; minimum, \$7.50, total not more than death benefits. (b) 55 per cent of wages for not over 6 years; weekly maximum, \$16; minimum, \$7.50, or actual wages.	Necessary medical, surgical, and hospital service for 12 weeks; maximum, \$150.	Excluded.	Notice in 30 days unless excused for cause; claim in 1 year.	(a) Industrial commissioner. (b) Voluntary agreement approved by commissioner; disputed cases settled by arbitration committee; review by commissioner; appeal to court upon questions of law.	All assenting employers must report all accidents to industrial commissioner within 48 hours; supplementary report after 60 days, or upon termination of disability.	(a) No provision. (b) Inspector of mines. ¹	South Dakota.	
Tennessee. Ch. 123. Approved Apr. 13, 1919. In effect July 1, 1919. Amended, 1923.	Elective, as to all employments except those employing less than 5 employees, farm labor, domestic service, and casual employees (not in usual course of employer's business). Voluntary, as to employments having less than 5 employees.	Voluntary, as to State and subdivisions.	Electing employers must insure in private companies or provide self-insurance; State fund for coal mining.	Presumed in absence of notice posted in establishment and filed with bureau of workshop and factory inspection.	Presumed in absence of notice to employer and bureau of workshop and factory inspection.	Assumed risk, fellow service, and contributory negligence.	Permitted if employer fails to insure risk.	Waivers forbidden.	Personal injuries by accident arising out of and in course of employment, unless due to willful misconduct, intentional self-inflicted injury, intoxication, or willful failure to use safety appliances or perform statutory duties.	1 week. None if disability continues for 6 weeks or more.	Death, 20 to 50 per cent. Disability, 50 per cent.	Maximum, \$15; minimum, \$3, or actual wages.	Death, 400 weeks. Permanent total disability, 550 weeks. Others, 300 weeks.	(a) Burial expenses, maximum, \$100; 20 to 50 per cent of wages for not over 400 weeks; maximum, \$15; minimum, \$3, or actual wages. (b) Burial expenses, maximum, \$100.	(a) 50 per cent of wages for 400 weeks; maximum, \$15; minimum, \$3, or actual wages. Specified injuries, 50 per cent of wages for fixed periods; others proportionate; maximum, \$12; minimum, \$3, or actual wages.	Reasonable medical, surgical, and hospital service for 90 days, longer at option of employer; maximum, \$100; charges limited to prevailing rates.	Included.	Notice as soon as practicable; barred after 30 days, unless cause shown; claim in 1 year.	(a) Courts. Department of labor supervises. (b) Voluntary agreement approved by court; disputed cases settled by courts.	Subscribers to coal operators' State fund must report all accidents to commissioner of labor.	(a) No provision. (b) Department of labor. ¹	Tennessee.	
Texas. Ch. 170. Approved Apr. 16, 1913. In effect Sept. 1, 1913. Amended, 1917, 1921, 1923.	Elective, as to all employments except those having less than 3 employees, farm and ranch labor, domestic service, railroads used as common carriers, and employees not in usual course of employer's business.	No provision.	Electing employers must insure in Texas Employers' Insurance Association or other private companies.	By subscribing to State association or insuring in other company and notifying employees and industrial accident board.	Presumed in absence of written notice to employer.	Assumed risk, fellow service, and contributory negligence, unless willful or due to intoxication.	Permitted if employer's willful or gross negligence causes death; damages, in addition to compensation, if part of insurance premiums is charged against employee.	Waivers forbidden.	Personal injuries sustained in course of employment unless due to willful intent to injure self or another, intoxication, act of God, or caused by act of third party for personal reasons.	1 week.	60 per cent.	Maximum, \$20; minimum, \$7.	Death, 300 weeks. Total disability, 401 weeks. Partial disability, 300 weeks.	(a) 60 per cent of wages for 30 weeks; maximum, \$20; minimum, \$7. (b) Expenses of last sickness, and funeral benefits of \$100.	(a) 60 per cent of wages during disability, for not over 401 weeks; maximum, \$20; minimum, \$7.	Reasonable medical and hospital service for 4 weeks. Two weeks additional in cases requiring hospital confinement. Charges limited to prevailing rates.	Included.	Notice in 30 days; claim in 6 months.	(a) Industrial accident board. (b) Voluntary agreement or by board; appeal to court.	All employers must report all accidents of more than 1 day's disability to board within 8 days; supplementary report after 30 days, or upon termination of disability.	(a) No provision. (b) Bureau of labor statistics; mine inspector; Texas Employers' Insurance Association.	Texas.	
Utah. Ch. 100. Approved Mar. 15, 1917. In effect July 1, 1917. Amended, each session.	Compulsory, as to all employments except those having less than 3 employees, farm labor, domestic service, casual employees not in usual course of employer's business.	Compulsory, as to all employees, including elective officials.	Employers must insure in State fund or private companies or provide self-insurance.				Permitted if employer fails to insure risk, or if injury is due to employer's willful misconduct.	Approved substitute schemes permitted if benefits equal those of act; waivers forbidden.	Personal injuries by accident arising out of or in course of employment, except those purposely self-inflicted.	3 days.	60 per cent.	Death: Maximum, \$10. Disability: Maximum, \$18; minimum, \$7, or actual wages.	Permanent total disability, 116. Others, 312 weeks; may be extended from special fund, in case of total dependents.	(a) Burial expenses, maximum \$150; 60 per cent of wages for 1 year; maximum, \$16; total not over \$5,000 nor less than \$2,000. (b) Burial expenses, maximum \$150; and 20 per cent of a death benefit to a second injury and total dependents' fund.	(a) 60 per cent of wages for 5 years; thereafter, 45 per cent for life; weekly maximum, \$16; minimum, \$7. (b) 60 per cent of wages for not over 6 years; maximum, \$7, or actual wages; total not over \$5,000.	60 per cent of wage loss for not over 6 years; maximum, \$16; total not over \$5,000. Specified injuries, 60 per cent of wages for fixed periods, in addition to temporary total; maximum, \$16. Disfigurement or loss of bodily function; maximum, 200 weeks.	Reasonable medical and hospital service; maximum, \$50; more if found necessary; hospital benefit fund permitted in lieu of above.	One-half benefits except to residents of Canada.	Notice in 48 hours, or penalty; barred after 1 year; death claims barred after 1 year.	(a) Industrial commission. (b) Commission has full power to determine all questions relating to compensation; limited appeal to court.	All employers must report all accidents to commission within 1 week.	(a) Industrial commission. (b) No provision.	Utah.

¹Not provided for in compensation law.

PRINCIPAL FEATURES OF LAWS OF THE UNITED STATES RELATIVE TO WORKMEN'S COMPENSATION AND INSURANCE—Continued

State	Employments covered		Insurance	How election is made		Defenses abrogated if employer does not elect	Suits for damages after election by both employer and employee	Special contracts	Injuries covered	Waiting time	Compensation benefits				Medical and surgical aid	Nonresident alien beneficiaries	Time for notice and claim	(e) By whom administered (f) How claims are settled	Accident reports required	Accident-prevention work by—(a) Compensation commission. (b) Other agencies	State
	Private	Public		By employer	By employee						Per cent of wages	Maximum and minimum weekly compensation payments	Maximum period	Death dependents (a) No dependents							
Vermont. Ch. 164. Approved Apr. 1, 1915. In effect July 1, 1915. Amended each session.	Effective, as to all employments for gain, except those having less than 11 employees, domestic service, casual employees, those not in usual course of employer's business or receiving over \$2,000 a year. Voluntary, as to other employments.	Effective, as to all employments except State, and officials elected or receiving more than \$2,000 a year.	Electing employers must insure in private companies or provide self-insurance.	Presumed in absence of written agreement or notice to employees and board; municipalities vote.	Presumed in absence of written agreement or notice to employer and board.	Assumed risk, fellow service, and contributory negligence.	Not permitted.	Waivers forbidden.	Personal injuries by accident arising out of and in course of employment, unless due to willful intention to injure self or another, intoxication, or failure to use safety devices.	1 week.	Death, 15 to 45 per cent. Disability, 50 per cent.	Death: Minimum basic wage, \$5. Total disability: Maximum, \$15; minimum, \$5, or actual wages if less. Partial disability: Maximum, \$10.	200 weeks.	(a) Burial expenses, maximum, \$100; 15 to 45 per cent of wages for 200 weeks; minimum basic wage, \$5; total not over \$3,500. (b) Burial expenses, maximum, \$100.	Reasonable medical, surgical, and hospital service for 14 days, maximum, \$100. Charges limited to prevailing rates.	No provision.	Notice as soon as practicable; claim in 6 months.	(a) Commissioner of industries. (b) Voluntary agreement approved by commissioner; disputed cases settled by commissioner; appeal to courts.	All assenting employers must report all injuries of 1 day's disability or requiring medical attendance to commissioner within 72 hours; supplementary report after each 60 days or termination of disability.	(a) Commissioner of industries. (b) No provision.	Vermont.
Virginia. Ch. 400. Became law over governor's veto Mar. 21, 1918. In effect Jan. 1, 1919. Amended each session.	Effective, as to all employments except those employing less than 11 employees, farm labor, domestic service, steam railroads, casual employees, or those not in usual course of employer's business. Voluntary, as to excepted employments.	Compulsory, as to all employees, administrative officers and employees elected or appointed for definite terms.	Electing employers must insure in private companies or provide self-insurance.	Presumed in absence of written notice to employees and commission.	Presumed in absence of written notice to employer and commission.	Assumed risk, fellow service, and contributory negligence.	Not permitted.	Approved schemes permitted. Waivers forbidden.	Personal injuries by accident arising out of and in course of employment, unless due to willful misconduct, intent to injure self or another, intoxication, or willful failure to use safety appliances or obey safety rules.	10 days. None if disability continues more than 0 weeks.	50 per cent.	Maximum, \$12, minimum, \$5.	Death, 300 weeks. Total disability, 300 weeks. Partial disability, 300 weeks.	(a) Burial expenses, maximum, \$100; 50 per cent of wages for 300 weeks; maximum, \$12, minimum, \$5; total not over \$4,500. (b) Burial expenses, maximum, \$150.	Necessary medical, surgical, and hospital service for 60 days, longer at option of employer, employee must accept unless otherwise ordered by commissioner; charges limited to prevailing rates.	\$1,000 maximum except to residents of Canada.	Notice in 30 days. Claim in 1 year.	(a) Industrial commission. (b) Voluntary agreement after 10 days approved by commission; disputed cases settled by commission or member thereof; review by full commission; appeal to courts.	All employers must report all injuries of over 1 week's disability to commission within 10 days; supplementary report after 60 days or upon termination of disability.	(a) No provision. (b) Bureau of labor and industrial statistics. ¹	Virginia.
Washington. Ch. 74. Approved Mar. 14, 1911. In effect Oct. 1, 1911. Amended each session.	Compulsory, as to "extrahazardous" employments, including enumerated list. Voluntary, as to employments not "extrahazardous."	Compulsory, as to all employees in "extrahazardous" work in which workmen are employed for wages, and salaried peace officers. Voluntary, as to employments not "extrahazardous."	Employers must insure in State fund.			Suit for excess damages permitted, in addition to compensation, if injury resulted from deliberate intention of employer.	Suit for excess damages permitted, in addition to compensation, if injury resulted from deliberate intention of employer.	Waivers forbidden; hospital fund may be maintained.	Personal injuries resulting from a fortuitous event, sustained on premises of plant or in course of employment, and from plant, not deliberately self-inflicted.	3 days.	Monthly pension; amounts not based on wages.	Monthly pension: Death, \$20; permanent total disability, minimum \$35; no fixed maximum.	Death, during life or until remarriage of widow or invalid widower. Total disability, during its continuance.	(a) Burial expenses, maximum, \$100 if single, \$125 if married; \$3 a month to widow or invalid widower until death or remarriage; and \$12.50 for 1 child, \$7.50 for next youngest, and \$3 to each other child under 16; \$250 additional to widow. (b) Burial expenses, maximum, \$100.	Necessary medical, surgical, and hospital service and transportation. Employees bear one-half cost.	One-half benefits; to parents only, unless treaty to contrary; nothing if law of nation excludes citizens of United States.	Claim in 1 year.	(a) Division of industrial insurance. (b) All questions relating to compensation determined by division; appeal to courts.	All employers must report all accidents to division of industrial insurance at once.	(a) No provision; (b) Division of safety; State mining board. ¹	Washington.
West Virginia. Ch. 10. Approved Feb. 22, 1913. In effect Oct. 1, 1913. Amended 1915, 1919, 1923, 1925.	Effective, as to all "regular" employments except farm labor, domestic service, and officers of corporations. Voluntary, as to employees not regularly employed.	Effective, as to all employees except elective officials.	Electing employers must insure in State fund or provide self-insurance.	By paying premiums and posting notice.	Remaining in service with notice of employer's election.	Assumed risk, fellow service, contributory negligence, and negligence of persons "whose duties are prescribed by statute."	Suit for excess damages permitted, in addition to compensation, if employer is in default on premiums.	Benefit funds permitted provided employees do not contribute and benefits equal those of act. Waivers forbidden.	Personal injuries sustained in course of and resulting from employment, unless self-inflicted or due to willful misconduct, disobedience to rules, intoxication, or failure to use safety appliances.	1 week.	Death, monthly pension. Disability, 66 2/3 per cent.	Disability: Maximum, \$16, minimum, \$5.	Death, during life or until remarriage of widow or invalid widower. Permanent total disability, life. Temporary total disability, 75 weeks, Permanent partial disability, 340 weeks.	(a) Burial expenses, maximum, \$150; widow or invalid widower, \$30 a month until death or remarriage; \$5 additional for each child under 16. (b) Burial expenses, maximum, \$150.	Reasonable medical, surgical, and hospital treatment; maximum, \$500; in permanent disability cases where disability can be materially reduced, special treatment up to \$600.	Widow, invalid widower, and children only.	Claim in 6 months; proof of dependency in 9 months.	(a) Compensation commissioner. (b) Commissioner has full power to determine all questions relating to compensation; appeal to courts.	All employers must report any information required by compensation commissioner for purpose of act upon request.	(a) Commissioner may require employer to adopt and post safety rules. (b) Bureau of labor; Department of mines. ¹	West Virginia.
Wisconsin. Ch. 50. Approved May 3, 1911. In effect same date. Amended each session.	Effective, as to all employments except those having less than 3 employees, farm labor, and employees not in usual course of employer's business. Voluntary (joint election), as to steam railroads.	Compulsory, as to all employees except officials.	Electing employers must insure in private companies or provide self-insurance.	Presumed as to employers of 3 or more persons in absence of notice filed with commission.	Presumed in absence of written notice to employer, if employer elects.	Assumed risk, fellow service, and contributory negligence unless willful.	Not permitted.	Insurance or other schemes may provide added benefits. Waivers forbidden.	Personal injuries growing out of and incidental to employment, unless intentionally self-inflicted. Occupational diseases included.	1 week. None if disability continues for more than 3 weeks.	65 per cent.	Maximum, \$18.20; minimum, \$6.83.	Permanent total disability, 1,000 weeks.	(a) Burial expenses, maximum, \$225; 65 per cent of wages to equal 4 years' earnings, but not to exceed a total disability benefit; maximum annual earnings, \$1,400, minimum, \$325. (b) Burial expenses, maximum, \$200, and 4 years' earnings, maximum, \$1,000, to special dependency fund.	Reasonable medical, surgical, and hospital treatment for 90 days; longer if disability period can be decreased; also necessary artificial members. Christian Science treatment permitted unless employer refuses by filing written notice.	Included.	Notice in 30 days; claim in 2 years.	(a) Industrial commission. (b) Voluntary agreement approved by commission; disputed cases settled by commission; appeal to courts.	All employers of 3 or more persons and insurers must report all accidents to commission within first 3 days of each month. ¹	(a) Industrial commission. (b) No provision.	Wisconsin.
Wyoming. Ch. 124. Approved Feb. 27, 1915. In effect Apr. 1, 1915. Amended 1917, 1919, 1923.	Compulsory, as to "extrahazardous" employments enumerated conducted for gain, except casual employees not in usual course of employer's business, clerical employees not subject to hazard of employment, and officials.	Compulsory, as to all employees in "extrahazardous" work in which workmen are employed for wages unless otherwise provided for.	Employers must insure in State fund.			Assumed risk, fellow service, and contributory negligence unless willful.	Permitted if employer does not contribute to State fund. ¹	Waivers forbidden. No reduction of liability allowed.	Injuries sustained as a result of employment, unless due to culpable negligence of employee or willful act of a third party.	7 days. None if disability continues for more than 21 days.	Amounts not based on wages.	Temporary total disability: Monthly pension, \$50 to \$90. Fixed lump sums in other cases.	No provision.	(a) Burial expenses, maximum \$100, lump sum of \$2,000 to widow or invalid widower; also \$120 a year for each boy under 16 or girl under 18; total not over \$3,000. (b) Burial expenses maximum, \$150.	In nonfatal cases, medical and hospital service; maximum, \$300, unless there is a hospital fund.	One-third benefits; to parents, widow and children only.	Claim in 6 months, but if notice was given within 20 days, claim may be made within 9 months.	(a) Courts; fund supervised by State treasurer. (b) Claims and disputed cases settled by district courts of county; appeal to supreme court.	All employers engaged in extrahazardous employments must report all accidents to district court within 20 days.	(a) No commission. (b) Inspector of mines. ¹	Wyoming.
United States. 35 Stat. 558. Approved May 30, 1908. In effect Aug. 1, 1908. Amended 1911-12. New act, No. 287, approved Sept. 7, 1916. In effect same date. Amended 1919, 1922, 1924, 1926.	Compulsory, as to all employees of Panama Railroad.	Compulsory, as to all civil employees of the United States and of the Government of the District of Columbia, except police and firemen having pension funds.				Assumed risk, fellow service, and contributory negligence unless willful.	Government can not be sued.	No provision.	Personal injuries sustained while in performance of duty unless due to willful misconduct, intention to injure self or another, or intoxication, including any disease proximately caused by the employment.	3 days. Compensation begins on fourth day after disability or exhaustion of sick and annual leave.	Death, 10 to 66 2/3 per cent. Disability 66 2/3 per cent.	Death: Basic wage, monthly maximum, \$100; minimum, \$50. Total disability: Monthly maximum, \$66.67; minimum, \$33.33, or actual wages if less than \$33.33. Partial disability: Monthly maximum, \$66.67.	Death, during life or until remarriage of widow or widower; other dependents, 416 weeks. Disability, during its continuance.	(a) Burial expenses, maximum \$100 and transportation; 35 per cent of wages to widow or dependent widower until death, remarriage and 10 per cent for each child under 18, not over 66 2/3 per cent in all; other dependents, 10 to 40 per cent for not over 8 years; basic wage maximum, \$100 a month; minimum, \$50. (b) Burial expense maximum, \$100 and transportation.	Reasonable medical, surgical, and hospital service, and transportation if necessary, for a reasonable period unless employee refuses.	Included.	Notice in 48 hours, 1 year for reasonable cause; claim for disability in 60 days, 1 year for reasonable cause; death, 1 year.	(a) United States Employees' Compensation Commission. (b) Commission decides all questions arising under act.	Immediate superiors must report such information as required by commission immediately; supplementary reports as required by commission.	(a) No provision. (b) Bureau of Mines; Bureau of Standards; Interstate Commerce Commission. ¹	United States.

¹ Not provided for in compensation law.

² But employers having less than 3 employees lose defense of assumed risk if they do not elect.

TEXT OF WORKMEN'S COMPENSATION LAWS OF THE UNITED STATES

ALABAMA

CODE OF 1923

Compensation of workmen for injuries

[Following are sections of the said code relating to violations of the workmen's compensation act.]

SECTION 3992. *False verification of complaint.*—[False statements in verifying complaints are punishable as perjury.]

SEC. 3993. *Accepting compensation after dependency.*—[Knowingly accepting benefits after marriage or attaining the age of 18 or after disability has ceased is a misdemeanor.]

SECS. 3994-3996. *Fraudulent claims, etc.*—[The knowing presentation of a fraudulent claim or fraud in making or perfecting a settlement or knowingly testifying falsely as to material facts are, as to the first two, misdemeanors, and as to the last, perjury.]

SEC. 3997. *False statements by physicians.*—[Physicians knowingly making false statements or certifications as to compensation claimed are guilty of a misdemeanor.]

SECS. 3998, 3999. *Solicitation by attorney.*—[Attorneys soliciting employment to act for a consideration in claims by employees or accepting claims that have been solicited by others, or who employ solicitors are guilty of a misdemeanor and are to be disbarred. It is also a misdemeanor for any person not authorized to practice as an attorney to solicit claims to be represented by him for a consideration.]

SEC. 4000. *False affidavits.*—[Making false affidavits is perjury.]

SEC. 4001. *Soliciting insurance.*—[Insurance companies and their representatives must comply with the law as to filing their classifications of risks and premiums, and securing approval of their plan of business from the superintendent of insurance. Failure to comply is a misdemeanor.]

SEC. 4002. *Failure to make reports.*—[Any willful failure to make written reports as required by the compensation law is a misdemeanor.]

SEC. 4003. *Accepting assignment of claims.*—[Any person other than a beneficiary who, for a consideration, takes or accepts an assignment from an employee of his claim or award for compensation or accepts the same as security or takes power of attorney to collect the same for an interest therein is guilty of a misdemeanor.]

[The following are the sections of the compensation act presented as part of the Civil Code.]

ARTICLE 1

SECTION 7534. *Compensation payable, when.*—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 defined in section 7544.

SECS. 7535-7537. *Defenses.*—[In proceedings under article 1, the common law defenses are excluded unless the negligence of the employee was willful, and so in an action at law against an employer rejecting article 2: but if an employee rejects and sues an employer who has accepted article 2, such suit shall be at common law only, with all defenses available to the employer.]

Secs. 7538, 7539. *Scope.*—[The provisions of secs. 7534–7537 apply to cases of an employee's death or personal injury under other statutes, and to minors, whether lawfully or unlawfully employed.]

Sec. 7540. *Contracts made within State.*—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 articles 1 and 2 of this chapter 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.

Sec. 7541. *Burden of proof.*—In all actions of law brought pursuant to article 1 of this chapter, the burden of proof to establish willful misconduct, or other misconduct as defined in section 7544 of the injured employees shall be upon the defendant.

Sec. 7542. *Attorney's fees.*—[No part of the compensation payable under this act may be paid for legal services except on application by a claimant and approval by a judge of the circuit court, and may not exceed 10 per cent of the award.]

ARTICLE 2

SECTION 7543. *Scope of act.*—Articles 1 and 2 of this chapter 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. Any employer who regularly employs less than sixteen employees in any one business of any county, city, town, village, or school district may accept the provisions of articles 1 and 2 of this chapter 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. Said employers who have so elected to accept the provisions of articles 1 and 2 of this chapter may at any time withdraw the acceptance by giving like notice of withdrawal. In no event nor under any circumstances shall articles 1 and 2 of this chapter apply to farmers and their employees.

Sec. 7544. *Effect of agreement.*—If both employer and employee shall by agreement expressed or implied or otherwise as herein provided become subject to article 2 of this chapter, 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 any 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.

Secs. 7545, 7546. *Remedy exclusive.*—[Such agreement effects a surrender of other rights of action or recovery and is binding on survivors, personal representatives, receivers, etc., and all other rights and remedies are barred; but criminal liability for violation of law is not affected.]

Secs. 7547, 7548. *Election.*—[Contracts of employment are presumed to have been made with reference to this act unless otherwise expressly stated in writing, or unless written or printed notice to the contrary has been given by either party to the other. Employers' notices must be posted, and those by employees served on the employer. In either case, a copy must be filed with

the probate judge of the county. Acceptance or rejection may be terminated on 30 days' notice to the other party, a copy, with proof of service, to be filed with the probate judge.]

Sec. 7549. *Minors*.—[Minors have the same power as adults as to election, settlements, and the receipt of compensation, subject to the power of the court in its discretion, to require the appointment of a guardian.]

Sec. 7550. *Settlements*.—The interested parties shall have the right to settle all matters of compensation and all questions arising hereunder between themselves, but all settlements made hereunder must be in amount substantially the same as the amounts or benefits stipulated in this article, unless a judge of the circuit court of the county where the claim for compensation under this chapter 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 \$2, 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.

Sec. 7551. *Temporary total disability*.—Following is the schedule of compensation: (a) For injury producing temporary total disability, 50 per cent of the average weekly earnings received at the time of injury, subject to a maximum compensation of \$12 per week, except as otherwise provided herein, and a minimum of \$5 per week, but if at the time of injury the employee receives average weekly earnings of less than \$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 300 weeks. Payments to be made at the intervals when the earnings were payable, as nearly as may be.

(b) *Partial disability*.—In all cases of temporary partial disability the compensation shall be 50 per cent 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 300 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 subsection (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.

(c) *Schedule for specified injuries*.—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, 50 per cent of the average weekly earnings during 60 weeks. For the loss of a first finger, commonly called index finger, 50 per cent of the average weekly earnings during 35 weeks. For the loss of a second finger, 50 per cent of the average weekly earnings during 30 weeks. For the loss of a third finger, 50 per cent of the

average weekly earnings during 20 weeks. For the loss of a fourth finger, commonly called little finger, 50 per cent of the average weekly earnings during 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; but 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, 50 per cent of the average weekly earnings during 30 weeks. For the loss of one of the toes other than the great toe, 50 per cent of the average weekly earnings during 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, 50 per cent of the average weekly earnings during 150 weeks. For the loss of an arm, 50 per cent of the average weekly earnings during 200 weeks. For the loss of a foot, 50 per cent of the average weekly earnings during 125 weeks. For the loss of a leg 50 per cent of the average weekly earnings during 175 weeks. For the loss of an eye, 50 per cent of the average weekly earnings during 100 weeks. For the complete and permanent loss of hearing in both ears, 50 per cent of the average weekly earnings during 150 weeks. For the loss of an eye and a leg, 50 per cent of the average weekly earnings during 350 weeks. For the loss of an eye and an arm, 50 per cent of the average weekly earnings during 350 weeks. For the loss of an eye and a hand, 50 per cent of the average weekly earnings during 325 weeks. For the loss of an eye and a foot, 50 per cent of the average weekly earnings during 300 weeks. For the loss of two arms other than at the shoulder, 50 per cent of the average weekly earnings during 400 weeks. For the loss of two hands, 50 per cent of the average weekly earnings during 400 weeks. For the loss of two legs, 50 per cent of the average weekly earnings during 400 weeks. For the loss of two feet, 50 per cent of the average weekly earnings during 400 weeks. For the loss of one arm and the other hand, 50 per cent of the average weekly earnings during 400 weeks. For the loss of one hand and one foot, 50 per cent of the average weekly earnings during 400 weeks. For the loss of one leg and the other foot, 50 per cent of the average weekly earnings during 400 weeks. For the loss of one leg and one hand, 50 per cent of the average weekly earnings during 400 weeks. For the loss of one arm and one foot, 50 per cent of the average weekly earnings during 400 weeks. For the loss of one arm and one leg, 50 per cent of the average weekly earnings during 400 weeks: *Concurrent injuries*, 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 effect liability for the concurrent loss of more than one member, for which member compensation is provided in the specific schedule in subsection (d) below: *Loss of use*, 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: *Refusing employment*, 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 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 50 per cent 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 \$12 per week as otherwise provided herein. Compensation shall continue during disability, not, however, beyond 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) hereof.

(d) *Permanent total disability.*—For permanent total disability as defined in subsection (c) 50 per cent of the average weekly earnings received at the time of the injury subject to a maximum compensation of \$12 per week except as otherwise provided herein and a minimum compensation of \$5 per week. If at the time of injury the employee was receiving earnings of less than \$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 550 weeks; but in all such cases drawing more compensation than \$5 per week, the payment after the first 400 weeks shall be reduced to \$5 per week for the remainder of the 550 weeks, while the permanent total disability continues; payment to be made at the intervals when the earnings were payable as nearly as may be. 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 \$5,000 in any case. 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 sections 7552, 7553, 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.

(c) 1. *Second injuries.*—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.

(c) 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.

(c) 2. For permanent total disability other than as defined in subsection (c) 50 per cent of the average weekly earnings received at the time of injury subject to a maximum compensation of \$12 per week and a minimum compensation of \$5 per week; but if at the time of injury the employee was receiving earnings of less than \$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 400 weeks; payments to be made at the intervals when the earnings were payable as nearly as may be. Such payments with the consent of the circuit judge may be made monthly or quarterly.

(c) 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 articles 1 and 2 of this chapter.

(c) 4. If an employee receives a permanent injury as specified in this section 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 500 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) *Subsequent death*.—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.

(f) 1. *Hernia*.—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:

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 in this chapter.

(g) *Wage basis*.—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 52 weeks immediately preceding the date of the injury divided by 52; 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 52 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 52 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 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 52 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.

(h) *Additional allowance for children*.—Wherever in this section there is a provision for 50 per cent such per cent shall be increased 5 per cent for each totally dependent child of the employee under the age of 18 years at the time of the injury to the employee until such per cent shall reach a maximum of 60 per cent. Wherever in this section a weekly maximum compensation of \$12 is provided such maximum compensation shall be increased in the following cases to the following amounts: Thirteen dollars in case of an employee with one totally dependent child under the age of 18 years at the time of the injury to the employee. Fourteen dollars in case of an employee with two totally dependent children under the age of 18 years at the time of the injury to the employee. Fifteen dollars in case of an employee with three or more totally dependent children under the age of 18 years at the time of the injury to the employee. The increase in the above per cent 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 18 years.

SEC. 7552. *Dependents*.—For the purposes of this chapter 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 that 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 16 and 18 years of age or those over 18, if physically or mentally incapacitated from earning shall prima facie be considered dependent.

Sec. 7553. *Total dependents.*—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.

Sec. 7554. *Partial dependents; death benefits.*—Any member of a class named in the preceding section, 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. 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. If the deceased employee leave a dependent widow or dependent husband and no dependent child, there shall be paid to the widow 30 per cent of the average weekly earnings of deceased. 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 40 per cent of the average weekly earnings of the deceased. 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 50 per cent of the average weekly earnings of the deceased. 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 60 per cent of the average weekly earnings of the deceased. 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.

Sec. 7555. *Remarriage.*—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.

Sec. 7556. *Dependents.*—If the deceased employee leave a dependent orphan, there shall be paid 30 per cent of the average weekly earnings of deceased, with 10 per cent additional for each additional orphan with a maximum of 60 per cent of such wages. If the deceased employee leave a dependent husband and no dependent child, there shall be paid to the husband 25 per cent of the average weekly earnings of the deceased. 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, 25 per cent of the average weekly earnings of the deceased and if both parents, 35 per cent of the average weekly earnings of the deceased to such parent or parents. 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, 20 per cent of the average weekly earnings of the deceased, or if more than one, 25 per cent of the average weekly earnings of the deceased, divided between or among them share and share alike. If compensation is being paid under article 2 of this chapter 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. 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.

SEC. 7557. *Burial, etc.*—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 7567 the expense of last sickness, and burial, not exceeding in amount \$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 nonpayment 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.

SEC. 7558. *Limitation on payments.*—The compensation payable in case of death wholly dependent shall be subject to maximum compensation of \$12 per week and a minimum of \$5 per week; but if at the time of injury the employee receives earnings of less than \$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 \$12 per week and a minimum of \$5 per week; if the income loss of the said partial dependents by such death is less than \$5 per week, then the dependents shall receive the full amount of their income loss. This compensation shall be paid during dependency not exceeding 300 weeks, payments to be made at the interval when the earnings were payable as nearly as may be.

SEC. 7559. *Orphans.*—In computing and paying compensation to orphans or other children, in all cases, only those under 18 years of age, or those over 18 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 18, the latter for the time they are so incapacitated, within the period of 300 weeks.

SEC. 7560. *Total dependents.*—Total dependents shall be entitled to take compensation in the order named in section 7553 above, until the per cent of the average weekly earnings of the deceased during the time and as specified in section 7558 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 \$12 per week, except as otherwise provided herein.

SEC. 7561. *Preexisting conditions.*—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.

SEC. 7562. *Additional allowance for children.*—Wherever in the nine preceding sections there is a provision for 50 per cent such per cent shall be increased 5 per cent for each totally dependent child of the deceased employee under the age of 18 years at the time of the death of the employee until such per cent shall reach a maximum of 60 per cent. Wherever in the nine preceding sections a weekly maximum compensation of \$12 is provided such maximum compensation shall be increased in the following cases to the following amounts: Thirteen dollars in case the deceased employee leaves one totally dependent child under the age of 18 years at the time of the injury to the deceased employee. Fourteen dollars in case the deceased employee leaves two totally dependent children under the age of 18 years at the time of the injury to the deceased employee. Fifteen dollars in case the deceased employee leaves three or more totally dependent children under 18 years of age at the time of the injury to the deceased employee. The increase in the above per cent 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 18 years.

SEC. 7563. *Limit on payments.*—In no case hereunder except as otherwise provided herein shall the compensation paid hereunder be more than \$12 per week, nor less than \$5 per week, and in no case shall the total amount of compensation exceed \$5,000.

SEC. 7564. *Payments.*—If compensation is being paid under this article to any dependent, such compensation shall cease upon the death or marriage of such dependent. Where compensation is being paid under this chapter to any de-

pendent, 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.

SEC. 7565. *Joint employers.*—In case any employee for whose injury or death compensation is payable under article 2 of this chapter shall, at the time of the injury, be employed and paid jointly by two or more employers subject to this chapter, 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 article 2 of this chapter, 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. 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.

SEC. 7566. *Waiting time.*—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 7567, nor in any case unless the employer has actual knowledge of the injury or is notified thereof within the period specified in section 7568. 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.

SEC. 7567. *Medical, etc., aid.*—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 60 days of disability, or in case of death within said 60 days, obtained during the period occurring between the time of the injury and his death therefrom. The total liability of the employer under this section shall not exceed the aggregate of \$100, 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. 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 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 \$100 as hereinabove provided. 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 60 days or such time thereafter as he desires to furnish the same, and such employee 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 interested party may require an autopsy, the cost of which is to be borne by the party demanding the same.

Sec. 7568. *Notice of accident.*—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 articles 1 and 2 of this chapter 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 90 days after the occurrence of the accident, or where death results within 90 days after the accident.

Sec. 7569. *Service of notice.*—[Notice may be served personally or by registered mail, substantially in the form prescribed.]

Sec. 7570. *Limitations.*—[Claims are forever barred unless an agreement is made or a verified complaint filed within one year after the accident, or, in case of death, within one year after the death resulting proximately from the accident within three years thereafter. If compensation payments have been made the limitation runs from the last payment. In case of mental or physical incapacity other than minority, the period of limitation dates from its cessation.]

Sec. 7571. *Disputes.*—[Disputes are within the jurisdiction of the circuit courts of the county that would have jurisdiction of a civil case in tort between the parties, to be heard and determined in a summary manner. Appeals may be taken to the supreme court by certiorari within 30 days.]

Sec. 7572. *Alien beneficiaries.*—[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.]

Sec. 7573. *Lump sums.*—[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 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 6 per cent basis.]

Sec. 7574. *Review of awards.*—[All amounts paid by the employer and received by the employee or his dependents under settlements made under section 7549, 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 can not agree, then at any time after six 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 7549 in case of disputed claim for compensation.]

Sec. 7575. *Payment to trustee.*—[After award made or agreed upon, the employer may deposit the present worth of the same, calculated on a 6 per cent basis, in an approved bank, to be held in trust for the beneficiaries and paid as the law provides, such action to relieve the employer of further liability. If a beneficiary's right terminates before the sum is exhausted, the balance reverts to the employer.]

Secs. 7576-7583. *Remedies, procedure, etc.*—[These sections provide remedies in case of an employer's default in payments, declare a preference for awards

the same as for wage debts, prescribe procedure in cases of dispute, authorize an allowance of costs, and prescribe methods of payment of judgments and of recording their discharge. No costs will be allowed if an employer has made a written offer of compensation prior to the commencement of action, in terms according with the provisions of the act.]

Sec. 7584. Insurance.—[The employer may insure his liability to pay compensation in any approved stock or mutual insurance company or reciprocal exchange or association, to cover all employees or only certain classes or risks. Provisions of policies are prescribed, one being the giving of an equitable lien to the injured workman on amounts due under the policy, and making the company directly liable in case of the employer's insolvency. Companies are to file rates, submit reports, and conform to the requirements of the State superintendent of insurance. Employees may not contribute to costs of insurance unless there is provision for other benefits than those fixed by this act. If the employer posts notices of full insurance in an approved company, suits and actions for injuries shall be brought directly against such company, and the employer is released from liability; but if the insurance company becomes insolvent or can not be reached by due diligence by process in the State, the employer is not released, and is in any case liable for any recovery in excess of the amount of insurance carried.]

Sec. 7585. Evading provisions of act.—(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 chapter. 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; but 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 the succeeding section.

Secs. 7586, 7587. Third-party injuries.—[If a party other than the employer is liable for injuries or death of an employee, and such party is himself under this act, the injured man, or his dependents, in case of death, may sue such third party, or make claim against the employer. Liability to damages shall be in a sum within the terms of this act, and if a claim is made against the employer, he is subrogated to the rights of the workman or his dependents. If such third party is not under the compensation act, he may be sued notwithstanding recovery of the award against the employer, but the employer is entitled to deduct from the compensation payable by him any sum obtained as a judgment on the suit. An employer from whom compensation has been claimed may proceed either in his own name or in the name of the employee to recover damages against such third party, any excess over the compensation award, costs, etc., to go to the injured employee or his dependents.]

Sec. 7588. Rules.—[The chief justice of the supreme court is to make rules for the guidance of circuit courts and judges.]

Sec. 7590. Commissioner.—[See ch. 464, Acts of 1923, below.]

Sec. 7590. Forms, etc.—[The compensation commissioner is to prepare and supply needed blank forms and literature for employers and employees.]

Sec. 7591. Records of accidents.—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. Within 15 days after the occurrence and knowledge thereof by the employer of an injury to an employe, causing his absence from work for more than 14 days, for which compensation is claimed or paid a report shall be made in writing and mailed

to the compensation commissioner of the State on blanks to be procured from such commissioner for this purpose.

SEC. 7592. *Settlements to be reported.*—Such employer shall within 10 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 on blanks to be procured from the commissioner for such purpose.

SEC. 7593. *Courts to make reports.*—The clerk of the circuit court shall, within 10 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.

SEC. 7594. *Supplementary reports.*—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 on blanks to be procured from the commissioner for such purpose.

SEC. 7595. *Report to legislature.*—[The compensation commissioner is directed to report "to the next regular session of the legislature" the operations of the act, from the records of the superintendent of insurance and other reports, such information as he may obtain.]

SEC. 7596. *Words and phrases defined.*—Throughout articles 1 and 2 of this chapter 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 article 1 and article 2 of this chapter 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 article 1 of this chapter is damages, and this is indicated in section 7534. To avoid confusion, the word "compensation" has been used in articles 1 and 2 of the chapter, but it should be understood that under article 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 stepchildren 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 18 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 7543, 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 16 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 chapter, and shall be construed to mean the same. (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." Every person not excluded by section 7543, 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 articles 1 and 2 of this chapter 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 articles 1 and 2 of this chapter 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. Article 1 of this chapter shall not apply in cases where article 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.

SEC. 7597. *Title*.—[The act may be cited as the "workmen's compensation act."]

ACTS OF 1923

CHAPTER 404.—*Bureau of insurance*

[An independent bureau of insurance is created, in lieu of the department of insurance, with a superintendent at its head and a designated staff. The superintendent is ex officio compensation commissioner, instead of the director of archives and history, as originally provided.]

ALASKA

ACTS OF 1923

CHAPTER 98.—*Compensation of employees for injuries*

SECTION 1. Scope; benefits.—Any person, or persons, partnership, joint-stock company, association or corporation employing five or more employees in connection with any business, occupation, work, employment, or industry carried on in this Territory, except domestic service, agriculture, dairying, or the operation of railroads as common carriers 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.

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:

(1) 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 \$3,900.

(2) In those cases where such married employee had children under the age of 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 \$780 for each child under the age of 16 years, or child wholly dependent upon his or her parents for support by reason of mental or physical 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 \$7,800.

(3) 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 \$780 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 \$7,800 and the payments to which the widow and children may be entitled shall be first paid out of said sum of \$7,800.

(4) 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 \$1,560.

(5) 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 \$1,560 each.

(6) 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 \$3,900, and the further sum of \$780 for each orphan child under the age of 16 years, provided the total amount paid shall not exceed \$7,800, and the judge of the probate court of the precinct wherein such accident or injury occurred shall appoint a guardian, for all of 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 \$3,900 thereof equally among such children and divide the surplus, if any, among the children under 16 years of age.

(6½) *Provided, however,* That if such beneficiary or beneficiaries as described in [sub]section 1 to 6, inclusive, immediately preceding this [sub]section be neither resident nor a citizen of the United States of America, then the amount due and payable to such beneficiary or beneficiaries shall be in an amount equal to 75 per cent of the sums set forth in [sub]sections 1 to 6, immediately preceding, and such amount shall be in full settlement of all claims under this act.

(7) 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 \$195, and such other expenses, if any, arising after the injury and before the death, not to exceed the further sum of \$195.

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 \$6,240 with \$780 additional for each child under the age of 16 years, but the total to be paid shall not exceed \$7,800.

(b) If such employee at the time of his injury had no wife or children, but had a mother or father dependent upon him, \$5,460.

(c) In case where such employee who at the time of his injury had both father and mother dependent upon him, \$6,240.

(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 \$4,680 with an additional sum of \$780 for each child below the age of 16 years, provided that the total sum to be paid such employee shall not in any case exceed the sum of \$7,800.

(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 \$4,680.

Where any such employee received 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, \$624.

(b) In case the employee was married but had no children, \$780.

(c) In case the employee was either married or a widower, but had one or more children, \$936.

For the loss of an index finger:

(a) In case the employee was at the time of the injury unmarried, \$390.

(b) In case that the employee was married but had no children, \$507.

(c) In case the employee was either married or a widower, but had one or more children, \$624.

For the loss of other finger than the index finger and thumb, \$234.

For the loss of a great toe, \$390.

For the loss of any other toes than the great toe, \$150.

For the loss of a hand:

(a) In case the employee was at the time of the injury unmarried, \$1,872.

(b) In case the employee was married but had no children, \$2,496.

(c) In case the employee was either married or a widower and had one child, \$2,496 and \$312 additional for each of said children, not to exceed, however, the total sum of \$3,120.

For the loss of an arm:

(a) In case that the employee was at the time of the injury unmarried, \$2,340.

(b) In case the employee was married but had no children, \$3,120.

(c) In case the employee was either married or a widower and had one child, \$3,120 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, \$1,872.

(b) In case that the employee was married but had no children, \$2,340.

(c) In case the employee was either married or a widower and had one child, \$2,496 and \$312 additional for each additional child, but not to exceed the total sum of \$3,120.

For the loss of a leg:

(a) In case the employee was, at the time of the injury, unmarried, \$2,340.

(b) In case the employee was married but had no children, \$3,120.

(c) In case the employee was either married or a widower and had but one child, \$3,120 with \$390 for each additional child, not to exceed the total sum of \$3,900.

For the loss of an eye:

(a) In case the employee was, at the time of the injury, unmarried, \$1,872.

(b) In case the employee was married but had no children, \$2,496.

(c) In case the employee was either married or a widower and had one child, \$2,496 plus \$312 for each additional child, not to exceed, however, the total sum of \$3,120.

For the loss of an ear, \$312.

For the loss of the nose, \$624.

For all other injuries causing temporary disability, the employer shall pay to the employee, during the period of such disability, 50 per cent of his daily average wages. 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.

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 \$6,240.

To illustrate: If said employee were of a class that would entitle him or her to \$6,240 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 25 per cent, he or she would be entitled to receive \$1,560, it being the amount that bears the same relation to \$6,240 that 25 per cent does to 100 per cent. Should such employee receive an injury that would impair his or her earning capacity 75 per cent, he or she would be entitled to receive \$4,680, it being the amount that bears the same relation to \$6,240 that 75 per cent does to 100 per cent.

SEC. 1½ (added 1925, ch. 63). *Medical, etc., aid.*—And in addition to the compensation for injured employees in this act otherwise provided, the employer shall furnish to and for each injured employee such reasonably necessary medical, surgical, and hospital treatment, including necessary transportation to and from hospitals, as may be required by reason of the injury, for a period not exceeding one year from and after the date of injury to any such employee; and the employer in order to create a fund out of which the expenses of such treatment may be paid, may charge against and deduct from the wages of each employee, as and when the same are paid, the sum of not to exceed \$2.50 per month; the money so deducted and withheld by the employer shall be kept by him in a separate fund and used only to cover the services and treatment in this section provided, and if the fund so created be insufficient, such deficiency may reasonably arise, shall be paid by the employer without any charge therefor against the injured employee or any other of the employees; and the employer shall have the exclusive right, and it shall be his duty to select and furnish the necessary physicians, surgeons, and hospitals, and to

that end he may enter into all necessary contracts with such physicians, surgeons, and hospitals for the furnishing of such services and treatments. 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. The fund hereby created by deductions herein allowed to be made by the employer from the wages of employees shall be, and the same is hereby, made a trust fund which can be used only for the purposes herein set out. Whenever any employer shall cease his business or operations and go out of the business in which such employer has been theretofore engaged, any part of the fund created by this section and remaining in the possession of such employer shall, by the employer, be paid to the Territorial treasurer and by him covered into general Territorial funds.

SEC. 2. Right to higher award.—If an injured employee entitled to compensation hereunder shall be paid compensation under any subdivision or part of this 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 years after the injury.

SEC. 3. Settlement by agreement.—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.

SEC. 4. Willful intention.—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.

SEC. 5. Waiting time.—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 the period of one week, compensation shall begin on the eighth 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.

SEC. 6. Contractors.—No contractor or subcontractor shall be entitled to receive compensation under this act, but shall be deemed to be an employer.

SEC. 7. Remedy exclusive.—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 representative, dependents, beneficiaries under this act, or next of kin of such employee.

SEC. 8. Step-parents, etc.—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.

SEC. 9. Statement of beneficiaries.—[Employers under the act must furnish employers with a list of their potential beneficiaries under this act, and keep the addresses correctly on file. Employers must notify each beneficiary so listed in event of the death of the employee in accordance with a prescribed form, including notice of the time within which claims must be submitted.

Failure to furnish the list does not forfeit the rights of claimants, but relieves the employer of all obligation to give notice of death. If the employer fails to notify beneficiaries whose names he has been furnished of the death of the employee, they may prosecute their claims without regard to the 120-day limitation fixed by the act. The statements made by employees as to dependents may be offered in evidence as to questions of relationship, and when so offered shall be received.

Claims for death benefits must be submitted within 120 days from the death of the employee; but failure to serve such notice will not be a bar to recovery

of benefits unless it is shown that the employer at no time prior to the expiration of 120 days had knowledge of the injury, or that, after the expiration of 120 days, he had paid in good faith the compensation herein provided to another claimant believed in good faith to be entitled thereto.]

SEC. 10. Deposits for claims.—[An employer served with notice by one or more claimants may deposit with the clerk of the district court for the division within which the employee was injured cash or a properly secured bond in the amount of \$7,800, such deposit to be made within the 10 days succeeding the 120 days during which notice may be served; but no action may be tried until the expiration of the 120 days and the 10-day period.]

SECS. 11-15. Procedure.—[All claimants are to be notified of such deposit by the employer, and any prior action by claimants then abates, and proceedings follow the course prescribed; but if such claimants are found entitled to compensation, costs are awarded.]

Notice of deposit of the money or bond must be advertised in a local newspaper for four weeks, and a time stated within which claims are to be presented. Claimants file their claims with the clerk of the district court, and a copy is served on the employer. Hearings are to be had within 30 days from the date set for the filing of claims, with a jury if demanded. If not, trial is before the judge; the order of proof to rest in his discretion, but to be such as will give all parties a full, fair, and complete hearing. Findings of fact are to be filed, whether trial is with or without a jury, and judgment is to be entered in accordance therewith.]

SECS. 16-18. Awards.—[If no claim is filed or claimants fail to prove a right to an award, the employer's deposit is to be returned, less costs. If claims are sustained the sums due are awarded without costs and without interest. If any part is undistributed, it is to be returned to the employer, less costs.]

SEC. 19. Appeals.—[Appeals lie to the United States Circuit Court of Appeals for the Ninth Circuit; but if an employer appeals and judgment against him is affirmed, interest at 8 per cent and the costs on appeal are allowed the claimant.]

SECS. 20-23. Actions.—[Actions by two or more claimants are to be consolidated, and are to be in the courts of the Territory unless it is shown that service on the defendant can not be had in the Territory. On the submission of affidavits showing the facts necessary to sustain a claim, a writ of attachment issues without the filing of bond or other security; but the defendant may file a bond in double the amount sued for, in which case no writ will issue; or if one has been issued, it will be dissolved and the attached property returned.]

SEC. 24. Medical examinations.—[Injured employees must at reasonable times submit to medical examinations on the request and at the expense of the employer. Refusing or obstructing examination suspends rights to compensation; and such rights may be forfeited for the period of suspension, in the discretion of the jury or court trying the action.]

SEC. 25. Waivers.—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.

SEC. 26. Limitation.—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.

SEC. 27. Liability of third parties.—Where the injury for which compensation is payable under this act was caused under circumstances creating a legal liability in some 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.

SEC. 28. Election presumed, when.—When five or more employees, as defined by this act, are employed in the same general employment in connection with any business or industry 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.

SEC. 29-31. Rejection by employer.—[Employees are presumed to have accepted the act unless and until notice in writing is recorded with a United States commissioner in a proscribed form. Such rejection effects an abrogation of the common-law defenses, and in actions for personal injuries the negligence of the employer is presumed to have been the proximate cause.]

SEC. 32. Terms of contract.—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.

SEC. 33. Rejection by employees.—[Acceptance by employees is presumed until written notice in proscribed form is served on the employer and recorded in the office of the commissioner for the precinct in which the employer's operations lie. (The text says "mining operations," but as the law is of general inclusiveness (see sec. 1), it seems that this is an overlooked retention of the provisions of the earlier law.)

Rejection by the employee leaves the employer free to plead the common-law defenses in case of a suit for damages; but if the injury is due to the employer's failure to comply with any safety law or regulation, the doctrine of assumption of risk shall not apply.]

SECS. 34, 35. Term of election; waiver.—[Rejections are for a term of one year, and must be renewed within 30 days of the expiration of that period. Rejections may be waived at any time in the same manner as made.]

SEC. 36. If both reject.—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.

SEC. 37. Assignments, etc.—No claim for compensation due under this act shall be assignable, and all compensation due hereunder shall be exempt from execution.

SEC. 38. Employer; employee.—Whenever the term "employer" is used in this act reference is had to any person or persons, partnership, joint-stock company, association, or corporation employing five or more employees in connection with any business or industry coming within the scope of this act and 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.

SEC. 39. Beneficiary.—The term "beneficiary" as used in this act refers to any person entitled to compensation under the provisions hereof.

SEC. 40. Gender.—The masculine gender whenever used herein shall be held to include the feminine and neuter.

SEC. 41 (as amended 1925, ch. 59). Costs.—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, including a reasonable attorney's fee to be fixed by the court.

SEC. 42. Title.—This act may be cited as "The workmen's compensation act of Alaska."

SEC. 43. Repeal.—All acts and parts of acts in conflict herewith are hereby repealed to the extent of such conflict; but this repeal shall not affect any right or claim which arose under any other act prior to the time when this act shall go into effect.

Approved May 4, 1923.

1965°—26—7

ARIZONA
CONSTITUTION

[The following section of the constitution of the State was amended by the legislature of 1925, and adopted at a special election, September 29, 1925, so as to read as follows. Its adoption effected the final step in the enactment into law of House Bill No. 227 (ch. 83, Acts of 1925), named in the amendment, as the compensation law of the State.]

ARTICLE XVIII

SECTION 8. Workmen's compensation law to be enacted.—The legislature shall enact a workmen's compensation law applicable to workmen engaged in manual or mechanical labor in all public employment whether of the State, or any political subdivision or municipality thereof as may be defined by law and in such private employments as the legislature may prescribe by which compensation shall be required to be paid to any such workman, in case of his injury and to his dependents, as defined by law, in case of his death, by his employer, if in the course of such employment personal injury to or death of 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 or danger of such employment, or a necessary risk or danger inherent in the nature thereof, or by failure of such employer, of any of his or its 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 any employee engaged in any such private employment to settle for such compensation, or to retain the right to sue said employer as provided by this constitution: *And provided further*, In order to assure and make certain a just and humane compensation law in the State of Arizona, for the relief and protection of such workmen, their widows, children or dependents, as defined by law, from the burdensome, expensive and litigious remedies for injuries to or death of such workmen, now existing in the State of Arizona, and producing uncertain and unequal compensation therefor, such employee, engaged in such private employment, may exercise the option to settle for compensation by failing to reject the provisions of such workmen's compensation law prior to the injury.

The percentages and amounts provided in house bill No. 227 enacted by the Seventh Legislature of the State of Arizona, shall never be reduced nor any industry included within the provision of said house bill No. 227 eliminated except by initiated or referred measure as provided by this constitution.

ACTS OF 1925

CHAPTER 83.—Industrial commission—Compensation of workmen for injuries

SECTIONS 1-9. Industrial commission.—[A commission of three members is appointed by the governor, by and with the consent of the senate, one term to expire each two years. Not more than two members may belong to the same political party; members may be removed for cause. Salaries are \$5,000 per annum, and bonds in the sum of \$10,000 are required, the premiums to be paid from the State treasury. A majority constitutes a quorum, offices are to be maintained at the State capitol, the commission has a seal, keeps records, and its office is open for the transaction of business during the business hours of every business day. Sessions are open to the public. Subject to the provisions of this act, the commission may adopt and modify its own rules of procedure.]

SEC. 10. Employees, etc.—[The commission is authorized to employ actuaries, accountants, inspectors, experts, physicians, clerks, etc., and fix their compensation; all subject to approval by the governor. Necessary traveling expenses are to be paid out of the compensation fund.]

SECS. 11-20. General powers.—[Commissioners may enter any place of employment for the purpose of collecting facts and statistics, are charged with the enforcement of all laws relating to the safety and welfare of employees, and may issue general orders to take effect within 30 days after publication. Special orders to take effect as therein directed. Proceedings to amend, set aside or vacate orders are regulated, the power of the commission to summon witnesses, administer oaths, designate agents, etc., are prescribed, and penalties fixed for noncompliance by employers and employees, and for failure of employees to furnish the information required by the commission.]

SECS. 30-43. State compensation fund.—[A State compensation fund is created, consisting of premiums paid by employers accepting this form of insurance, and of penalties, interest, etc.

The fund is to be administered by the commission without liability on the part of the State beyond the amount of such fund. The commission has full authority to administer the fund, classify employments, and keep separate accounts for convenience in determining equitable rates, which shall be the lowest possible consistent with the maintenance of a solvent fund and the creation of a surplus and reserve. For the purpose of paying compensation, the fund is a unit. Individual risks may be taken into consideration in adopting a system of schedule rating. Computations are to be made annually, and if there is an excess of assets over liabilities, including a necessary reserve in the sum of \$100,000 for catastrophe hazards, either a credit or cash dividend to individual members of a class showing excess contributions over liabilities may be allowed. A reserve for reimbursing the general fund of the State for the initial appropriation of \$100,000 must be first provided.

The commission may sue and be sued in its own name, make contracts of insurance and such other contracts relating to the fund as are authorized or permitted by the act, and reinsure any risk or part thereof as other reinsurance carriers. Contracts of insurance may fully protect employers not only for compensation claims but for all liability claims whatsoever by employees or their dependents, including the cost of defense in the event of suit. Employers insuring in the State fund receive a contract in an approved form, make semiannual payments of premiums, and may withdraw from the fund, if not in arrears, and due notice of such withdrawal has been given. Ten per cent of the premiums must be set aside for the creation of a surplus until the sum of \$100,000 is accumulated, and thereafter 5 per cent until a sufficient surplus is accumulated to cover the catastrophe hazard and all other unanticipated losses. A reserve adequate to carry all claims and policies to maturity must be provided. Readjustments of rates are to be made at the end of each year, and at such other times as the commission may approve, and credits and dividends allowed if the commission believes that it may safely and properly be done. Premiums may be reduced for any class showing a balance remaining after credits and expenses of administering, etc., properly chargeable against the class have been met. The commission is to adopt rules and regulations as to cost, maintenance and disbursements of the fund, requiring that adjustments shall be made of the amount of premiums actually due at the end of any six months' period for which estimated contributions have been paid, excess or payments of insufficient amounts to be adjusted according to the actual pay roll for the period.

The State treasurer is custodian of the fund, under a separate surety bond. Sums not needed for immediate use may be deposited, with the consent of the commission, interest to be credited to the fund. The surplus may be invested in United States, State or municipal bonds or bonds of Federal land banks.]

SEC. 44. Who are employers.—The following shall constitute employers subject to the provisions of this act:

(1) The State, and each county, city, town, municipal corporation, 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 workers not employed in the use of machinery, and domestic servants: *Provided*, That employers who have in service agricultural workers as designated and domestic servants shall have the right to come under the terms of this act 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 the year. It means all employments in the usual course of the trade, business, profession, or occupation of an employer.

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. 45. *Who are employees.*—The terms "employee," "workman," and "operative," as used in this act, shall be construed to mean:

(1) Every person in the service of the State, and every county, city, town, municipal corporation, 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, municipal corporation, or school district therein, or other official receiving more than \$2,400 per year salary.

(2) Every person, except agricultural laborers as designated and domestic servants in the service of any employer, as defined in subdivision 2 of section 44, 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 or illegally 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 of 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.

SEC. 46. *Definitions.*—The following terms as used in this act 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 applied generally throughout the State to all persons under the jurisdiction of the commission. All other orders of the commission shall be considered special orders.

(3) 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.

These shall not include a disease except as it shall result from the injury.

(4) The term "compensation" shall mean the compensation and benefits provided for in this act.

(5) The term "award" shall mean the finding or decision of the commission as to the amount of compensation or benefit due any injured or the dependents of any deceased employee.

(6) The term "hazardous employment" as used in this act shall be construed to mean and shall include the following:

(1) The operation of steam railroads, electrical railroads, street railroads, by locomotives, engines, trains, motors, or cars of any kind propelled by 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 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.

SEC. 47. Compensation to be paid.—Every employee mentioned in section 45 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 expenses, in case of death, as are herein provided.

SECS. 48-53. Insurance.—[Private employers must secure the payment of benefits under the act either by insuring in the State fund or in an authorized stock or mutual insurance company, or by furnishing satisfactory proof of financial ability to make direct payments as they become due under the act. In the last case, the commission may require the deposit of security or bonds.

If self-insurers do not fully comply with the provisions of the act as to their obligations, the claim of the injured workman or his dependents will be assumed to have been assigned to the commission for the benefit of the State fund, from which benefits due will be paid, and the commission will have a right of action against the employer to recover such amount, with necessary expenses of the recovery, including a reasonable attorney's fee. If a bond has been deposited, recovery will be on the bond.

Stock and mutual companies will be subject to the rules and regulations of the commission, including the subjects of rates, reserves, deposits, etc. Employers insuring in other than the State fund must file notice of their insurance, with a copy of the policy. Policies must cover the entire liability of the employer, and provide for the industrial commission or the State to enforce in their own names the liability of the insurer for the payment of the compensation insured, or any unpaid portion thereof. Policies must also contain a provision that notice and jurisdiction of the employer bind the insurer, and that the insolvency of the employer does not release the carrier from liability for benefits accruing during the life of the policy. The State and its municipalities must insure in the State fund.]

SEC. 54. Pay rolls to be furnished.—[Counties, cities, etc., are required to furnish pay rolls of their employees, classified as the commission may require, and appropriate premiums are to be paid at once to the commission by the proper officer.]

SEC. 55. Payments from State fund.—[This section provides that employees covered by insurance in the State fund shall be paid therefrom compensation, medical aid, and funeral expenses in case of death.]

SEC. 56. Premium payments.—[Every employer except the State who is insured in the State fund must make semiannual payments of premium accord-

ing to the classes and rates fixed by the commission: also any adjustments found due.]

SEC. 57. Benefits.—(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 Arizona Industrial Commission. The benefits conferred by this section upon the injured employee shall hereinafter be termed "accident benefits."

(b) For the purpose of providing a fund to take care of said accident benefits as in this act provided, the Arizona Industrial Commission is authorized and directed to collect a premium upon the total pay roll of every employer, including the State and its legal subdivisions, 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 Arizona Industrial Commission. Every employer paying such premium for accident benefits may collect one-half thereof, not to exceed \$1 per month, from each employee, and may deduct the same from the wages of such employee.

The Arizona Industrial Commission shall have the authority to adopt such reasonable rules and regulations as may be necessary to carry out the provisions of this subdivision of this section. All fees and charges for such accident benefits shall be subject to regulation by the commission, and shall be limited to such charges as prevail in the same community for similar treatment of injured persons of like standard of living.

The State compensation 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.

(c) It shall be the duty of every employer operating under 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 Arizona Industrial Commission furnishing first aid shall be entitled to receive from the commission the amount of such expenditure reasonably made.

(d) Every employer, except the State and its legal subdivisions, operating under this act, alone or together with other employers may, in lieu of making premium payments to the accident benefit fund, make arrangements for the purpose of providing accident benefits as defined in this act for injured employees and such employer may collect one-half of the cost of such accident benefits from their collective employees, not to exceed \$1 per month from any one employee, and may deduct the same from the wages of each employee. Employers electing to make such arrangements for providing accident benefits shall notify the Arizona 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 30th day of January of each year, make a written report to the Arizona 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 a physician, if contracted to a physician.

Every employer who fails to so notify said Arizona Industrial Commission of such election and arrangement, 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.

(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 Arizona Industrial Commission, in which event the cause of action of said injured employee against the employer or hospital association shall be assigned to the Arizona Industrial Commission for the benefit of the accident benefit fund, and the Arizona Industrial Commission shall furnish to said injured employee the medical, surgical, or hospital aid or treatment provided for in this act.

[The State and its subdivisions are to pay into the accident benefit fund such premiums as are authorized by this section and the commission is to administer such fund with the same power as is provided for the administration of the State compensation fund; the State treasurer is its custodian.]

Sec. 58. *Tax on noninsuring employers.*—[Employers who do not insure must pay a tax based on the amount the employer would pay as premiums if insured in the State fund, at the same rate as required by law on premiums received by insurance companies.]

Sec. 59. *Extraterritoriality.*—If a workman who has been hired or is regularly employed in this State receives a personal injury by accident arising out of and in the course of such employment, he shall be entitled to compensation according to the law of this State as provided for in this act, even though such injury was received outside of this State. If a workman who has been hired outside of this State is injured while engaged in his employer's business, and is entitled to compensation for such injury under the law of the State where he was hired, he shall be entitled to enforce against his employer his rights in this State if his rights are such that they can reasonably be determined and dealt with by the commission and the courts in this State.

Sec. 60. *Employee's option.*—[Employers complying with the provisions of section 48 are exempt from other liability than that herein provided; but employees may elect to reject the terms of the act by prior notice in writing, a duplicate to be filed with the commission.¹ Election is presumed in the absence of such notice and employers in hazardous occupations must post and keep posted a notice to that effect, which failing, an injured employee may either claim compensation or sue under other laws of the State.]

Sec. 61. *Notice of self-insurance.*—Each employer providing insurance or electing directly to pay compensation to his injured or the dependents of his killed employees as herein provided, other than the employers mentioned in subdivision 1 of section 44, shall post in conspicuous places about his place of business typewritten or printed notices stating the fact that he has complied with the provisions of this act and of all 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 of his employees of the fact that he has complied with the law as to securing compensation to his employees and their dependents.

Secs. 62, 63. *Employers failing to comply.*—[Employers failing to comply with the provisions of section 48 are not entitled to the benefits of this act during the term of such noncompliance, but are liable in actions in damages for the injury or death of employees, without the defenses of assumption of risk or contributory negligence; and proof of injury shall be prima facie evidence of negligence. Instead of suing, the injured worker or his dependents may apply for compensation in accordance with the terms of this act, and the commission shall proceed to hear and determine the claim. An award filed in the office of the clerk of the superior court must be docketed as a judgment of that court, and is a lien on the real property of the employer in that county for a period of eight years.]

Sec. 64. *Default.*—[Employers defaulting in payments due the State compensation fund or the accident benefit fund are required to pay the same with

¹ As enacted, this option extended only to employees in occupations declared by section 46 to be hazardous; but the supreme court held this restriction to be in conflict with the constitution, and invalid.

interest at 12 per cent per annum, to be collected by the commission in a civil suit.]

SEC. 65. *Right to recover; exceptions.*—The right to recover compensation pursuant to the provisions of this act for injuries sustained by an employee shall be the exclusive remedy against the employer, except as provided in sections 60 and 61 of this act, and except where the injury is caused by the employer's willful misconduct and such act causing such injury is the personal act of the employer himself, or if the employer be a partnership, on the part of one of the partners, or if a corporation, on the part of an elective officer or officers thereof, and such act indicates a willful disregard of the life, limb, or bodily safety of employees, such injured employee may, at his option, either claim compensation under this act or maintain an action at law for damages. The term "willful misconduct" as employed in this section shall be construed to mean an act done knowingly and purposely with the direct object of injuring another.

SEC. 66. *Injuries by third parties.*—[In case of third-party liability the injured employee or his dependents must elect between an action for damages and a claim against the employer. If the latter is chosen, the right to sue passes to the person, fund, or association liable for the payment of compensation; if suit is brought, the liability for compensation is limited to the difference, if any, between the amount recovered and the benefits provided by the act. Compromise settlements may be made by an employee only with written approval of the person liable for compensation.]

SEC. 67. *Choice of remedies.*—[Applying for, or, with the consent of the commission, accepting compensation is a waiver of a right to sue; and bringing suit is a waiver of compensation rights.]

SEC. 68. *Status of judgments.*—All judgments obtained in any action prosecuted by the commission or by the State under the authority of this act shall have the same preference against the assets of the employer as claims for taxes now have.

SEC. 69. *Waiting time.*—No compensation shall be allowed for the first seven days after the injury is received: *Provided, however,* That this shall not prevent disbursement from the accident benefit fund and shall not apply to the payment of funeral expenses.

SEC. 70. *Average monthly wages; dependents.*—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, in case of his death, shall be entitled to receive the following compensation on the basis of average monthly wage at time of injury. The term "average monthly wage" shall be construed to mean the average wage paid during and over the month in which such employee shall be killed or injured. In the event that such employee shall be working under a contract with his employer under the terms of which said employee shall be guaranteed any amount per diem or per month, notwithstanding the contract price for such labor, then and in such event said employee or his subordinates or employees working under the terms of said contract, or his or their dependents as hereinafter defined in case of death, shall be entitled to receive the following compensation on the basis only of the guaranteed wage as set out in said contract of employment, whether such amount is paid on a per diem basis or on a monthly basis, provided that in no event shall such basis be less than such wages as are paid to employees for similar work not under contract.

(A) *Death benefits*

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 \$150, in addition to the compensation payable under this act.
2. To the widow, if there is no child, 55 per cent of the average wage of the deceased. This compensation shall be paid until her death or remarriage, with two years' compensation in one sum upon remarriage.
3. To the widower, if there is no child, 35 per cent of the average wage of the deceased, if wholly dependent for support upon the deceased employee at the time of her death. This compensation shall be paid until his death or remarriage.

4. To the widow or widower, if there is a child or children, the compensation payable under subdivision (1) or subdivision (2), and in addition the additional amount of 15 per cent of such wage for each child until the age of 18 years, in no case including provision for widow or widower and children, to exceed 66⅔ per cent of the average wage. In case of the subsequent death of such surviving wife, or dependent husband, a single surviving child of the deceased employee shall have his compensation increased to 25 per cent of such wages; or in the event that there is more than one surviving child, 25 per cent should be paid for one child under 18, and 15 per cent for each additional such child, to be divided among such children share and share alike, but not exceeding a total of 66⅔ per cent of the average wage: *Provided*, That compensation on account of any such child ceases when it dies, marries, or reaches the age of 18 years, or if over 18 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 18 years, but no surviving wife (or dependent husband), then for the support of each child until the age of 18 years, the provisions of the foregoing subsection shall apply.

6. If there be no surviving wife (or dependent husband) or child under the age of 18 years, there shall be paid to a parent, if wholly dependent for support upon the deceased employee at the time of his death, 25 per cent of the average monthly wage of the deceased during dependency, with an added allowance of 15 per cent if two dependent parents survive; to the brothers or sisters, under the age of 18 years, if one is wholly dependent upon the deceased employee for support at the time of injury causing death, 25 per cent of the average monthly wage for the support of such brother or sister, until of the age of 18 years. If more than one brother or sister is wholly dependent, 35 per cent 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 15 per cent divided among such dependents share and share alike.

7. In all other cases, questions of total or partial dependency shall be determined in accordance with the facts as the facts may be at the time of the injury. If the deceased employee leaves dependents only partially dependent upon his earnings for support at the time of the injury causing his death, the monthly compensation to be paid shall be equal to the same proportion of the monthly payments for the benefit of persons totally dependent as the amount contributed by the employee to such partial dependents bears to the average wage of deceased at the time of the injury resulting in his death. The duration of such compensation to partial dependents shall be fixed by the commission in accordance with the facts shown, but in no case exceed compensation for 100 months.

8. Compensation to the widow or widower shall be for the use and benefit of such widow or widower and of the dependent children, and the commission may, from time to time, apportion such compensation between them in such way as it deems best for the interest 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 60 per cent, of the amount or amounts above specified.

9. If there be no dependents, the employer or insurance carrier, or the State compensation fund, shall pay the burial expenses of the deceased, as provided herein, and shall pay into the State treasury the sum of \$850. Such payments shall be held in a special fund for the purpose of enabling the commission to provide such additional awards as may be necessary to enable injured employees to accept the benefits of any act that may be passed by the Legislature of Arizona, or the Congress of the United States, or both assemblies jointly, to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise, and their return to safe employment.

10. 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 \$150 shall be paid.

(B) Total disability

1. Temporary total disability: 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 65 per cent of the average monthly wage,

but not exceeding 100 months, during the period of such disability; if there be persons residing in the United States totally dependent for support upon the workman, compensation as provided herein with an additional allowance of \$10 per month for such dependents during the period of such disability.

2. Permanent total disability: In cases of total disability adjudged to be permanent, compensation of 65 per cent of the average monthly wage, 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 feet.
3. The loss by separation of both hands.
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 hand and one foot shall 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

1. Temporary partial disability: For temporary partial disability, 65 per cent of the difference between the wages earned before the injury and the wages which the injured person is able to earn thereafter, for a period not to exceed 60 months during the period of said 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 55 per cent of the average monthly wage shall be paid in addition to the compensation paid for temporary total disability for the period named in the following schedule:

- (a) For the loss of a thumb, 15 months.
- (b) For the loss of a first finger, commonly called the index finger, nine months.
- (c) For the loss of a second finger, seven months.
- (d) For the loss of the third finger, five months.
- (e) For the loss of the fourth finger, commonly called the little finger, four 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 thumb or finger, and compensation shall be one-half of the amount specified for 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 months.
- (i) For the loss of one of the other toes other than the great toe, two and one-half months.
- (j) However, the loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of such toe, and compensation shall be one-half of the amount above specified.
- (k) The loss of more than one phalange shall be considered as the loss of the entire toe.
- (l) For the loss of a major hand, 50 months; the loss of a minor hand, 40 months.
- (m) For the loss of a major arm, 60 months; for the loss of a minor arm, 50 months.
- (n) For the loss of a foot, 40 months.
- (o) For the loss of a leg, 50 months.
- (p) For the loss of an eye by enucleation, 30 months.
- (q) The permanent and complete loss of sight in one eye without enucleation, 25 months.
- (r) For permanent and complete loss of hearing in one ear, 20 months.
- (s) For permanent and complete loss of hearing in both ears, 60 months.

(f) 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.

(g) For the partial loss of use of a finger, toe, arm, hand, foot, leg, or partial loss of sight or hearing, 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.

(h) Facial disfigurement: For permanent disfigurement about the head or face, which shall include injury to or loss of teeth, the commission may allow such sum for compensation thereof as it may deem just, in accordance with the proof submitted, for a period not to exceed 18 months.

(i) Where the injury causes partial disability for work, the employee shall receive, during such disability, compensation equal to 55 per cent of the difference between his average monthly wages before the accident and the monthly wages he is able to earn thereafter. In no case shall the 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 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.

(j) Where there is a previous disability, as the loss of one eye, one hand, one foot, or any other previous 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.

(k) 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.

(l) All hernias are considered to be injuries within the provisions of this act causing incapacitating conditions, or permanent disability, and until otherwise ordered by the commission, the following rules for rating shall govern hernia cases:

SEC. 71. *Hernia*.—(a) Real traumatic hernia is an injury to the abdominal (belly) wall of sufficient severity to puncture or tear asunder said wall, and permit the exposure or protruding of the abdominal viscera or some part thereof. Such injury will be compensated as a temporary total disability, and as a partial permanent disability, depending upon the lessening of the injured individual's earning capacity.

(b) All other hernias, whenever occurring or discovered and whatsoever the cause, except as under (a), are considered to be diseases causing incapacitating conditions, or permanent partial disability; but the permanent, partial disability and the causes of such are considered to be as shown by medical facts to have either existed from birth; to have been years in formation, or both, and are not compensatory except as hereinafter provided.

(c) All cases coming under (b) in which it can be proven, first, that the immediate cause, which calls attention to the presence of the hernia, was a sudden effort or severe strain or blow received while in the course of employment; second, that the descent of the hernia occurred immediately following the cause; third, that the cause was accompanied, or immediately followed, by severe pain in the hernial region; fourth, that the above facts were of such severity that the same were noticed by the claimant and communicated immediately to one or more persons; are considered to be aggravations of previous ailments or diseases, and will be compensated as such for time lost only to a limited extent, depending upon the nature of the proof submitted and the result of the local medical examination, but not to exceed two months.

SEC. 72. *Dependents*.—(a) The following persons shall be conclusively presumed to be totally dependent for support upon a deceased employee:

1. A wife upon a husband whom she has not voluntarily abandoned at the time of the injury.

2. A husband, mentally or physically incapacitated from wage earning, upon a wife whom he has not voluntarily abandoned at the time of the injury.

3. A natural, posthumous, or adopted child or children, whether legitimate or illegitimate, under the age of 18 years, or over that age if physically or mentally incapacitated from wage earning, upon the parent with whom he or they are living at the time of the injury resulting in the death of such parent, there being no surviving parent. Step-parents may be regarded in this act as parents, if the fact of dependency is shown, and a stepchild or stepchildren may be regarded in this act as a natural child or children, if the existence and fact of dependency is shown.

(b) Questions as to who constitute dependents and the extent of their dependency shall be determined as of the date of the accident or injury to the employee, and their right to any death benefit shall become fixed as of such time, irrespective of any subsequent change in conditions, and the death benefits shall be directly recoverable by and payable to the dependent or dependents entitled thereto, or to their legal guardians or trustees.

SEC. 73. *Waiting time.*—No compensation, except accident benefits, 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 seven days, such compensation shall be computed from the date of the injury.

SEC. 74. *Assignments, etc.*—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 another person by operation of the 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.

SEC. 75. *Waiver.*—[No waiver of rights under the act is valid, nor any agreement for an employee to pay any part of the employer's premium except premiums for accident benefits.]

SEC. 76. *Lump sums.*—[The commission may, in its discretion, commute any compensation into a lump-sum payment not in excess of \$6,500.]

SEC. 77. *Medical examinations, etc.*—[Workmen entitled to compensation must submit to medical examinations from time to time at reasonably convenient places, as may be provided by the rules of the commission, and may have present a physician provided at their own expense. Refusal or obstruction suspends benefits, "and no compensation shall be payable during or for account of such period." The commission may suspend or reduce compensation in case of persistence in insanitary or injurious practices or the refusal of reasonably essential medical or surgical treatment. Making false statements to obtain benefits is a misdemeanor and a claimant convicted thereof forfeits all right to compensation under the act.]

SEC. 78. *Interstate commerce.*—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 separate and distinguishable from interstate or foreign commerce.

SEC. 79. *Reports.*—[Employers under the act and physicians attending employees within its scope are required to file with the commission full and complete reports of all known injuries in such form as the commission may prescribe. A schedule is to be fixed of physicians' fees, which shall not be exceeded. Physicians may be required to testify, and information obtained while in attendance on injured employees is not privileged if necessary to a proper understanding of the case. On receipt of knowledge of an accident an employer must at once send a physician chosen by him to examine the injured

man, and such examination must be permitted. It is the duty of the physician to report the character and extent of the injury as ascertained.

If the employee or his physician fail to report the accident, or if the employer's physician is not permitted to make the examination above provided for, no compensation shall be paid for the injury; but the commission may in its discretion relieve of such forfeiture if it appears that the circumstances attending the failure of the employee or his physician to report the injury were sufficient to excuse such failure and the failure will not result in an unwarrantable charge against the State compensation fund or accident benefit fund.]

SEC. 80. *Claims*.—[An injured employee or his dependents must file application for the compensation claimed, together with a certificate of the attending physician, who shall render all necessary assistance in making the application and necessary proof.

If change of circumstances warrants a modification of the award application shall similarly be made therefor. No change will affect prior payments. No application will be valid or claim thereunder enforceable unless filed within one year after the date of the occurrence of the injury or the accrual of the right to benefits.]

SECS. 81, 82. *Examination of records, etc.*—[All books, records, and pay rolls of employers relating to wage expenditure must always be open for inspection by the commission or its agents. Any misrepresentation of pay roll entails a forfeiture of ten times the amount of the difference in the premium involved.]

SECS. 83-86. *Enforcement, reports, etc.*—[The attorney general or a county attorney under his direction may be called on by the commission to prosecute actions to enforce the law or recover money or penalties due. The State auditor is to audit the books, funds, etc., of the commission annually, or as often as he may deem necessary. The commission is to make annual reports to the governor of accidents, administration, finances, etc., and to publish and distribute to employers and employees general information as to its transactions.]

SEC. 87. *Classifications, etc., to be printed*.—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. 88. *Suspension of orders, etc.*—No injunction shall issue suspending or restraining any order, award, classification, or rate adopted by the commission or any action of any officer required to be taken by them or any of them by and of the provisions of this act, except as herein provided; but nothing herein shall affect any right of defense in any action brought by the commission or the State in pursuance of authority contained in this act.

SEC. 89. *Construction*.—If any employer shall be adjudicated to be outside the lawful scope of this act, the act shall not apply to him or his workman, or if any workman shall be adjudicated to be outside the lawful scope of this act because of the 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. Any adjudication or invalidity of any part of this act shall not affect the validity of the act as a whole or any part thereof.

SEC. 90. *Appeals*.—[Appeals to the supreme court may be taken within 30 days after a finding of the commission, limited to questions of action in excess of power, and whether a finding of fact made supports the award under review.]

SEC. 91. *Procedure*.—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.

SEC. 92. *Payments to 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, 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.

SECS. 93-97. [These sections make provisions for contingencies of invalidity or repeal of the law, repeal of the former law, and for its taking effect on adoption of the amendment to the constitution.]

SEC. 98. *Appropriations.*—[The sum of \$100,000 is appropriated, \$90,000 to the compensation fund and \$10,000 to the accident benefit fund, with provision for the return of these amounts by installments through a period not exceeding 15 years. A salary and expense fund of \$50,000, or so much thereof as may be necessary, was also appropriated for the year ending June 30, 1927.]

CALIFORNIA
CONSTITUTION
ARTICLE XX

SECTION 21.—*Compensation and insurance legislation*

[As amended in 1918, this section authorizes the legislature "to create and enforce a complete system of workmen's compensation," including provisions for comfort, health, and safety, medical, surgical, and hospital treatment, the payment of compensation and its security by insurance, the establishment of a State fund, methods of adjusting disputes, and administration of such a law generally by arbitration, a commission, or the courts, either, any, or all. Findings of a commission are to be subject to review by the appellate courts of the State.]

STATUTES

*Workmen's compensation and insurance*¹

SECTION 1 (1917, ch. 586). *Scope and intent.*—[This section embodies the declaration of public policy embodied in the amendment of 1918 of section 21 of the State constitution, supra.]

SECS. 1, 2. *Title.*—[These are taken from the acts of 1913 (ch. 176) and 1917 (ch. 586), respectively, and give the short title of the acts, "Workmen's compensation, insurance, and safety."]]

SEC. 3 (1917, ch. 586, as amended 1919, ch. 471). *Definitions.*—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 176 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 6 to 81, 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.

SEC. 3 (1913, ch. 176). *Industrial accident commission.*—[A board of three members appointed by the governor is to serve four years at \$5,000 per year, not more than one member's term expiring in any year.]

¹The original act of 1911 was superseded in 1913. This second act was amended in 1915 and largely recast in 1917, other changes being made in 1919, 1923, and 1925. The text of these laws has been compiled by the industrial accident commission of the State, and while the form is said to be without official sanction, it is followed as a careful and complete presentation of existing law.

SECS. 4-7 (1913, ch. 176). *Organization, powers, etc., of commission.*—[The commission selects its own chairman, has a seal, is to maintain offices at San Francisco and Los Angeles, may appoint an attorney, a secretary, a manager of the State compensation insurance fund, and other officers, assistants, experts, referees, and employees as it deems necessary.]

SECS. 4, 5 (1917, ch. 586). *Same.*—[The commission may appoint an assistant to its attorney and is vested with whatever additional powers the act of 1917 may confer.]

SECS. 8-11 (1913, ch. 176). *Salaries, expenses, forms, etc.*—[Salaries and expenses are to be fixed by law or by the commission. The commission is to provide forms and record books, may charge fees for copies of papers, is to make annual reports to the governor, and may make and distribute from time to time reports and pamphlets relative to its work, and may make and collect reasonable charges for the same.]

SEC. 6 (1917, ch. 586, as amended 1919, ch. 471; 1923, ch. 161). *Compensation payable, when.*—(a) Liability for the compensation provided by this act, in lieu of any other liability whatsoever to any person, shall, without regard to negligence, exist against an employer for any injury sustained by his employees arising out of and in the course of the employment and for the death of any such employee if the injury shall proximately cause death, in those cases where the following conditions of compensation concur:

(1) Where, at the time of the injury, both the employer and employee are subject to the compensation provisions of this act.

(2) Where, at the time of the injury, the employee is performing service growing out of and incidental to his employment and is acting within the course of his employment.

(3) Where the injury is proximately caused by the employment, either with or without negligence, and is not caused by the intoxication of the injured employee, or is not intentionally self-inflicted.

(4) Where the injury is caused by the serious and 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 70 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 16 years of age, it shall be conclusively presumed that such injury was not caused by serious and willful misconduct.

(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 a managing representative or general superintendent thereof), 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 \$2,500.

(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 (1917, ch. 586, as amended 1919, ch. 471). *"Employer."*—The term "employer" as used in sections 6 to 31, 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.

SEC. 8 (1917, ch. 586). *Employees included and excluded.*—(a) The term "employee" as used in sections 6 to 31, inclusive, of this act shall be construed to mean: Every person in the service of an employer as defined by section 7 hereof under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens, and also including minors, whether lawfully or unlawfully employed, and all elected and appointed paid public officers, and all officers and members of boards of directors of quasi-public or private corporations, while rendering actual service for such corporations for pay, but excluding any person whose employment is both casual and not in the course of the trade, business, profession, or occupation of his employer, and also excluding any employee engaged in household domestic service, farm, dairy, agricultural, viticultural, or horticultural labor, in stock or poultry raising, and any person holding an appointment as deputy clerk, deputy sheriff, or deputy constable appointed for the convenience of such appointee, who receives no compensation from the county or municipal corporation or from the citizens thereof for services as such deputy: *Provided*, That such last exclusion shall not deprive any person so deputized from recourse against any private person employing him for injury occurring in the course of and arising out of such employment.

(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.

(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 10 working days, without regard to the number of men employed, and where the total labor cost of such work is less than \$100. 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.

(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-employed persons conferring benefits equal to those conferred by this act, the employer shall not be liable under this act.

(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.

(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 \$12: *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.

Sec. 9 (1917, ch. 586, as amended 1919, ch. 471; 1925, ch. 354). *Benefits.*—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.

(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, 65 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.

(2) If the injury causes temporary partial disability, 65 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 1 and 2 of this subdivision, respectively.

(4) Paragraphs 1, 2, and 3 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 240 weeks from the date of the injury.

(5) If the injury causes permanent disability, the percentage of disability to total disability shall be determined and the disability payment computed and allowed as follows: For a 1 per cent disability, 65 per cent of the average weekly earnings for a period of four weeks; for a 10 per cent disability, 65 per cent of the average weekly earnings for a period of 40 weeks; for a 20 per cent disability, 65 per cent of the average weekly earnings for a period of 80 weeks; for a 30 per cent disability, 65 per cent of the average weekly earnings for a period of 120 weeks; for a 40 per cent disability, 65 per cent of the average weekly earnings for a period of 160 weeks; for a 50 per cent disability, 65 per cent of the average weekly earnings for a period of 200 weeks; for a 60 per cent disability, 65 per cent of the average weekly earnings for a period of 240 weeks; for a 70 per cent disability, 65 per cent of the average

weekly earnings for a period of 240 weeks, and thereafter 10 per cent of such weekly earnings during the remainder of life; for an 80 per cent disability, 65 per cent of the average weekly earnings for a period of 240 weeks and thereafter 20 per cent of such weekly earnings during the remainder of life; for a 90 per cent disability, 65 per cent of the average weekly earnings for a period of 240 weeks and thereafter 30 per cent of such weekly earnings during the remainder of life; for a 100 per cent disability, 65 per cent of the average weekly earnings for a period of 240 weeks and thereafter 40 per cent of such weekly earnings during the remainder of life.

(6) The payment for permanent disabilities intermediate to those fixed by the foregoing schedule shall be computed and allowed as follows: If under 70 per cent, 65 per cent of the average weekly earnings for 4 weeks for each 1 per cent of disability; if 70 per cent or over, 65 per cent of the average weekly earnings for 240 weeks and thereafter 1 per cent of such weekly earnings for each 1 per cent of disability in excess of 60 per cent to be paid during the remainder of life.

(7) In determining the percentages of permanent disability, account shall be taken of the nature of the physical injury or disfigurement, the occupation of the injured employee, and his age at the time of such injury, consideration being given to the diminished ability of such injured employee to compete in an open labor market.

(8) Where an injury causes both temporary and permanent disability, the injured employee shall not be entitled to both a temporary and permanent disability payment, but only to the greater of the two.

(9) The following permanent disabilities shall be conclusively presumed to be total in character: Loss of both eyes or the sight thereof; loss of both hands or the use thereof; an injury resulting in a practically total paralysis; an injury to the brain resulting in incurable imbecility or insanity. In all other cases, permanent total disability shall be determined in accordance with the fact.

(10) The percentage of permanent disability caused by any injury shall be so computed as to cover the permanent disability caused by that particular injury without reference to any injury previously suffered or any permanent disability caused thereby.

(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.

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.

(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 65 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:

(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 \$150, and a death benefit, which shall be a sum sufficient, when added to the disability indemnity which at the time of death has accrued and become payable, under the provisions of subsection (b) hereof, and the said burial expense, to make the total disability indemnity, cost of burial and death benefit equal to three times his average annual earnings, such average annual earnings to be taken at not less than \$333.33 nor more than \$1,666.66.

(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 \$150, 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 the 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 \$333.33 nor more than \$1,066.66.

(3) If the deceased employee leaves no person dependent upon him for support, the employer shall be liable for the reasonable expense of his burial, not exceeding \$150 and such other benefit as may be provided by law.

(d) Payment of compensation in accordance with the order and direction of the commission shall discharge the employer from all claims therefor.

SEC. 10 (1917, ch. 586). *Employers' hospitals*.—[Hospitals maintained by employers or by mutual associations of employees for the treatment of injuries coming within the provisions of this act are subject to inspection by the commission. No contributions or deductions from employees' wages for the maintenance of hospital facilities may be used to pay any part of the compensation provided by this act; but hospital associations may supply the treatment required by the act free of charge. Such hospitals must report on demand and at least once a year as to their operations, and may be declared inadequate and other treatment required.]

SEC. 11 (1917, ch. 586). *Claims*.—(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 20 (d) and section 63 (b) of this act.

(b) The periods within which proceedings for the collection of compensation may be commenced are as follows:

(1) Proceedings for the collection of the benefit provided by subsection (a) of section 9 or for the collection of the disability payment provided by subsection (b) of said section 9 must be commenced within six months from the date of the injury, except as otherwise provided in this act.

(2) Proceedings for the collection of the death benefit provided by subsection (c) of said section 9 must be commenced within one year from the date of death, and in any event within 240 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.

(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 245 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.

(d) If an injured employee, or in the case of his death, one or more of his dependents, shall be under 21 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 21 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.

(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.

(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.

(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.

SEC. 12. (1917, ch. 586). *Average earnings.*—(a) The average annual earnings referred to in section 9 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 \$6.41 nor more than \$32.05, and three times the average annual earnings shall be taken at not less than \$1,000 nor more than \$5,000, and between said limits said average weekly earnings shall be arrived at as follows:

(1) If the injured employee has worked in the same employment, whether for the same employer or not, during at least 260 days of the year preceding his injury his average weekly earnings shall consist of 95 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 95 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 260 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 260 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 95 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 95 per cent of such sum as shall reasonably represent the average weekly earning capacity

of the injured employee at the time of his injury, due consideration being given to his actual earnings from all sources and employments during the year preceding his injury: *Provided*, That the earnings from other occupations shall not be allowed in excess of the rate of wages paid at the time of the injury.

(b) In determining such average weekly earnings, there shall be included overtime and the market value of board, lodging, fuel, and other advantages received by the injured employee as part of his remuneration which can be estimated in money, but such average weekly earnings shall not include any sum which the employer may pay to the injured employee to cover any special expenses entailed on him by the nature of his employment.

(c) If the injured employee is under 21 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 21 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 21 years can not reasonably be determined, such average weekly earnings shall be based upon \$3 a day for a 6-day week.

SEC. 13 (1917, ch. 586). *Wage loss*.—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 9, and the weekly amount which the injured employee will probably be able to earn during the disability, to be determined in view of the nature and extent of the injury. In computing such probable earnings due regard shall 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.

SEC. 14 (1917, ch. 586, as amended 1919, ch. 471). *Dependents*.—(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 18 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.

(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.

SEC. 15 (1917, ch. 586). *Notice of injury.*—No claim to recover compensation under this act shall be maintained unless within 30 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 (1917, ch. 586). *Medical examination.*—[Employees entitled to compensation under this act must submit to medical examination at reasonable time, on request of the employer, or under the direction of the commission. The employee may also have a physician present. Refusal or obstruction suspends the right to begin or maintain proceedings for the collection of compensation; and if the commission has directed the examination, payments accruing during the period of such refusal or obstruction are barred. Physicians making, or present at, such examinations may be required to testify as to the results.]

SECS. 17 (1917, ch. 586, as amended 1919, ch. 471); 18 (1917, ch. 586, as amended 1923, ch. 197); 19-23 (1917, ch. 586). *Procedure.*—[These sections prescribe the forms of hearings, the jurisdiction of the commission, declare the right of a claimant to proceed against the estate of an employer in the event of his death, provide for attachments to issue on application of a claimant, in the discretion of the commission, etc. Formal pleadings are not required; appearance may be in person or by an agent or attorney; cases may be submitted on a basis of stipulated facts; the nature of evidence that may be received is set forth; and the burden of proof is declared to lie on the party holding the affirmative of an issue, and specifically where an employer claims that the injured person was an independent contractor or otherwise outside the act if he was at the time actually performing service for the alleged employer, or where intoxication, willful misconduct, aggravation of the injury by unreasonable conduct of the employee, or prejudice by failure to give the required notice is offered as a defense. Autopsies may be ordered on a proper representation.]

Findings and award must be made in 30 days after final hearings. Jurisdiction is continuing, and orders may, on proper notice and opportunity for hearing, be rescinded, altered, or amended as good cause therefor may appear. A certified copy of findings and award may be filed with a clerk of court and constitute a judgment roll. Stay of execution may be allowed by the commission or a member for good cause, and orders, awards, etc., are subject to review by the courts as specified in sections 67, 68. No fees are allowed except for docketing and for certified copies of transcripts of awards as judgments. Costs are in the discretion of the commission; if benefits have been unreasonably delayed, the beneficiary may be allowed interest not exceeding 1½ per cent per month during the period of delay.]

SEC. 24 (1917, ch. 586, as amended, 1919, ch. 471; 1923, ch. 381; 1925, ch. 255). *Assignments; status of claims, etc.*—(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.

[Other subsections authorize a lien against an award for a reasonable attorney's fee, medical, etc., benefits, living expenses of the injured employee or his dependents, burial expenses not above \$150, and reasonable living expenses of a deserted or neglected wife or minor children or both, subsequent to the injury; prescribe procedure as to such lien claims, limit legal and medical charges thus enforceable to an amount declared reasonable by the commission, authorize the exclusion of other representatives of claimants than recognized attorneys at law, and give compensation claims and awards the same preference as is allowed claims for wages.]

SEC. 25 (1917, ch. 586). *Liability of principal and contracting employers.*—[This section undertook to give employees of contractors and subcontractors recourse to the principal employer in cases of injury occurring on the premises of the latter or under his control unless the immediate employer maintained full compensation insurance; or proceedings might be against both the immediate employer and such principal, but payment in whole or in part by either to that extent barred recovery against the other. It was declared unconstitutional in so far as it attempted to award compensation against a third person, not the employer of the injured employee (*Pacific Gas & Electric Co. v. Ind. Ac. Com.* (1919), 180 Calif. 497, 181 Pac. 788).]

SEC. 26 (1917, ch. 586, as amended 1919, ch. 471). *Injuries by third parties.*—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 (1917, ch. 586, as amended 1923, ch. 379). *Waivers; compromises.*—[Contracts or rules exempting employers from the obligations of this act are forbidden, but this does not prevent releases or compromises that provide for

full payment according to this act, or that are approved by the commission. The agreement must stipulate its terms in detail and be duly executed and attested.]

SEC. 28 (1917, ch. 586). *Lump sums.*—(a) At the time of making its award, or at any time thereafter, the commission, on its own motion, either with or without notice, or upon application of either party with due notice to the other, may, in its discretion, commute the compensation payable under this act to a lump sum, if it 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 9 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 9 and shall estimate the present value thereof, assuming interest at the rate of 6 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 3 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.

SEC. 29 (1917, ch. 586, as amended 1919, ch. 471; 1925, ch. 300). *Security of payments.*—[Employers except the State and its subdivisions and institutions must secure the payment of compensation by insurance with an authorized insurance carrier, or by obtaining from the commission a certificate permitting self-insurance, in which case a bond or securities may be required. Such certificate may be revoked at any time for good cause shown.

Failure to secure the payment of compensation is a misdemeanor. The employee may submit a claim under the act and may also sue such employer for damages the same as if the act did not apply, and is thereupon entitled to an attachment in an amount fixed by the court, to secure the payment of any judgment that may be obtained, to include also a reasonable attorney's fee.

If damages exceed the compensation award, such award shall be credited on the judgment. In such action it will be presumed that the injury grew out of the negligence of the employer, and the common-law defenses are barred.]

SECS. 30, 31 (1917, ch. 586). *Insurance*.—[Insurance in mutual and other companies is permitted, but nothing may be received or taken from the earnings of any employee to cover the cost of compensation under this act; nor may the liability therefor be reduced by reason of any insurance or other benefit receivable by any person entitled to compensation. But the payment of all or any part of the compensation provided for by the act by either the employer or the insurer will to that extent relieve the other.

Policies must contain a provision for direct and primary liability to the employee or his dependents, and that notice, knowledge, and jurisdiction of the employer are binding on the insurer, as are also awards rendered against the employer: also that the employee has a first lien on payments to the employer, and if the employer is legally incapacitated to receive payments they shall be paid directly to the beneficiary, the insolvency of the employer not relieving the insurer for liabilities accruing during the period the policy remains in operation.

Acceptance by the insurer of the liability to compensation arising out of an injury received relieves the employer of such liability, but the substitution does not abate proceedings in respect of any claim instituted. If the insurer has assumed or met the liabilities of an employer under the act, it is subrogated to all the rights and duties of such employer, and may enforce the same in its own name.

If any policy contains any limitation as to the compensation payable, it shall be so stated in the policy, in bold-faced type, the words, "limited compensation policy" to be also printed on the top of the policy. No policy shall protect the employer against the liability existing under the provisions of section 6(b).]

SEC. 32 (1917, ch. 586). *State fund unaffected*.—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.

SEC. 36 (1913, ch. 176, as amended 1915, ch. 607). *Creation of State fund*.—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 12 hereof (subdivision b), and insuring to employees and other persons the compensation fixed by this act for employees and their dependents.

SEC. 37 (1913, ch. 176, as amended 1915, ch. 607). *State insurance fund*.—(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.

(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 1st 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.

SEC. 38 (1913, ch. 176). *Powers of commission.*—(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 hereinafter 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.

SEC. 39 (1913, ch. 176). *Powers of manager.*—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 38 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 (1917, ch. 176). *Rates, how fixed.*—(a) It shall be the duty of the commission to fix and determine the rates to be charged by the State compensation insurance 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.

(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 3½ 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 (1913, ch. 176). *Forms of policy.*—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.

Sec. 42 (1913, ch. 176). *Who may be insured.*—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-employed persons and to casual employees, who, for the purpose of such insurance, shall be deemed to be employees within the meaning of sections 12 to 35, inclusive, of this act.

Secs. 43-45 (1913, ch. 176). *Custody of fund: investments.*—[The treasurer of the State is custodian of the fund, liable under his official bond for its safe-keeping. No part of the fund may be disbursed without first passing into the State treasury, and being drawn therefrom. Monthly estimates of expenditures are to be submitted by the commission to the State board of control, and if approved, the controller draws his warrant therefor on the fund. Monthly accounts are to be rendered, and semiannual valuations are required of all properties and securities held. Moneys in excess of current requirements are to be invested in authorized securities, or deposited in banks authorized to receive State deposits.]

Secs. 46, 47 (1913, ch. 176, as amended, 1915, ch. 607). *Municipalities.*—[Cities, counties and other public or quasi-public corporations may insure only in the State fund unless refused by it, and premiums therefor are a proper charge against their general funds. When the premium rates have been estab-

lished, the commission is to inform the proper officials thereof, and they shall then make application for insurance in the fund, and transmit the premiums.]

Sec. 48 (1913, ch. 176). *Reports*.—[The commission is to make quarterly reports to the governor of the business, assets and liabilities of the fund, which reports are to be audited and published one or more times in at least two newspapers of general circulation in the State.]

Sec. 49 (1913, ch. 176). *Misrepresenting pay roll*.—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.

Sec. 50 (1913, ch. 176). *Fraud*.—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.

[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. 370, Labor Laws of the United States, pp. 214-219.]

Secs. 55-66 (1917, ch. 586). *Procedure*.—[Injuries covered by the act are within the exclusive jurisdiction of the industrial commission, subject only to review by the courts as provided herein. Notices, orders or decisions may be served in accordance with the provisions of the Code of Civil Procedure, and the secretary, assistant secretaries and inspectors appointed by the commission have power as to arrests and warrants conferred by law upon peace officers. The commission has full power and authority to establish its own rules of practice and procedure, to provide for the appearance and representation of minors and incompetents, to regulate and prescribe the nature and extent of proofs and evidence, regulate notices, provide for joinder of parties, etc. It has jurisdiction over all controversies arising out of injuries suffered outside of the State where the contract of hire was made within the State. (The act limited this provision to employees resident of the State at the time of the injury, but this limitation was held unconstitutional as discriminating between citizens of that State and other States. *Quong Ham Wah Co. v. Ind. Ac. Com.* (1920), 184 Cal. 26, 192 Pac. 1021.)

Applications may be referred to referees by agreement of the parties, on application of either, or on motion of the commission; but a party may object to the appointment of any person as referee on grounds specified in the Code of Civil Procedure, and such objection must be heard and disposed of by the commission. Referees are to have the powers and jurisdiction granted under the law and by the rules of the commission, and must report separately on facts found and conclusions of law within 15 days after the testimony is closed; or they may be required to hold hearings and make return of testimony only. Hearings are to be had in accordance with the rules adopted by the commission, and are not bound by the common law or statutory rules of evidence and procedure, but may follow methods best calculated to ascertain the substantial rights of the parties and carry out justly the spirit and provisions of the act. Depositions may be procured either within or without the State, witnesses subpoenaed, oaths administered, etc. The local superior court has power to compel the attendance of witnesses, the giving of testimony, and the production of papers, books, accounts and documents. It may also issue orders relative to contempt at the instance of the commission. Rehearings are provided for on motion of a party affected by any final order, award, rule, etc., on compliance with the specified requirements. A verified statement must be made and served on all adverse parties, who may file an answer within 10 days thereafter. The commission may on such rehearing abrogate, change or modify the objectionable award or order, but unless the application for rehearing is acted upon within 30 days from the date of filing it will be deemed to have been denied, though an extension may be allowed for good cause shown. Application for rehearing must be filed within 20 days after the service of the final order or decision objected to, and may be based on the grounds that the commission acted without or in excess of its powers, that the order or award was procured by fraud, that the evidence does not justify the findings of fact, that new and material evidence has been discovered, not with reasonable diligence discoverable by the

applicant at the time of the hearing, or that the findings of fact do not support the order, decision or award.]

SECS. 67, 68 (1917, ch. 586). *Appeals to court.*—[Within 30 days after denial of rehearing or a rendition of the decision on a rehearing a party affected may appeal to the appellate or supreme court of the State for a writ of certiorari or review to secure a determination of the lawfulness of the original decision or award. Such review is limited to a determination of whether or not the commission acted in excess of its powers, whether the order or award was secured by fraud, was unreasonable, or whether findings of fact made support the order, decision, or award under review. Findings and conclusions of the commission on questions of fact are not subject to review.]

The filing of an application for rehearing stays proceedings, unless otherwise ordered by the commission, for a period of 10 days, and further stay or suspension may be allowed during the pendency of the rehearing; but the filing of an application for a writ of review, or the pendency of such writ does not of itself stay or suspend the operation of the law, though such suspension may be allowed in the discretion of the court on terms prescribed by it. However, a written undertaking must be executed by the petitioner, with sureties, to secure the payment of the award, order, or judgment or such part thereof as is affirmed, with all damages and costs. The provisions of the Code of Civil Procedure not inconsistent with this act are applicable to this undertaking.]

SEC. 69 (1917, ch. 586). *Construction of act.*—(a) Whenever this act, or any part or section thereof, is interpreted by a court, it shall be liberally construed by such court with the purpose of extending the benefits of the act for the protection of persons injured in the course of their employment.

(b) If any section, subsection, subdivision, sentence, clause, or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, subdivision, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, or phrases is declared unconstitutional.

(c) This act shall not be construed to apply to employers or employments which, according to law, are so engaged in interstate commerce as not to be subject to the legislative power of the State, or to employees injured while they are so engaged, except in so far as this act may be permitted to apply under the provisions of the Constitution of the United States or the acts of Congress.

SEC. 70 (1917, ch. 586). *Excluded employments.*—[Employers of employees not entitled to compensation under this act may, by joint election, come within its provisions. Such election is made by the employer by writing filed with the commission, valid for one year and for succeeding years unless withdrawn at least 60 days prior to the termination of any year. Election by the employees of an electing employer is presumed in the absence of written notice to the employer to the contrary.]

The State and its subdivisions and institutions are conclusively presumed to have elected to come within the provisions of the act as to all employments otherwise excluded therefrom.]

SEC. 88 (1913, ch. 176). *Reports.*—[The commission is required to make annual reports of its operations, with such recommendations as it may deem of value, the report to be printed and furnished to applicants within the State.]

COLORADO

ACTS OF 1915

CHAPTER 130.—*Industrial commission*

SECTION 5. Commission created.—There is hereby created a board which shall be known as the "Industrial Commission of Colorado." Within 30 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.

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 \$10,000, 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 \$4,000 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.

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.

ACTS OF 1910

CHAPTER 210.—*Compensation of workmen for injury*

SECTION 1. Title.—This act shall be known and may be cited as "Workmen's Compensation Act of Colorado."

SEC. 2. Administration.—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.

SEC. 3. Definitions.—The term "commission" when used in this act shall mean the industrial commission of Colorado.

SEC. 4. Number and gender.—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.

SEC. 5. Order.—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.

SEC. 6. Place of employment.—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.

SEC. 7. Employment.—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.

SEC. 8. Employer.—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.

(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.

SEC. 9 (as amended 1923, ch. 202). Employee.—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 State or municipality may contribute, except, however, that in case such injury shall result in a permanent disability, including a loss, or loss of use, or partial loss of use of any member or members as set forth in section 73 of this act, the compensation therefor shall be paid said injured employee without deduction on account of any payment from such pension or benefit fund.

(b) Every person in the service of any other person, association of persons, firm, private corporations, 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 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. Interstate commerce.—The provisions of this act shall not apply to common carriers engaged in interstate commerce nor to their employees.

SEC. 11. Loaned employees.—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.

SECS. 12, 13 (as amended 1923, ch. 201), 14. *Abrogation of defenses.*—[In suits for damages for personal injuries to employees the defenses of assumption of risks and fellow service are abrogated, also that there was lack of ordinary care on the part of the injured employee if such want of care was not willful. Employers accepting the provisions of this act are not subject to the foregoing provision, nor to any other liability whatsoever for injuries or death of employees other than as herein provided. If an accepting employer is sued by an employee who rejects the provisions of this act he may plead the common law defenses unaffected by this and other statutes.]

SEC. 15. *Application of act.*—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:

(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 (as amended 1923, ch. 201). *Election presumed.*—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 to have accepted the provisions of this act, unless, prior to the date such employer becomes the employer of four or more persons, he shall have filed with the commission a notice in writing to the effect that he elects not to accept the provisions of this act or unless said employer has rejected the provisions of the workmen's compensation act of Colorado in conformity with the provisions of said act as heretofore existing.

SEC. 17 (as amended 1923, ch. 201). *Voluntary election.*—[Any employer, regardless of number of employees or of occupation, may come under the act by insuring his liability thereunder as herein provided. Withdrawal may be effected by notice given June 1, effective August 1 of any year, conspicuously posted; an employer so withdrawing may at any time elect to come under the act by filing notice or by insuring.]

SEC. 18 (as amended 1923, ch. 201). *Employees' acceptance.*—[Employees of employers accepting the act are presumed to have accepted it, in the absence of written notice to the employer and the commission.]

SEC. 19. *Suits barred.*—[Acceptance of the act is a waiver by both parties of any other remedy or action at law, and is binding on personal representatives, next of kin, and those conducting an employer's business in case of bankruptcy or insolvency.]

SEC. 20. *Notice of non-election.*—[Employers not coming under the act must give notice thereof by conspicuously posting notices to that effect and give similar notice of any change.]

SECS. 21, 22 (as amended 1923, ch. 201), 23-26, 27 (as amended 1923, ch. 201), 28. *Insurance.*—[Employers accepting the act must secure the payment of compensation by insuring in the State fund, in an authorized stock or mutual corporation, or by procuring a self-insurance permit from the commission. The State and its subdivisions and agencies must insure in the State fund. Insurance contracts are subject to the provisions of this act, and inconsistent provisions are void. Forms of policies must be approved by the industrial commission of the State, which shall prescribe a standard or universal form as nearly as possible for all contracts, indorsements, riders, etc. Companies must file classifications of risks and premiums relative thereto, which are not effective until approved. Such approval may be withdrawn at any time. Rebating and the cutting of rates are forbidden.]

Policies and contracts of insurance must provide that the company is directly and primarily liable to the employee or his dependents, and that notice or knowledge on the part of the employer is notice to the insurance company, which is bound by and subject to all orders, findings, or awards rendered against the employer under the provisions of the act. Legal incapacity or insolvency or bankruptcy of the employer shall not relieve the insurance carrier.

If an employer is not insured, or has allowed his insurance to terminate, the employee or his dependents may claim compensation under the act, the benefits to be increased 50 per cent. When compensation is awarded, the employer shall be required to pay to a designated trustee the present value of all unpaid benefits computed at the rate of 4 per cent per annum, or file a bond with sureties guaranteeing the payment of the benefits awarded. In default of these, a certified copy of the award may be filed with the clerk of the district court of any county in the State, and when recorded shall have the effect of a judgment on which execution may be issued.

Insurance carriers operating under the act may apply to the commission for permission to examine books, pay rolls or other documents of employers insured by such carrier, or of contractors and others covered by the insurance, to discover the amount of wage expenditure of such insured persons.]

Sec. 29. Self-insurance.—[The right to self-insurance may be granted under rules, regulations, and conditions prescribed by the commission, subject to revocation at any time.]

Secs. 30-33. Notices and reports.—[Employers are required to keep a record of all injuries to their employees and report the same to the commission within 10 days on prescribed forms. Employees must notify employers of injuries received within 2 days if physically and mentally able to do so, unless the employer or his representative has actual notice of the injury. Failure forfeits one day's compensation for each day's delay, but if anyone reports the accident for the employee within the time specified, he is relieved from reporting the accident.]

Employers must furnish all information required by the commission, which shall be for its confidential use unless otherwise ordered, and shall not be open to the public nor used in any legal proceeding unless the commission is a party thereto. The commission may require information requested by it to be verified under oath.]

Secs. 34-46. General powers.—[The commission has general powers with regard to safety inspection, the collection of statistics, the examination of books and pay rolls, and the enforcement of orders and subpoenas through the agency of the district court. Orders are valid and *prima facie* reasonable until found otherwise in an action brought for the purpose, and shall not be declared inoperative on technical grounds. Rules and regulations may be adopted with regard to employers, employees and insurance carriers, effective within 10 days after adoption and posting. The commission may employ deputies, experts, actuaries, clerks, and other employees needed to carry out the provisions of the act or for the performance of its duties, and may conduct any number of investigations through agents and referees delegated to such work, who shall have power to subpoena and swear witnesses and take all testimony necessary. Officers and employees of the State and its subdivisions are required to enforce in their respective departments all lawful orders of the commission applicable and consistent with their general duties, also to make reports, furnish statistics and other data relative to the purposes of the act and the duties of the commission.]

Sec. 47. Computation of wages.—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.

Sec. 48. *Second injuries*.—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.

Sec. 49. *Contractors and lessees*.—[Persons, companies, and corporations leasing or contracting part or all their work are classed as employers of the contractors, subcontractors, lessees and their employees, all of whom are to be classed as employees under the act. Such employers are entitled to recover the cost of insurance from the lessees, contractors, subcontractors, etc., and may deduct the same from the contract price, royalties, or other money due. But if the contractor, subcontractor, lessee, or sublessee is himself an employer within the terms of this act and has insured his liability thereunder, the person, company or corporation is not subject to the provisions of this section.]

Sec. 50. *Owners of real property*.—[This section applies the same provisions as above to owners of real property or improvements thereon contracting work to a contractor or a subcontractor who hires four or more workmen, including himself, in the performance of such contract.]

Sec. 51. *Medical, surgical, and hospital aid*.—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 60 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.

SEC. 52. Dependents.—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 18 years. The term "minor child" shall include posthumous children or a child legally adopted prior to the injury.

SEC. 53 (as amended 1923, ch. 201). Degree of dependency.—Children 18 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 or brother 18 years of age or over, a husband, father, or grandfather, 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.

SEC. 54 (as amended 1923, ch. 200). Benefits for death.—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 \$12 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.

SEC. 55. Remarriage.—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.—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.

SEC. 57 (as amended 1923, ch. 201). Dependency; payments.—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 benefits shall become fixed as of said date irrespective of any subsequent change in conditions, and such death benefits shall be directly payable to the dependent or dependents entitled thereto or to such person legally entitled thereto as the commission may designate.

In case of the death of an employee or claimant entitled to compensation leaving dependents, any accrued and unpaid portion of the compensation or benefits up to the time of the death of such employee or claimant shall be paid to such dependents as may be ordered by the commission and not to the legal representative as such of said decedent. In case said injured employee or claimant leaves no dependents the commission may order the application of any accrued and unpaid benefits up to the time of the death of such em-

ployee or claimant paid upon the expenses of the last sickness or funeral of such decedent as may be ordered by the commission, the preference in such payment to be to funeral expenses. In case an injured employee or dependent of a deceased employee entitled to benefits hereunder is declared incompetent or insane, any benefits accrued or to accrue may be paid to the conservator of his estate, if any, or to his dependents, if any, or to the party or institution having custody of the person of such injured employee or dependent of a deceased employee as may be ordered by the commission in its discretion.

SEC. 58 (as amended 1923, ch. 201). *Lapse of benefits.*—Death benefits shall terminate upon the happening of any of the following contingencies and shall thereupon survive to the remaining dependents, if any, to wit:

(a) Upon marriage.

(b) Upon the death of any dependent.

(c) When a son or brother of the deceased reaches the age of 18 years, except as otherwise provided in section 53 hereof.

SEC. 59 (as amended 1923, ch. 200). *Funeral expenses, etc.*—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 \$125 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.

SEC. 60. *Rights.*—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.

SEC. 61. *Illegitimate children.*—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.

SEC. 62. *Death after two years.*—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.

SEC. 63 (as amended 1923, ch. 200). *Death within two years.*—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 \$3,750, 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.

SEC. 64 (as amended 1923, ch. 200). *Death from other cause.*—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 \$3,750.

(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.

SEC. 65 (as amended 1923, ch. 200). *Same*.—If death occurs to an injured employee other than as 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 \$3,750 as the amount devoted 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 devoted 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.

SEC. 60 (as amended 1923, ch. 201). *Nonresident aliens*.—[Payments to non-resident dependents are to be one-fourth the amounts provided in the act. They may be made directly, or, at the direction of the commission, to a duly accredited consul, vice consul or consular agent.]

SEC. 67. *Mode of payment*.—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. *Minor children*.—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.

SEC. 69. *Payment as discharge*.—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.

SEC. 70 (as amended 1923, ch. 200). *Disability benefits*.—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:

(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 (as amended 1923, ch. 200). *Temporary disability*.—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 \$12 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.

SEC. 72 (as amended 1923, ch. 200). *Temporary partial disability.*—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 \$12 per week, or the aggregate sum of \$1,500.

SEC. 73 (as amended 1923, ch. 201). *Schedule.*—In case an injury results in a loss set forth in the following schedule the injured employee shall, in addition to compensation to be paid for temporary disability receive compensation for the period as specified, to wit:

	Weeks
The loss of an arm between elbow and shoulder.....	208
The loss of forearm between wrist and elbow.....	139
The loss of a hand.....	104
The loss of a thumb and the metacarpal bone thereof.....	50
The loss of a thumb at the proximal joint.....	35
The loss of a thumb at the second or distal joint.....	18
The loss of an index finger and the metacarpal bone thereof.....	26
The loss of an index finger at the proximal joint.....	13
Loss of an index finger at the second joint.....	13
Loss of an index finger at the distal joint.....	9
Loss of a second finger and the metacarpal bone thereof.....	18
Loss of a middle finger at the proximal joint.....	13
Loss of a middle finger at the second joint.....	9
Loss of a middle finger at the distal joint.....	5
Loss of a third or ring finger and the metacarpal bone thereof.....	11
Loss of a ring finger at the proximal joint.....	7
Loss of a ring finger at the second joint.....	7
Loss of a ring finger at the distal joint.....	4
Loss of a little finger and the metacarpal bone thereof.....	13
Loss of a little finger at the proximal joint.....	9
Loss of the little finger at the second joint.....	9
Loss of a little finger at the distal joint.....	4
Loss of a leg at the hip joint or so near thereto as to preclude the use of an artificial limb.....	208
Loss of a leg at or above the knee, where the stump remains sufficient to permit the use of an artificial limb.....	139
The loss of a foot at the ankle.....	104
The loss of a great toe with the metatarsal bone thereof.....	26
The loss of a great toe at the proximal joint.....	18
The loss of a great toe at the second or distal joint.....	9
The loss of any other toe with the metatarsal bone thereof.....	11
The loss of any other toe at the proximal joint.....	4
The loss of any other toe at the second or distal joint.....	4
The loss of an eye by enucleation (including disfigurement resulting therefrom).....	139
Total blindness of one eye.....	104
Total deafness of both ears.....	139
Total deafness of one ear.....	35
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

(a) The commission shall determine the time when temporary disability terminates as to injuries coming under any provision of this section.

(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 the hip-joint) the resulting loss shall be estimated as if the amputation had been made at the joint nearest thereto. In case of the amputation of any portion of the bone of the distal joint of any finger, thumb, or toe the amount paid therefor shall be the amount allowed for amputation at said distal joint.

(d) The amounts specified in this section are all subject to the limitations as to weekly maximum and minimum benefits provided herein, for injuries causing temporary total disability.

(e) When an injured employee sustains two or more injuries coming under this schedule, the disabilities specified herein shall be added and the injured employee shall receive the sum total thereof: *Provided*, That where the injury results in the loss or partial loss of use of the index finger and thumb and of the same hand or of more than two digits of any one hand or foot, the disability may, in the discretion of the commission, be compensated on the basis of the partial loss of use of said hand or foot measured respectively from the wrist or ankle.

(f) 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 and such amount shall be in addition to compensation for temporary disability, 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.

Sec. 74. *Injury to teeth*.—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.

Sec. 75. *Disfigurements*.—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.

Sec. 76. *Second injuries*.—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 812 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 schedule 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 (as amended, 1923, ch. 201). *Permanent total disability*.—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 benefits specified herein for injuries causing temporary total disability.

The loss of both hands or both arms or both feet or both legs or both eyes or of any two thereof, by injury in or resulting from the same accident, 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 (as amended 1923, ch. 200). *Injuries not scheduled.*—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 \$3,120. 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.

SEC. 79. *Multiple injuries.*—Where an injured employee sustains a loss set forth in the 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.

SEC. 80 (as amended 1923, ch. 201). *Hernia.*—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 accidental strain suffered in the course of the employment. If an employee, after establishing his right to compensation for hernia as above provided, elects to be and is operated therefor within a reasonable time as fixed by the commission, he shall be entitled to medical, surgical, nursing and hospital treatment and supplies and apparatus as in this act provided irrespective of the time limit therefor fixed. In case the employee does not elect to be so operated and the hernia becomes strangulated after the date fixed by the commission for said operation the results from said strangulation will not be compensated.

SEC. 81. *Medical examinations.*—Whenever, in case of injury, the right to compensation 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, submit 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 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 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 compensation 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 commission 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 understanding 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 permission 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 non-medical treatment recognized by the laws of this State as legal, the practitioner administering such treatment to receive such fees therefor under the medical provisions of this act as may be fixed by the commission.

Sec. 82 (as amended 1923, ch. 200). *Lump sums*.—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 \$3,750.

Sec. 83. *Willful acts*.—The compensation provided for herein shall be reduced 50 per cent:

(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.

Sec. 84 (as amended 1923, ch. 201). *Notice*.—[Compensable injuries must be notified to the commission by the employer within ten days, or in case of death immediately. If not given by the employer, notice may be given by another person. Notices required to be given by employees may be given by another and will be valid unless specifically disclaimed or objected to by the claimant in writing within a reasonable time. On receipt of a notice from a claimant the commission must immediately mail a copy to the employer, his agent or insurance carrier.]

Right to compensation is barred unless claim is filed within six months after an injury, or one year in case of death; this does not apply to any claimant to whom compensation has been paid.]

Sec. 85 (as amended 1923, ch. 201). *Disabilities not due to accident*.—Any disability beginning more than five years after the date of accident shall be conclusively presumed not to be due to the accident.

Sec. 86. *Assignments, etc.*—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.

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 compensa-

tion benefits awarded any such claimant shall be wholly void, illegal, and of no force and effect.

SEC. 87. *Injuries due to third parties.*—[In case of injuries by the negligence or wrong of a third party the claimant must elect in writing whether to take compensation or sue. Taking compensation effects an assignment of the right of action, and the person liable for the payment of compensation is subrogated to the rights of the injured worker, or his dependents in case of death, but not in excess of the amount of compensation for which such assignee is actually liable. If the employee or his dependents sue, the insurance carrier is liable only for the deficiency, if any, between the amount so recovered and the compensation herein provided. A compromise may be made by the injured person only with the written approval of the party liable for compensation.]

SEC. 88 (as amended 1923, ch. 201). *Preference.*—[Compensation claims and awards have the same preference, without limit, as is allowed wage debts. Payments made on the date fixed by the commission bear interest at 8 per cent unless relieved on satisfactory showing.]

SEC. 89. *Failure to insure.*—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.

SEC. 90. *Attorneys' fees.*—Unless previously authorized by the commission, no lien shall be allowed nor any contract be enforceable for any attorneys' 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.

SEC. 91. *Trust fund.*—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, 93-98 (as amended 1923, ch. 203), 99 (as amended 1923, ch. 201), 100, 101 (as amended 1923, ch. 201), 102-121. *Procedure.*—[The employer or his insurer is required to notify the commission and the injured employee or his dependents, in case of his death, within 15 days after the injury, whether he admits or contests the liability. If he admits it, he shall also specify amounts and beneficiaries, and payments thereon shall be made at once. On a proper showing an extension of time, not exceeding 10 days at any one time, may be allowed. Hearings may be had, but shall not interfere with the continuance of payments according to admitted liability; no settlement or receipt

is final unless in accordance with the act and rules of the commission, nor until approved by the commission. Hearings may be had by the commission on its own motion or on the application of either party. Notice must be given, and the parties may be present either in person or by attorney or other agent. The commission may receive, besides the testimony, the reports of physicians, employers, its own investigators, and the records of hospitals. The hearing may be either by the commission, a referee, or a commissioner designated for the purpose. Referees have power to conduct hearings, issue subpoenas, and to make summary orders as to claims without making specific findings of fact. Such order is final unless reviewed on petition filed. Cases may be referred to any district or county judge or other person as special referee for the taking of evidence, the same to be reduced to writing and certified to the commission for its use. Recourse may also be had to the commission or other agency administering the compensation law of another State, after notice to the party in interest.

If any party is dissatisfied with the order of the referee he may petition for a review, whereupon the referee may reopen the case and amend or modify the order or refer the entire case to the commission. The order as amended is final, or the commission's approval of an unamended order, in the absence of a petition to review. Such petition must be filed in 10 days unless further time is granted. Proceedings to set aside, vacate, or amend an order or to enjoin its enforcement may not be brought unless a petition for review be first presented. Such action must be commenced within 20 days after the final finding on review. Any person in interest, including the State insurance fund, if dissatisfied with such final finding or award may commence an action in the district court for modification or vacation of the same. Such actions have precedence over civil causes of a different nature pending in the court. The time and method for filing documents, making returns, and presenting issues are prescribed. The court may affirm or set aside the award or order, but only if it appears that the commission acted without or in excess of its power, that the finding or award was procured by fraud, or that the findings of fact by the commission did not support it. Speedy action is provided for, trial to be to the court without a jury and upon the record of the commission. If an order is set aside the question may be remanded to the commission for further hearings or proceedings, or the court may direct a proper award to be entered. Appeal may be taken to the supreme court for summary review on questions of law. No fee shall be charged by the clerk of any court for services required by this act, and costs shall be allowed or not in the discretion of the court; but no costs shall be taxed against the commission.

The commission may on its own motion, on the ground of error, mistake or change in conditions, after notice of hearing to the parties interested, review any award and end, maintain or modify it for reasons set forth in its findings; past payments are not affected by such a review.

The commission and its agents and referees have general powers as to the issue of subpoenas, the attendance of witnesses, production of books, papers and records, and to administer oaths. Depositions may be taken of witnesses residing within or without the State, and a full and complete record of all proceedings shall be kept.

Violations of provisions of the act or failure or refusal to perform duties lawfully enjoined are punishable, each day constituting a separate offense. The making of false statements under oath is perjury, and a claimant convicted of such offense forfeits all right to compensation under the act.]

Sec. 122. *State fund.*—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.

Sec. 123. *Power of commission.*—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.

Sec. 124. *Same.*—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:

(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.

Sec. 125 (as amended 1923, ch. 201). *Fund to be continuing.*—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 or liabilities incurred under the contracts or policies of insurance issued by said State compensation insurance fund in accordance with the provisions of this act.

Sec. 126. *Classifications.*—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.

Sec. 127. *Subclasses.*—It shall also be its duty to divide each of such classes under said classifications 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 or risks are based and determined, as provided in this act.

Sec. 128. *Maintenance rates only.*—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.

Sec. 129. *Basis of rates.*—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.

SECS. 130-136, 137 (as amended 1925, ch. 132), 138-146. *General provisions as to fund.*—[Separate accounts are to be kept of the premiums collected and disbursements made for each of the different classes and subclasses of occupations or industries, also for each employer insured in the State fund; but the fund for the State and its subdivisions is to be treated as a unit. Rates are to be so levied as to make the fund neither more nor less than self-supporting. A surplus is to be maintained, at least 10 per cent of the earned premiums to be contributed thereto until \$500,000 is accumulated. Classifications may be amended, and no policy shall be in effect until the proper premium has been actually paid. Earned premiums and losses are to be tabulated semiannually with adjustments according to the showings made.

Policies in arrears for more than 20 days are subject to cancellation, and if any disbursements have been made during the 20-day period, the amount so paid may be collected in a civil action against the employer; but the employer himself is primarily liable.

Semiannual payments are made by employers insured in the fund on the basis of the annual pay roll, according to classification, rules, and rates made by the commission. The same rule applies to the State and its subdivisions as to private employers. Public officials must cause sufficient funds to be raised and appropriated to meet the premium expenditures required by the commission. The keeping of the necessary records by public officials is prescribed to be audited and examined by the public examiner of the State at least annually. Other provisions permit reinsurance for catastrophe hazard, make the State treasurer custodian of the fund, authorize the investment of such portions of the fund as are not needed for immediate use, require separate bond by the treasurer as custodian of the insurance fund, authorize investigation of the fund by the State insurance commissioner, provide penalties for misrepresentation of employers as to pay rolls, direct the preparation and supply of necessary blanks by the commission, and the promulgation of classifications, rates, and regulations fixed by it.]

CONNECTICUT

GENERAL STATUTES, 1918

CHAPTER 284.—*Compensation of workmen for injuries*

PART A—EMPLOYERS' LIABILITY

SECTION 5339. Abrogation of defenses.—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.

SEC. 5340. Does not apply, when.—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.

PART B—WORKMEN'S COMPENSATION

SECTION 5341 (as amended 1919, ch. 142; 1921, ch. 301). Election of compensation.—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. 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.

SECS. 5342, 5343 (both as amended 1919, ch. 142). Election.—[Contracts of employment between employers of five or more employees are conclusively presumed to include an acceptance of the provisions of part B of this chapter in the absence of written stipulation in the contract or written or printed notice by either party to the other. Employers of less than five workmen may accept the provisions of the act by insuring as prescribed in section 5369, and the employees will be presumed to accept in the absence of written notice to the contrary to the employer and also to the commissioner having jurisdiction. Change of election may be made in the same manner as original action, notices to be effective 30 days after service.]

SEC. 5344. Nonacceptance.—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.

SEC. 5345. *Contractors*.—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.

SEC. 5346 (as amended 1921, ch. 306). *Liability of third parties*.—[Where a third party is liable for damages for the injury the employee may receive compensation and also proceed in an action at law against such party; and an employer may sue to recover an amount paid or awarded. If either party sues he must notify the other, who may then join in the action, which failing, his right to sue will abate within 30 days. The employer paying or liable to pay compensation has a prior claim to the extent of such liability on any recovery; but any excess over such liability and costs goes to the employee. Neither party can compromise without the assent of the other.

Compensation is here used includes medical, hospital and burial costs.]

SEC. 5347 (as amended 1919, ch. 142; 1921, ch. 306). *Notice, medical, etc., aid*.—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 chapter 284 of the General Statutes 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; but the liability of the employer for hospital service shall be the amount it actually costs the hospital to render the service, said amount to be determined by the commissioner. 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 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 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.

SEC. 5348 (as amended 1919, ch. 142). *Waiting time*.—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.

Sec. 5349 (as amended 1919, ch. 142; 1921, ch. 306). *Death benefits.*—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 the 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.

Sec. 5350. (as amended 1921, ch. 306). *Dependents.*—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 of the General Statutes, 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. When the sole dependents as herein defined shall at the time of the injury be nonresident aliens and the deceased shall have in this State some person or persons who are dependent in fact, then the commissioner having jurisdiction may in his discretion equitably apportion the sums payable as compensation to the dependents.

Sec. 5351 (as amended 1921, ch. 306; 1925, ch. 247). *Total disability.*—If 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 \$21 or less than five dollars 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 and one hand at or above the wrist; (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.

Sec. 5352 (as amended 1919, ch. 142; 1921, ch. 306; 1925, ch. 247). *Partial disability*.—If any injury for which compensation is provided under the provisions of said chapter 284 shall result 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 \$21 weekly and shall continue during the period of partial incapacity, but no longer than 520 weeks. If the employer procure 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. With respect to 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, but in no case more than \$21 or less than five dollars 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 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. In case of an injury to any portion of the body, referred to in subsections (a) to (k), inclusive, or to a phalanx or phalanges of the thumb, finger, or toe, the commissioner may in his discretion, in the manner hereinbefore provided, award compensation for the proportionate loss or loss of use of the member of the body affected by such injury.

Sec. 5353 (as amended, 1919, ch. 142). *Computation of earnings*.—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.

SEC. 5354. *Advance payments.*—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.

SEC. 5355. *Review.*—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.

SECS. 5356 (as amended 1919, ch. 142), 5357. *Commissioners.*—[The act is to be administered by five commissioners, one for each congressional district of the State. Terms are five years, subject to removal by the governor for cause. Offices are to be maintained at Hartford, Norwich, New Haven, Bridgeport, and Waterbury. Each commissioner has power to hear and decide cases, administer oaths, summon witnesses, require the production of books and papers, certify official acts, and, in general, all powers necessary for the administration of the act.]

SEC. 5358 (as amended 1919, ch. 142). *Regulations.*—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.

SECS. 5359 (as amended 1919, ch. 142), 5360 (as amended 1921, ch. 306), 5361 (as amended 1919, ch. 142), 5362, 5363 (as amended 1921, ch. 306), 5364, 5365-5366 (as amended 1919, ch. 142). *Claims; procedure.*—[Employers under part B of the act must keep a record of injuries to their employees and report the same to the commissioner in duplicate weekly or oftener if so directed, together with such notices of claims for compensation as have been served upon him within the week. Notice of claim must be submitted within one year from the date of the injury, unless for due cause shown the period is extended not beyond two years. If there has been a hearing or a written request for a hearing or an assignment for a hearing within one year from the date of the injury, or a voluntary agreement submitted within that time, no want of notice claimed shall be a bar to the maintenance of proceedings; nor shall defects or inaccuracies invalidate the claim unless the employer shows that he was ignorant of the injury and was prejudiced thereby.]

If the parties reach an agreement between themselves in regard to compensation and such an agreement, together with a statement of facts, is submitted by the employer to the commissioner and he approves, such agreement shall be filed in the office of the clerk of the superior court of the county and is thereafter binding upon both parties as an award by the commissioner. Before payments are discontinued on account of total or partial incapacity under

such an agreement, if the injured person claims that his incapacity continues, the employer must notify the commissioner and the employee of discontinuance and the reason therefor, and until such notices are furnished the liability for such a payment shall continue unless otherwise ordered by the commissioner.

Persons claiming or receiving compensation must, on the reasonable request of the employer or at the direction of the commissioner, submit to a medical examination at which the injured employee may have his own physician in attendance. Refusal to submit to a reasonable examination suspends the right to compensation. In case of failure to agree, the commissioner shall, upon notice, or upon his own knowledge, appoint a hearing, giving notice to the parties with opportunity to make proper preparation for attendance at the place appointed, which shall be convenient to the injured employee. Appearance may be in person or by attorney or other accredited representative. The hearing shall be informal, and as far as possible, in accordance with the rules of equity, the purpose being to ascertain substantial rights and carry out justly the spirit of the act. No fees except the cost of certified copies of testimony, awards, etc., shall be charged. Witnesses subpoenaed by the commissioner are allowed fees and traveling expenses to be paid by the party in whose interest they are subpoenaed. The award made and filed in the office of the clerk of the superior court of the county is final unless appealed from within 10 days, and may be the basis of execution as in case of judgments rendered in the court. If payments are delayed unduly, interest at 6 per cent may be added to the award. If there has been delay without fault or neglect, caused by appeals or otherwise, a reasonable interest may be allowed not to exceed 6 per cent per annum. Appeals may be brought within 10 days, and are privileged in respect of assignment for trial. Other provisions relate to costs, which are reduced to a minimum unless it appears that an appeal is frivolous or for purposes of vexation or delay. Notice is to be given the commissioner from whose award the appeal is taken, and of the final disposition of the case.]

Sec. 5367. *Lump sums*.—[The commissioner may commute weekly payments into monthly or quarterly payments or into a single lump sum if found just or necessary, based on the present worth of payments due in the future. Lump sums may be paid into a savings bank or other repository to be held in trust for the beneficiary or beneficiaries under the act.]

Sec. 5368. *Substitute schemes*.—[With the approval of the State insurance commissioner a compensation system in lieu of that provided by this chapter may be agreed upon by employer and his employees. It must confer at least equivalent benefits, and membership therein must not be a condition of employment. If contributions are required, added benefits commensurate therewith must be provided. Equitable provision must be made for withdrawal and the distribution of assets.]

Secs. 5369-5371. *Insurance*.—[Employers subject to part B who do not furnish satisfactory proof of solvency and ability to make direct payments of benefits must file an acceptable security guaranteeing the performance of the obligations of this chapter or insure in an authorized stock or mutual company, or the methods may be combined. Policies must state that as between the employee and the insurer notice and knowledge of the injury by the employer shall be deemed notice and knowledge by the company, and that the latter accepts the jurisdiction of the employer for the purposes of the act. The policy must cover the entire liability of the employer and provide for the direct enforcement of the claimant's right to compensation in case the employer becomes insolvent or bankrupt during the period that the policy is in operation. No limit is placed upon the power of an employer of less than five employees to insure against such liability as he may incur by reason of employing a larger number of employees at irregular intervals.]

Sec. 5372. *Waivers*.—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. *Incompetents*.—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 commis-

sioner 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.

SEC. 5374. *Fees.*—All fees of attorneys, physicians, or other persons for services under this chapter shall be subject to the approval of the commissioner.

SEC. 5375. *Status of payments.*—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.

SEC. 5376. *Mode of payment.*—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.

SEC. 5377. *Notice.*—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.

SEC. 5378. *Duty of town clerks.*—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.

SEC. 5379. *Interstate commerce.*—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.

SEC. 5380 (as amended 1921, ch. 306). *Default in insurance.*—[Where an employer fails to maintain insurance, an injured employee may either claim his right to compensation or sue for damages. The same option may be exercised by dependents, and in the event of their failure to agree upon the election the commissioner shall decide. The option must be exercised within six months and action brought within one year. In the absence of notice to the employer only the right to compensation remains. Where an employer has accepted the provisions of the act and thereafter fails to conform thereto he is subject to a fine of not more than \$100 for each such failure.]

SEC. 5381 (as amended 1919, ch. 142). *Certificates.*—[Employers who have made arrangements for substitute schemes, or secured payments by insurance or otherwise as herein provided may file in the office of the commissioner having jurisdiction of any case of injury a certificate to that effect, issued by the commissioner of insurance, which certificate shall then become a part of the records of the office of the compensation commissioner.]

SEC. 5382. *Attachments.*—[Persons submitting compensation claims may ask for a writ of attachment to secure their payment, and unless it appears that the employer has secured their payment by insurance or otherwise the writ will issue, and will be dissolved on the showing of compliance and the payment of the expenses incurred, the commissioner having authority to dissolve such attachments.]

SEC. 5383 (as amended 1918, ch. 142). *Reference to supreme court.*—[Provision is made for submission to the supreme court by the superior court of all questions of law held not to be free from reasonable doubt, which the public interest requires shall be determined. In the meantime a pro forma award may be made on the facts. Self insurers found dilatory in adjusting claims or making payments, or otherwise failing to comply with the provisions of the chapter and the rules of the commission may have their certificates revoked, regardless of questions of solvency and financial conditions.]

SEC. 5384. *Defective employees.*—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.

SEC. 5385 (as amended 1919, ch. 142). *Insurance companies.*—[Insurance companies found dilatory in investigating or adjusting claims and making payments or complying with the law, etc., may, after hearing with due notice, have their licenses revoked by action of the compensation commissioners or a majority of them. This section contains also a provision as to the revoking of the authority of self insurers by action of the commissioners or a majority of them, similar to the provisions of section 5383.]

SEC. 5386. *Fees and expenses.*—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.

SEC. 5387 (as amended 1921, ch. 148). *Digest of decisions.*—[This section provides for the compilation and distribution of decisions of the compensation commissioners and the courts on questions of compensation.]

SEC. 5388 (as amended 1921, ch. 306). *Definitions.*—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, and shall also include any salaried officer or paid member of any police department or fire department of any municipal corporation in the State, irrespective of the manner in which he is appointed or employed, which provision shall not be construed as affecting any existing rights as to pensions which such persons or their dependents may now have, or as preventing any existing custom of paying the full salary of any such person during disability due to injury arising in the course of and out of his employment; but said term 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: *Provided*, If in any contract of insurance the wages or salary of a member of the employer's family dwelling in his house is included in the pay roll on which the premium is based, then such person shall, in the event of his sustaining an injury arising out of and in the course of his employment, be deemed an employee and compensated accordingly. "Employer" shall mean any person, corporation, firm, partnership, voluntary association, 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. "Outworker" shall mean any person to whom articles or material are given to be treated in any way on premises not under the control or management of the person who gave them out. 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. Singular terms may be taken to include the plural and plural the singular, and masculine terms to include males, females, and legal persons, as the natural interpretation of the context may require.

SEC. 5389. [Repealed.]

SEC. 5390. *Provisions severable.*—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

SECTIONS 5391-5402. *Mutual associations.*—[Employers under part B may, with the approval of the insurance commissioner, and in accordance with the law on the subject of corporations without capital stock, organize mutual associations to insure their liabilities under this chapter; but such associations may not include employers not in the same or similar trades or business or with substantially similar degrees of hazard of injury to employees. Provisions as to when policies may issue, organization of rules for safety, power to fix premiums, questions of assessment, investment, and general regulations are provided for.]

PART D—WORKMEN'S COMPENSATION INSURANCE

SECTIONS 5403-5409, 5414 (as amended 1919, ch. 142). *Effect of contracts, validity, etc.; duty of insurance companies.*—[This part declares a contract of insurance between an employer and an insurer to be a contract for the benefit of an employee injured under or within the terms of the act. Policies must provide for direct and primary liability to the employee or his dependents. Provision is made for hearings and awards; the latter may be directly against the employer or the insurer or both, and enforceable in all respects as against the employer. No question may be raised by the insurance company against an employee as to breach of warranty, coverage, or misrepresentation by the employer; nor shall misrepresentation not materially affecting the acceptance of the risk or the hazard assumed by the company vitiate such policy. Forms of policies must be approved, and reports must be made by insurance companies as to persons insured, the policies, etc. An employer knowingly making a material misstatement to the damage of the insurer is liable in just damages resulting therefrom.]

ACTS OF 1919

CHAPTER 251.—*Claims of injured workmen against the State*

SECTION 1. *Compensation for State employees.*—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, 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.

DELAWARE

ACTS OF 1917

CHAPTER 233.—*Compensation of workmen for injuries*

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.

3193 a. SECTION 94. *Title.*—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.

3193 b. SEC. 95. *Defenses abrogated.*—In any action instituted by any person whatsoever on or after the 1st day of September, A. D. 1917, to recover damages for personal injury sustained by an employee by accident arising out of and in the course of his employment within this State on or after said date, or for death resulting from injury so sustained, it shall not be a defense—

(a) That the injury or death was caused in whole or in part by the want of ordinary or reasonable care of, or by the negligence of, a fellow employee; or

(b) That the employee had either expressly or impliedly assumed the risk of the injury; or

(c) That injury was caused in any degree by the negligence of such employee; but the foregoing provisions of this section shall not apply to an action instituted by any person whatsoever to recover damages for injuries to or death of an employee who shall have elected not to operate under the compensatory provisions of the subsequent sections of this article, nor to an action instituted against any employer to recover damages for injuries to or death of an employee, when such employer shall have elected to operate under the compensatory provisions of the subsequent sections of this article: *Provided, however,* That when both the employer and the employee shall have elected not to operate under the compensatory provisions of the subsequent sections of this article, then and in such case the employer shall be deprived of the right of interposing the defenses mentioned in this section the same as though he alone had rejected the terms or the subsequent sections of this article.

3193 c. SEC. 96. *Plaintiff to show status.*—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.

3193 d. SEC. 97. *Election presumed.*—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 conclusively presumed to be coextensive with the contract of hire between the employer and employee.

3193 e. SEC. 98. *Waivers.*—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.

3193 f. Sec. 99. *Notice of rejection.*—[Employers desiring not to be bound by the act or to waive rejection, may post notices in conspicuous places in their plants or serve notice personally on their employees, filing an affidavit with regard thereto with the industrial accident board. Employees may reject or waive prior rejection by notice in writing to the employer, also filing an affidavit as to such notice with the board. Such notice to be effective must be given 30 days before the injury or death, except notices given at the time of employment. Acceptance by both parties constitutes a surrender of any other form of compensation or damages for injury.]

3193 g. Sec. 100. *Waivers.*—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.

3193 h. Sec. 101 (as amended 1919, ch. 203; 1921, ch. 186). *Waiting time; medical aid, etc.*—(a) 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 such incapacity: *Provided, however,* That if such incapacity continues for four weeks or longer, such compensation shall be computed from the date of incapacity.

(b) During the first 30 days 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 \$100.

If the employer shall, upon application made to him, refuse to furnish reasonable surgical, medical, and hospital services, medicines, and supplies, the employee may procure the same and shall receive from the employer the reasonable cost thereof within the above limitations.

(c) Upon application made to the industrial accident board by the injured employee or some one on his behalf the board may, in its discretion, require the employer to furnish additional surgical, medical, and hospital services, medicines, and supplies, as and when needed, for such further period as it shall deem right and proper. The charges for such additional surgical, medical, and hospital services, medicines, and supplies shall not exceed the rates regularly charged to other individuals for like services and supplies: *Provided, however,* The industrial accident board shall at all times have jurisdiction to determine, and shall determine, the character of service and supplies to be furnished.

(d) If any person, firm, or corporation charged with the payment of the above-mentioned surgical, medical, and hospital services, medicines, and supplies, and the person, firm, or corporation to whom the same are due and payable, fail to reach an agreement in regard to said charges, 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, sent by registered mail to all parties in interest, hear and determine the matter and notify such parties of its conclusions.

(e) 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.

3193 i. Sec. 102. *Funeral, etc., expenses.*—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 \$100, but without deduction of any amount theretofore paid for compensation or for medical expenses.

3193 j. Sec. 103 (as amended 1919, ch. 203; 1921, ch. 186). *Compensation.*—The following schedule of compensation is hereby established for injuries resulting in total disability:

(a) For the first 475 weeks of total disability, 50 per cent of the wages of the injured employee as defined by this act as amended; but the compensation shall not be more than \$15 per week nor less than \$5 per week, and shall not exceed in the aggregate the sum of \$4,000: *Provided,* That if at the time of injury, the employee receives wages of less than \$5 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 475 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.

(b) For disability for work partial in character (except the particular cases mentioned in the next succeeding subsection (c) of this section), 50 per cent 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 \$15 per week. This compensation shall be paid during the period of such partial disability for work; not, however, beyond 285 weeks. Should total disability for work be followed by partial disability for work, the period of 285 weeks mentioned in this subsection (b) shall be reduced by the number of weeks during which compensation was paid for such total disability.

(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 as follows:

For the loss of a hand, 50 per cent of wages during 158 weeks.

For the loss of an arm, 50 per cent of wages during 194 weeks.

For the loss of a foot, 50 per cent of wages during 135 weeks.

For the loss of a leg, 50 per cent of wages during 194 weeks.

For the loss of an eye, 50 per cent of wages during 113 weeks.

For the loss of two or more of such members, not constituting total disability, 50 per cent of wages during the aggregate of the period specified for each.

For the loss of a thumb, 50 per cent of wages during 60 weeks.

For the loss of a first finger, commonly called index finger, 50 per cent of wages during 35 weeks.

For the loss of a second finger, 50 per cent of wages during 30 weeks.

For the loss of a third finger, 50 per cent of wages during 20 weeks.

For the loss of a fourth finger, commonly called little finger, 50 per cent of wages during 15 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 period, and compensation for the loss of one-half of the first phalange shall be for one-fourth of the period.

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, 50 per cent of wages during 30 weeks;

For the loss of one of the toes, other than a great toe, 50 per cent of wages during 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 for one-half of the period.

The loss of more than one phalange shall be considered as the loss of the entire toe.

For the loss of a fractional part of the vision of an eye the compensation shall be for such percentage of the total number of weeks allowed for the total loss of the use of an eye under this subsection (c) as the loss suffered bears to the total loss of an eye.

In all other cases in this class, or when the usefulness of a member or any physical function is permanently impaired, the 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.

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. Total 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 \$15 per week, nor less than \$5 per week: *Provided*, That, if at the time of injury, the employee receives wages of less than \$5 per week, then he shall receive the full amount of such wages per week as compensation.

3.) 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.

3193 k. SEC. 104 (as amended, 1919, ch. 203). *Benefits; distribution of.*—In case of death, compensation shall be computed on the following basis and distributed to the following persons:

1. To the child or children, if there be no widow nor widower entitled to compensation, 25 per cent of wages of deceased, with 10 per cent additional for each child in excess of two, with a maximum of 60 per cent, to be paid to their guardian.

2. To the widow or widower, if there be no children, 25 per cent of wages.

3. To the widow or widower, if there be one child, 40 per cent of wages.

4. To the widow or widower, if there be two children, 45 per cent of wages.

5. To the widow or widower, if there be three children, 50 per cent of wages.

6. To the widow or widower, if there be four children, 55 per cent of wages.

7. To the widow or widower, if there be five children or more, 60 per cent of wages.

Such compensation to the widow or widower shall be for the use and benefit of such widow or widower and of the dependent children, and the industrial accident board may from time to time apportion such compensation between them in such way as it deems best. The industrial accident board, in its discretion, may require payments to be made direct to a minor who has been injured, and may also require payments to be made to the person caring for any dependent minor, when, in the opinion of the industrial accident board, the expense of securing the appointment of a guardian would be disproportionate to the amount of compensation payable to such minor.

8. If there be neither widow, widower, nor children, then to the father and mother, or the survivor of them, if dependent to any extent upon the employee for support at the time of his death, 20 per cent of wages.

9. If there be neither widow, widower, children, nor dependent parent, then to the brothers and sisters, if actually dependent to any extent upon the decedent for support at the time of his death, 15 per cent of wages for one brother or sister, and 5 per cent additional for each additional brother or sister, with a maximum of 25 per cent; 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 16 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.

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.

The wages upon which death compensation shall be based shall not in any case be taken to exceed \$30 per week nor to be less than \$10 per week. Subject to the provisions of subsection (d) of the last preceding section, this compensation shall be paid during 285 weeks, and in the case of children entitled to compensation under this section the compensation of each child shall continue after such period of 285 weeks until such child shall reach the age of 16 years, at the rate of 15 per cent of wages if there be but one child, with 10 per cent additional for each additional child, with a maximum of 60 per cent. Children are not entitled to compensation during the period that compensation is payable to their mother or father, except as herein provided.

3193 l. **Sec. 105. Notice of accidents.**—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 14 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 14 days, but within 30 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 30 days, but within 90 days after the accident, and if the employee or other beneficiary shall show that his delay in giving notice was due to his mistake or ignorance of fact or of law, or to his physical or mental inability, or to fraud, misrepresentation, or deceit, of the employer or 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 90 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.

3193 m. **Sec. 106. Medical examinations.**—[Standard provisions as to submission and presence of own physician. Wages and traveling expenses must be reimbursed for all examinations after the first. Refusal or obstruction deprives of compensation absolutely for the period covered thereby. Facts learned by physicians attending or examining injured employees are not privileged.]

3193 n. **Sec. 107. Agreements.**—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.

3193 o. **Sec. 108. Notice of disagreement.**—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.

3193 p. **Sec. 109. Review.**—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.

3193 q. SEC. 110 (as amended 1921, ch. 186), 3193 r. SEC. 111 (as amended 1919, ch. 203). *Procedure*.—[The board is to make necessary inquiries and investigations, hold its hearings in a reasonable place, file awards, and furnish copies thereof to the parties. The superior court of the State is to make rules and provide for the obtaining of evidence outside the State. Subpoenas run throughout the State.

In the absence of fraud, awards are final except as provided in 3193 p. sec. 109, unless an appeal is taken to the superior court within 10 days after a copy is sent to the parties. The court decides from the record, without a jury, and may reverse, affirm, modify, or remand for rehearing. No deposit of costs will be required, but costs may be awarded in the discretion of the court. The court, on hearing an appeal, may appoint impartial physicians or surgeons to examine the claimant, fix their compensation, and tax the same as costs. Physicians' reports are not to be conclusive of facts, but advisory only.]

3193 s. SEC. 112 (as amended 1919, ch. 203). *Alien beneficiaries*.—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.

3193 t. SEC. 113. *Lump sums*.—The compensation contemplated by this article may be commuted by said industrial accident board at its present value when discounted at 5 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.)

3193 u. SEC. 114 (as amended 1919, ch. 203). *Deposits*.—[Where the amount of future payments awarded or agreed upon is certain, a sum equal to all future installments may be deposited with a savings bank or trust company for disbursement, relieving the employer from further liability. If any sum remains after liability ceases, it is to be returned to the employer.]

3193 v. SEC. 115. *Limitation*.—[Claims are barred unless within one year after the injury or death an agreement has been made or application made to the board. If payments have been made, the year begins to run from the time of making the last payment.]

3193 w. SEC. 116. *Industrial accident board*.—[An industrial accident board of three competent persons is appointed by the governor for terms of six years each, one term expiring every two years. Members hold office until their successors are appointed and qualified, but may be removed at any time by the governor with or without cause. Members take oath; the board has a seal, elects its own president, may employ a secretary and such clerical and other assistance as required, is entitled to traveling expenses, and must maintain an office kept open at reasonable hours, keeping a record of its transactions. It hears disputes, makes its own rules of procedure, supplies blanks

for information, and issues subpoenas, administers oaths, requires the production of documents, etc. Process is served by county officials or employees of the board. Disobedience or misbehavior, refusal to take the oath or to be examined, or neglect to produce printed documents subjects the offender to punishment for contempt on certification of the facts to any judge of the supreme court of the State. Members receive \$2,500 per annum, and a majority constitutes a quorum. The board may appoint physicians to make medical examinations and testify in respect thereto, who may be allowed a reasonable fee, not exceeding \$5 for each examination, the same to be included in its expense account. The board is to inquire into the causes and results of industrial accidents and their prevention, also to study the operation of the act and report its findings and recommendations at each session of the general assembly. It is also to furnish blanks to employers and employees, and such literature as is deemed requisite to facilitate and promote the efficient administration of the act.]

3193 x. Sec. 117. *Reports of accidents.*—[Employers under the act are required to keep a record of all injuries to their employees in the course of their employment and report the same within 10 days after knowledge of their occurrence. A supplemental report is to be made on the termination of disability. Name, age, sex, and occupation; time, nature, and cause of the injury; and such other information as the board may require are to be included. Such reports are not to be used as evidence, but are exclusively for the information of the board in securing data as the basis of recommendations to the general assembly.]

3193 y. Sec. 118, 3193 z. Sec. 119 (as amended 1919, ch. 203), 3193 aa. Sec. 120—3193 gg. Sec. 126. *Insurance.*—[Employers accepting the provisions of the act must insure their liability thereunder. If satisfactory proof of financial ability to pay direct compensation is given, the board may authorize self-insurance. Sums awarded or agreed upon in case of injury to an employee of a self-insurer must be paid into a savings bank or trust company in accordance with provisions of 3193 u, sec 114. Failure to make such payment within 30 days forthwith terminates the right to self-insurance. Employers must file with the board, annually or as often as required, evidence of compliance with the requirements as to insurance. Failure is punishable by fines, and also leaves the employer liable to either a claim for compensation or an action at law for damages. If suit is brought, the defenses of fellow service, contributory negligence, and assumed risks are not allowed; and if default continues for 30 days, the employer may be enjoined from carrying on his business while such default continues.

[On evidence of compliance, the industrial board issues a certificate to authorize self-insurance, which may be revoked on satisfactory evidence on at least 60 days' notice; a new certificate may be granted after the expiration of one year from such revocation.

Employers may form mutual insurance associations, or enter into benefit schemes with their employees, subject to the approval and control of the board. No substitute system will be approved unless it provides at least equivalent benefits, and, if contributions from employees are required, commensurate added benefits must be allowed. The board may terminate such systems on reasonable notice and hearing for cause shown.

All insurance policies covering compensation liabilities are subject to the provisions of the act, and must contain a provision to the effect that as between the employee and the insurer notice or knowledge on the part of the employer is notice or knowledge on the part of the company and that the company accepts the jurisdiction of the employer and is bound by awards against him. The obligations of the policies are not to be affected by default of the employer after the injury or by any default in the giving of notice required by the policy or otherwise. Such agreement shall be construed to be direct promise by the company to the person entitled to compensation enforceable in his name.]

3193 hh. Sec. 127. *Payment of benefits.*—[Except as otherwise provided benefits are to be paid as wages, but the board may authorize payments monthly or quarterly instead of weekly, with regard to the welfare of the employee and the convenience of the employer.]

3193 ii. Sec. 128. *Contractors.*—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.

3193 jj. Sec. 129. *Intoxication, etc.*—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.

3193 kk. Sec. 130. *Joint employment.*—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.

3193 ll. Sec. 131. *Actions against third parties.*—[If a third party is legally liable for damages on account of the injury, the employee may either claim compensation from the employer or sue such third party, but may not proceed against both. If compensation is awarded, the employer is subrogated to the rights of the injured employee or his dependents and may recover in his own name or that of the injured employee damages for the injury, any excess recovery, less costs, to go to the employee or his dependents.]

3193 mm. Sec. 132. *Status of payments.*—[The right to compensation has the same preference as unpaid wages for labor. Claims and awards are not assignable, and are exempt from claims of creditors. If default is made in payments for 30 days after demand, recovery may be had in the same manner as claims for wages are now collectible.

[Fees of attorneys and physicians are subject to the approval of the board.]

3193 nn. Sec. 133. *Suspension of payments.*—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.

3193 oo. Sec. 134. *Construction.*—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.

3193 pp. Sec. 135 (as amended 1923, ch. 206). *Employers.*—The following shall constitute employers subject to the provisions of this article: Every person, firm, association, and corporation, private, public, or municipal (excepting the employers mentioned in 3193 vv. section 141 and 3193 ww. section 142 hereof) having in his or its service any employee defined in 3193 qq. section 136 of this article. If the employer is insured, it shall include his or its insurer as far as practicable.

3193 qq. Sec. 136 (as amended 1923, ch. 206). *Employees.*—The term "employee" as used in this article shall be construed to mean: Every person in the service of any person, firm, association, and corporation, private, public or municipal (excepting the employees mentioned in 3193 vv. section 141 and 3193 ww. section 142 hereof) under any contract of hire, expressed or implied, oral or written, or performing services for a valuable consideration, but not including any person whose employment is casual and not in the regular course of the trade, business, profession or occupation of his employer, and not including persons to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished or repaired, or adapted for sale in the worker's own home, or on other premises not under the control or management of the employer.

3193 rr. Sec. 137. *Injury.*—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 285 weeks after the accident.

3193 ss. Sec. 138. *Restrictive clause.*—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.

3193 tt. Sec. 139. *Dependent.*—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.

3193 tt. Sec. 139a (added 1921, ch. 186). *Construction.*—For the purpose of making more clear certain of the provisions of the act to which this section is an amendment, provision is hereby made as follows:

(a) The term "compensation" wherever used in this act and wherever the context requires it shall be held to include surgical, medical, and hospital services, medicines and supplies, and funeral benefits provided for in this act.

(b) The notice required to be served on all parties in interest under the provisions of 3193 o, section 108, chapter 90, Revised Code, as amended by chapter 233, volume 29, Laws of Delaware, may be served personally or sent by registered mail.

(c) The provision in 3193 p, section 109, chapter 90, Revised Code, as amended by chapter 233, volume 29, Laws of Delaware, that the industrial accident board shall "send to the parties a copy of the award" shall be construed to mean either personal delivery of such copy or the sending thereof by registered mail.

(d) Proceedings for compensation may be instituted by the surviving parent, guardian, or next friend in the case of minors claiming to be entitled to compensation, and all notices thereafter shall be given in the manner provided in this act to said parent, guardian, or next friend.

(e) Compensation agreed upon or awarded to injured employee who shall have died and which shall not have been paid at the time of his death, shall be paid to his nearest dependent as indicated by 3193 k, section 104, chapter 90, Revised Code of the State of Delaware, as amended by chapter 233, volume 29, Laws of Delaware, and chapter 203, volume 30, Laws of Delaware.

(f) In construing the words "earning power of the employee thereafter as the same appears in subsection (b) of 3193 j, section 103, chapter 90, of the Revised Code of the State of Delaware, as amended by chapter 233, volume 29, Laws of Delaware, the industrial accident board shall take into consideration the value of gratuities, board, lodging, and similar advantages received by the employee in a subsequent employment.

3193 uu. Sec. 140 (as amended 1919, ch. 203). *Wages.*—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 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 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 (as amended 1923, ch. 206). *Exemptions.*—This article shall not apply to the employers or employees in any employment in which less than five employees are engaged; nor to farm laborers and domestic servants or to their respective employers; nor to officers and servants of the State or any governmental agency created by it, excepting officers and servants of the mayor and council of Wilmington, a municipal corporation of the State of Delaware, who shall have been neither elected or appointed for a term of office or fixed and definite duration or to complete the unexpired portion of any such term: *Provided, however,* That the said the mayor and council of Wilmington shall at all times apply to the industrial accident board for a certificate for self-insurance.

3193 ww. SEC. 142. *Interstate commerce.*—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.

3193 xx. SEC. 143 (as amended 1919, ch. 203). *Act in effect.*—This act shall begin and take effect from the 1st day of January, A. D. 1918.

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.

DISTRICT OF COLUMBIA

ACTS OF 1919—SIXTY-SIXTH CONGRESS

PUBLIC No. 6.—*Compensation of workmen for injuries—Public employees*

SECTION 11. *Act extended; scope.*—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," are hereby extended to 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.

1965°—26—11

GEORGIA

ACTS OF 1920

Compensation of workmen for injuries

(Page 167)

SECTION 1. Title.—This act shall be known as the Georgia workmen's compensation act.

SEC. 2 (as amended, 1922, p. 185). Definitions.—In this act, unless the context otherwise requires:

(a) "Employers" shall include any municipal corporation within the State and any political division thereof, and any individual, firm, association, or corporation engaged in any business operated for gain or profit, except as hereinafter excepted, and the receiver or trustee of the same, and the legal representative of a deceased employer, using the service of another for pay. If the employer is insured, it shall include his insurer so far as applicable.

(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 and, except as hereinafter set out. Minors are included even though working in violation of any child labor law or other similar statute: *Provided*, That nothing herein contained shall be construed as repealing or altering any such law or statute. Any reference to any 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, pursuant to the provisions of this act.

(c) The basis for computing the compensation provided for in this act shall be as follows:

1. The compensation of an injured person shall be computed on the basis of the regular wage received by the employee on the date of the accident. The compensation of the injured person who has not been receiving regular wages and has been employed for such a short period of time, that it is impracticable to accurately determine his wages, the wages of the employees of the same class, in the same employment, in the same locality, or, if that be impracticable, of neighboring employees of the same kind, shall be used as a basis for determining the wages of such injured employee.

(d) "Injury" and "personal injury" shall mean an injury by accident arising out of and in the course of employment and shall not include a disease in any form except that resulting naturally and unavoidably from the accident. Nor shall "injury" and "personal injury" include injury caused by the willful act of the third person directed against the employee for reasons personal to such employee.

When an employee coming under 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 thereto the employee, or beneficiary, may take proceedings both against that person to recover damages and against the employer for compensation, but the amount of compensation to which he is entitled under this act shall be reduced by the amount of damages recovered. If the employee, or beneficiary of the employee, in such case recovers compensation under this act, the employer by whom the compensation was paid, or the party who was 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 therefrom, to the extent of the compensation.

(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; 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 result from such operation, the death shall be considered as a result of the injury and compensation paid in accordance with the provisions of section 38. In nonfatal cases time loss only shall be paid, unless it is shown by special examination, as provided in section 28, 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 38 with reference to partial disability. In case the injured employee refuses to undergo the radical operation for the cure of such hernia, no compensation shall 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 81.

Sec. 3. Pending suits.—The provisions of this act shall not affect pending litigation.

Secs. 4, 5. Election.—[Employers and employees are presumed to accept the provisions of the act unless prior to the occurrence of the accident notice of rejection has been given by the one to the other. Forms are prescribed, to be substantially complied with; also for waivers of such rejection, which may be made at any time. Copies are to be sent also to the industrial commission, and if not so filed within 10 days after service, due and proper notice will be deemed not to have been given. Employers' notices are to be conspicuously posted. Notices are valid after 30 days, except for accidents within 30 days after employment if notice was given at the time of the employment.]

Sec. 6. Presumption as to contracts.—[In the absence of notice that the provisions of the act other than sections 16, 17, and 18 do not apply, contracts of service will be presumed to have been made subject to the provisions of this act. This applies to minors.]

Sec. 7. Waivers forbidden.—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. Corporations.—Neither any municipal corporation within the State, nor any political subdivision thereof, nor any employee 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.

Sec. 9. Interstate carriers.—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 railroads to their employees in certain cases, approved April 22, 1908.

Sec. 10. Prior injuries.—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.

Sec. 11. Insurance.—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.

Sec. 12. Remedies.—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.

SEC. 13. *Violation of statutes.*—Nothing in this act shall be construed to relieve any employer or employee from penalty for failure or neglect to perform any statutory duty.

SEC. 14. *Willful misconduct, etc.*—No compensation shall be allowed for any 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.

SEC. 15 (as amended 1925, p. 282). *Exempt employments.*—This act shall not apply to common carriers, engaged in interstate [intrastate] trade [or] commerce, the motive power of which is steam, 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 laws of this State; employees not in the usual course of the trade, business, occupation or profession of the employer or not incidental thereto; farm laborers or domestic servants; nor to employees of institutions maintained and operated as public charities; nor to employers of such persons: nor to any persons, firms or private corporation, including any public service corporation, that has regularly in service less than ten employees in the same business within this State; unless such employees and their employers voluntarily elect to be bound by this act. When an employer and his employees elect to be bound by this act the election shall continue until recalled by joint action of employer and employees and shall be effective after notice is given to the industrial commission, and shall include employees subsequently employed, unless they elect to reject the act.

SEC. 16–18. *Common law defenses.*—[Rejecting employers may not plead the common law defenses, even though the employee also rejects; if the employer accepts and the employee rejects, the employer may plead the defenses as at common law.]

SEC. 19. *Direct settlements.*—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 the employer with the commission, and no such settlement shall be binding until approved by the commission.

SEC. 20. *Liability of principals.*—A principal, intermediate, or subcontractor shall be liable for compensation to any employee injured while in the employ of his subcontractors and engaged upon the subject matter of the contract to the same extent as the immediate employer.

Any principal, intermediate, or subcontractor, who shall pay compensation under the foregoing 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. 21. *Compensation preferred.*—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. 22. *Assignments, etc.*—No claim for compensation under this act shall be assignable, and all compensation and claims therefor shall be exempt from all claims of creditors.

SECS. 23, 24 (both as amended 1923, p. 92). *Notice.*—[Employees must give notice, either in person or by a representative of the occurrence of any accident, immediately, or as soon as practicable, to the employer or his representative, or to the immediate superior of the injured employee. No right to medical aid or compensation accrues until such notice. If not given within 30 days, the notice must be in writing; nor will compensation be payable if notice is not given within 30 days after the accident or the death resulting therefrom unless it appears that it was prevented by physical or mental incapacity, fraud or deceit, or that the employer, his agent, representative, foreman, or the immediate superior of the employee had knowledge of the accident, or a reasonable excuse satisfies the commission, or it is reasonably proved that the employer was not prejudiced by the delay. The written notice must state the facts in ordinary language, nor will defects or inaccuracies be a bar to compensation unless the employer's interest was prejudiced, and then only to the extent of such prejudice.]

SEC. 25 (as amended 1925, p. 282). *Limitation.*—[Claims must be filed within one year after the injury or death; but if proceedings are begun in good faith against a corporation whose charter has expired, but is still doing business, the claimant may proceed against the person or persons carrying on the business, and the one-year limit will not apply.]

SEC. 26. *Medical aid.*—For a period of not exceeding 30 days after an accident the employer shall furnish or cause to be furnished, free of charge to the injured employee, and the employee shall accept such necessary medical attention as the nature of the accident may require. The industrial commission may at any time, for good cause shown or in its discretion, order a change in such medical attention so furnished by the employer: *Provided*, That the total liability of the employer for necessary medical attention shall not exceed \$100. During the whole or any part of the remainder of 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 physician or the industrial commission. The refusal of the employee to accept any medical, hospital, or surgical service when provided by the employer, or on order by the industrial commission, 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. If in an emergency on account of the employer's failure to provide the medical care during the first 30 days, as herein specified, a physician other than provided by the employer is called to treat the injured employee during the first 30 days, the reasonable cost of such service, not to exceed \$100, as above set out, shall be paid by the employer if ordered to do so by the industrial commission.

SEC. 27. *Cost of medical, etc., service.*—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 persons, and shall not, in any event, exceed the aggregate of \$100 in amount. 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.

SEC. 28. *Medical examinations.*—[An injured employee must submit to medical examinations at reasonable times and places, on request and at the expense of the employer, and may have his own physician present. Facts learned by attending and examining physicians are not privileged. Refusing or obstructing examinations suspends benefits, and no compensation shall be paid for the period unless the commission thinks the act justified. The employer or the commission may require an autopsy, at the expense of the party requesting. No compensation for death or disability will be payable in so far as caused by

unreasonable refusal or neglect to submit to or follow competent or reasonable surgical treatment.]

SEC. 29 (as amended 1922, p. 185). *Waiting time.*—No compensation shall be allowed for the first seven calendar days of incapacity resulting from an injury, including the day of the injury, except the benefits provided for in section 26.

SEC. 30 (as amended 1922, p. 185). *Total disability.*—When the incapacity from work resulting from an injury is total, the employer shall pay, or cause to be paid, as hereinafter provided for, the employee during such total incapacity, a weekly compensation equal to one-half of his average wages, but not more than \$15 per week or less than \$4 per week, except when the weekly wage is below \$4, then the regular wages on the date of the accident shall be the weekly amount paid; and in no case shall the period covered by such compensation be greater than 330 weeks, nor shall the total amount of compensation exceed \$5,000.

SEC. 31. *Partial disability.*—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 \$12 a week, and in no case shall the period covered by such compensation be greater than 330 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.

SEC. 32 (as amended 1923, p. 92). *Schedule.*—In the cases included by the following schedule the permanent partial industrial handicap, in each case, shall be compensated by payments for the period specified, and the compensation so paid for such handicap shall be as specified therein, and shall be in lieu of all other compensation for the permanent partial handicap. In addition to the compensation provided in the schedule for permanent partial handicap, compensation for total incapacity for work, as provided in section 30, shall be paid, but compensation for total incapacity for work shall in no case be paid for a period longer than 10 weeks.

(a) For the loss of a thumb, 50 per cent of the average weekly wages during 60 weeks.

(b) For the loss of a first finger, commonly called the index finger, 50 per cent of the average weekly wages during 35 weeks.

(c) For the loss of a second finger, 50 per cent of average weekly wages during 30 weeks.

(d) For the loss of a third finger, 50 per cent of average weekly wages during 20 weeks.

(e) For the loss of a fourth finger, commonly called the little finger, 50 per cent of average weekly wages during 15 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*, 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, 50 per cent of the average weekly wages during 30 weeks.

(i) For the loss of one of the toes, other than a great toe, 50 per cent of average weekly wages during 10 weeks.

(j) The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half such toe, and the compensation shall be for one-half of the periods of time 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, 50 per cent of the average weekly wages during 150 weeks.

(m) For the loss of an arm, 50 per cent of average weekly wages during 200 weeks.

(n) For the loss of a foot, 50 per cent of average weekly wages during 125 weeks.

(o) For the loss of a leg, 50 per cent of average weekly wages during 175 weeks.

(p) For the loss of an eye, 50 per cent of the average weekly wages during 100 weeks.

(q) For the complete loss of hearing in both ears, 50 per cent of the average weekly wages during 150 weeks.

(r) Total loss of use of a member or loss of vision of an eye shall be considered as equivalent to the loss of such member or eye. The compensation for partial loss of or for partial loss of use of a member or for partial loss of vision of an eye shall be such proportion of the payments above provided for total loss as such partial loss bears to total loss. Loss of both arms, hands, legs, or feet, or of any two of these members, the permanent total loss of vision in both eyes, shall be deemed permanent total incapacity and shall be compensated under section 30.

The weekly compensation payments referred to in this section shall be subject to the same limitations as to maximum and minimum as set out in section 30.

SEC. 33. *Refusing employment.*—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.

SEC. 34. *Second injuries.*—If an employee who suffers an injury in his employment has a permanent disability or has sustained a permanent injury, such as specified in section 32, suffered elsewhere, he shall be entitled to compensation only for the degree of incapacity which would have resulted from the later accident if the earlier disability or injury had not existed.

SEC. 35. *Same.*—If an employee receives 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 32; 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.

SEC. 36. *Same.*—If an employee receives a permanent injury as specified in section 32 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 350 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.

SEC. 37. *Injuries outside State.*—(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 happened in this State, the employee or his dependents shall be entitled to compensation, if the contract of employment was made in this State and if the employer's place of business is in this State or if the residence of the employee is in this State: *Provided*, His contract of employment was not expressly for service exclusively outside of the State. (b) *Provided, however*, If an employee shall receive compensation or damages under the laws of any other State, nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided for in this act.

SEC. 38 (as amended 1922, p. 185; 1923, p. 92). *Death.*—When 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 balance for such injury shall cease and all liability therefor shall terminate.

If death results instantly from an accident arising out of and in the course of the employment, or if during the period of disability caused by an accident death results proximately therefrom, the compensation under this act shall be as follows:

(a) The employer shall, in addition to any other compensation, pay the reasonable expenses of the employee's last sickness and burial expenses not to exceed \$100. If the employee leaves no dependents, this shall be the only compensation.

(b) The employer shall pay the dependents of the deceased employee wholly dependent on his earnings for support at the time of the injury a weekly compensation equal to 85 per cent of the compensation which is provided for in section 30 for total disability for a period not exceeding 300 weeks from date of injury.

(c) If the employee leaves dependents only partially dependent on his earnings for support at the time of his injury, the weekly compensation for those dependent shall be in the same proportion to the compensation for persons wholly dependent as the average amount contributed weekly by the deceased to the partial dependents bears to his average weekly wages at the time of his injury.

(d) When weekly payments have been made to an injured employee before his death the compensation to dependents shall begin on the date of the last of such payments, but shall not continue more than 300 weeks from the date of the injury not except during dependency. The total compensation to be paid to all dependents of a deceased employee shall not exceed in the aggregate \$12.75 per week.

(e) If the employee does not leave dependents, citizens of or residing at the time of the accident in the United States or Dominion of Canada, the amount of compensation shall not in any case exceed \$1,000.

Sec. 39. *Dependents*.—The compensation provided for in section 33 shall be payable only to dependents and only during dependency. 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 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 18, or a girl under the age of 18, 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 step-parents and parents by adoption.

If the deceased employee leaves dependent surviving spouse, as above described and no dependent child or children, the full compensation shall be paid to such spouse; if the deceased employee leaves dependent surviving spouse, as above described, and also a dependent child or children, then the full compensation shall be paid to such spouse for his or her use and that of such child or children, the commission, however, to have the power in proper cases, in its discretion, to apportion the compensation: 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.

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; and in such other cases if there is more than one person wholly dependent, the death benefit shall be 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.

For the purpose of this act the dependence of a widow or widower of a deceased employee shall terminate with remarriage. The dependence of a child, except a child physically or mentally incapacitated from earning a livelihood, shall terminate with the attainment of 18 years of age. In all cases, except such as are hereinbefore specifically provided for, where there are both total and partial dependents, and the total dependents die, remarry, or cease to be dependents the partial dependents shall be entitled to the balance of compensation, if any.

Sec. 40 (as amended 1923, p. 92). *Maximum*.—The total compensation payable under this act shall in no case exceed \$5,000.

SEC. 41. *Advance payments.*—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 payments.

SEC. 42. *Times of payment.*—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.

SECS. 43, 44. *Lump sums.*—[After not less than 26 weekly installments have been made the parties may agree, with the approval of the commission on the grounds of the interests and convenience of the party, to commute the remaining payments, in whole or in part, to a lump sum, representing their present worth calculated at 5 per cent per annum. If the commission deems it expedient the employer must pay such lump sum to a trustee to be administered as provided by the commission, and the employer or other person liable is thereby discharged.]

SEC. 45. *Review.*—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 or any settlement made between the parties and filed with the commission and, on such review, may make an award ending, diminishing, or increasing the compensation previously awarded or agreed upon, 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.

SEC. 46. *Acquittances.*—[Payment to a parent on behalf of children, or to persons over 18, or to guardians of minors under 18 or incompetent, when properly receipted, acquit the employer. Payments in good faith to a dependent subsequent in right are a discharge unless a dependent having prior right gives notice of such right.]

SEC. 47. *Incompetents.*—If an injured employee is mentally incompetent or is under 18 years of age 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.

SEC. 48 (as amended 1925, p. 282). *Limitation.*—[Limitations do not run against incompetents so long as they have no guardian or trustee, nor against one who in good faith proceeds against a corporation found to be defunct by reason of expiration of charter.]

SEC. 49. *Joint employment.*—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.

SECS. 50, 51 (as amended 1922, p. 77), 52, 53 (as amended 1925, p. 282), 54. *Industrial commission.*—[An industrial commission is created consisting of four persons, a commissioner of commerce and labor, being chairman ex officio, the attorney general being also a member. The governor appoints two other members for terms of four years each, one term expiring every two years. Employers and employees are to be represented by these appointees who are to give full time to their employment and receive salaries of \$4,000 each. The chairman receives an additional salary of \$1,200 for his services on the commission. The commission may appoint a secretary-treasurer and such clerical and other assistants as it may deem necessary, subject to the approval of the governor. Offices are to be furnished at Atlanta, deputies may be appointed, and sessions may be held by the commission or any member at any place within the State as may be deemed necessary by the commission. The commission has power to make rules in conformity with the act for carrying out its provisions, to subpoena witnesses, administer oaths, and examine books and records. Processes and procedure are to be summary and as simple as reasonably may be. Enforcement of attendance and the giving of testimony is in the hands of the superior courts on application of the commission, a member or deputy

thereof. Blanks are to be prepared and supplied free of charge from which accident reports are to be tabulated, but the names of employers or employees shall not appear, nor shall the employers' reports be open for public inspection, though the parties interested, to the extent of their interest may see them.]

SECS. 55-57, 58 (as amended 1925, p. 282), 59-64. *Procedure*.—[In case of injury or death, parties interested may agree, after 14 days from the date of a nonfatal injury, or any time after the death, and file a memorandum of the agreement with the commission for approval. Otherwise it is voidable by the employee or his dependents, but if approved the memorandum of agreement is enforceable as a decree or judgment of the superior court. If the parties fail to agree, or if there is a disagreement as to the continuance of payments under an agreement, either party may apply to the commission for a hearing. Hearings and determination are to be summary and a copy of the award shall be immediately sent to the parties to the dispute. Either party may ask for a review within seven days from the date of the notice, whereupon the full commission shall review the evidence, or if deemed advisable, hear the parties, their representatives and witnesses and enter their award together with the rulings of law. If a single commissioner has been delegated the duty of taking additional evidence, the full commission must consider it before rendering a decision.

Awards as above are final unless within 20 days an appeal is taken to the superior court, stating the grounds on which the application is based. The order will be set aside if it is found that the commission acted without or in excess of its powers, that the order or decree was procured by fraud, that the facts do not support the order or decree, or that there was not sufficient competent evidence to warrant it, or finally, that it was contrary to law. If none of these grounds appear, the court must affirm the findings appealed from. If set aside, the court may remand the case to the commission or may itself enter judgment on the findings according to the nature of the case.

The commission may certify questions of law to the State court of appeals, and an appeal may be taken from the superior court to that court. In case of such reference or appeal to the court of appeals, such action operates as a supersedeas if the employer has complied with the provisions of the act as to insurance, and no payments will be required until the questions are answered or the appeal determined.

Awards on appeal, or those affirmed on appeal, may be filed with the superior court of the county which shall thereupon render judgment in accordance therewith, such judgment to have the same effect as if rendered in a suit duly heard and determined by the court. If payment of compensation is insured or provided for according to the terms of the act, no judgment shall be entered or execution issued except on application to the court and for good cause shown. If it appears to the commission or the court that proceedings have been brought, prosecuted or defended without reasonable ground, the whole cost of the proceedings may be assessed upon the moving party.

The commission may, on application of either party or on its own motion, appoint a disinterested physician to examine and testify to the physical condition of an injured employee at the expense of the State.

Attorneys' and physicians' fees are to be reasonable, and subject to approval by the commission, which has control of all questions in dispute, except as otherwise herein provided.]

SEC. 65 (as amended 1923, p. 92). *Reports of injuries*.—[Employers under the act as required to keep records of all injuries to their employees on blanks approved by the commission, forwarding a report of the same within 10 days after the occurrence and knowledge thereof. Injuries to be reported are those that require medical or surgical treatment or that cause absence from work for more than seven days. A supplementary report must be made on the termination of the disability. Failure to report is penalized but if the employer has reported the injury to his insurance carrier for transmission to the industrial commission, the penalty for failure will lie against the insurance carrier.]

SEC. 66. *Insurance*.—[Employers under the act must fully insure and keep insured their liability thereunder in an authorized corporation or organization, or by mutual insurance, unless otherwise ordered or permitted by the commission. If self insurance is approved the commission may in its discretion require the deposit of acceptable security or bond covering the liabilities

that may be incurred. Nothing in this section is to be construed as requiring an insurance to place his entire insurance with a single insurance carrier.]

SEC. 67 (as amended 1923, p. 92). *Evidence of insurance.*—[Employers are required to file annually, or as often as the commission deems necessary, satisfactory evidence of compliance with the provisions relative to insurance.]

SEC. 68. *Self-insurance.*—[Certificates of self-insurance issued to approved employers, to be in force for a fixed period unless revoked on at least 60 days' notice and hearing. New certificates may issue on petition after revocation.]

SEC. 69. *Substitutes.*—[Employers may enter into or continue any approved agreement with their employees in lieu of the provisions of this act. Such systems must confer at least equivalent benefits, and if employees make contributions, there must be added benefits at least commensurate thereto. Such system may be terminated by the commission on reasonable notice and hearing if it appears that the scheme is not fairly administered, that there is danger of insolvency, or if it fails to accomplish the purposes of the act. The proper distribution of assets is to be made by the commission subject to appeal to the superior court of the county of the employer's principal office or chief place of business.]

SECS. 70-72. *Insurance policies.*—[Policies of insurance, including mutual, reciprocal, and interinsurance contracts, must provide that notice or knowledge of an injury on the part of the employer is to be deemed notice or knowledge on the part of the insurer or insurers, also that they accept jurisdiction and are bound by the awards, judgments, or decrees rendered against the employer. Provision must also be made for direct liability of payments of compensation installments, not affected by any default in giving notice required by such policy or otherwise, the policy to be enforceable in the name of the person entitled to compensation. All policies and contracts are deemed to have been made subject to the provisions of this act. The form of any such contract or policy must be approved by the commission. The act does not apply to policies or insurance against loss from explosion of boilers or flywheels or other similar catastrophe hazards.]

SEC. 73. *Premium rates.*—[All premiums charged must be fair, reasonable, and adequate, with due allowance for merit rating; if covering risks of the same kind and degree of hazard, they must be at the same rate by the same carrier. Basic rates are to be filed with the insurance commissioner and no policy shall be valid until such filing and approval. Modification plans based on physical inspection or experience must also be filed and approved. Insurance carriers of all classes must make reports to the insurance commissioner as provided by law, and for the purpose of determining solvency and adequacy of rates and reserves the insurance commissioner may inspect all books and records and examine agents, officers, and directors under oath.]

SEC. 74. *Severability.*—[The unconstitutionality or invalidity of any section is not to affect the validity of other parts of the act.]

SEC. 75. *Act in effect.*—[The law came into effect March 1, 1921.]

SEC. 76 (as amended 1922, p. 77). *Expenses to be met.*—[The total expenses of the commission are to be prorated among the insurance companies writing compensation insurance in the State, and self-insurers. The gross earned premiums of the companies and the amount of premiums which a self-insurer will have to pay if insured are the basis, semiannual payment being required subject to adjustment at the end of each year.]

HAWAII

REVISED LAWS—1925

CHAPTER 200.—*Workmen's compensation law*

SECTION 3604. *Scope of law.*—This chapter 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.

Sec. 3605. *Public employments.*—This chapter shall apply to employees (other than officials as hereinafter defined) of the Territory, and all counties, and all other political subdivisions within the Territory.

Sec. 3606. *Injuries not covered.*—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.

Sec. 3607. *Remedy exclusive.*—The rights and remedies herein granted to an employee on account of a personal injury for which he is entitled to compensation under this act shall exclude all other rights and remedies of such employee, his personal representatives, dependents, or next of kin, at common law or otherwise, on account of such injury.

Employers who hire workmen within this 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. 3608. *Liability of third persons.*—[If a third person is liable for injuries suffered, the employee may sue him or claim compensation; if the latter, the employer is subrogated to the employer's rights, but any excess recovery, less costs, goes to the employee or his dependents. The amount of compensation paid or payable shall not be put in evidence in an action for damages.]

Sec. 3609. *Contracting out.*—No contract, rule, regulation, or device whatsoever shall operate to relieve the employer in whole or in part from any liability created by this chapter.

Sec. 3610. *Death benefits.*—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 \$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 3618.

(a) To the dependent widow or widower, if there be no dependent children, 40 per cent.

(b) To the dependent widow or widower, if there be one or two dependent children, 50 per cent; or if there be three or more dependent children, 60 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, 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 30 per cent, with 10 per cent additional for each child in excess of two, with a maximum of 50 per cent, 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 40 per cent, or if partially dependent 25 per cent, or if both parents be dependent then one-half of the foregoing compensation to each of them; or, if there be

no such parents, but a dependent grandparent, then to every such grandparent the same compensation as to a parent.

(e) If there be neither dependent widow, widower, child, parent, or grandparent, but there be a dependent grandchild, brother, or sister, or two or more of them, then to such dependents 25 per cent for one such dependent and 5 per cent additional for each additional such dependent, with a maximum of 40 per cent, to be divided equally among such dependents if more than one.

Sec. 3611. *Dependents.*—The following persons, and they only, shall be deemed dependents and entitled to compensation under the provisions of this chapter.

A child if under 16 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 16 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 chapter.

Sec. 3612. *Periods of compensation.*—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 312 weeks.

To a widower, during disability or until remarriage, but in no case to exceed 312 weeks.

To or for a child, until 16 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 104 weeks beyond said age of 16 years.

To a parent or grandparent, during the continuation of a condition of actual dependency, but in no case to exceed 312 weeks.

To or for a grandchild, brother, or sister, during dependency as hereinbefore defined, but in no case to exceed 312 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. 3613. *Who are dependents.*—As used in this chapter 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" 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.

Sec. 3614. *Basic wages, etc.*—In computing death benefits the average weekly wages of the deceased employee shall be considered not to be more than \$36 nor less than \$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 \$5,000.

Payment of death benefits by an employee 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.

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.

The compensation of a person who is insane shall be paid to his or her guardian.

Sec. 3615. Medical, etc., aid.—[The employer must immediately furnish an injured employee such medical, surgical and hospital services and supplies as the nature of the injury may require, costs to be according to prevailing standards. If not so supplied, the employee may secure the same at the employer's cost. Willful refusal of services or obstruction of treatment may, in the discretion of the board, be construed as a waiver in whole or in part of the employee's right to such aid.]

Sec. 3616. Total disability.—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 60 per cent of his average weekly wages, but not more than \$20 nor less than \$5 a week, except as in the next succeeding paragraph provided. In no case shall the weekly payments continue after the disability ends, nor longer than 312 weeks, nor shall the amount of compensation paid in any case exceed in the aggregate the sum of \$5,000. But no adjudication of permanent disability shall be made until after two weeks from the date of injury.

In case of an employee whose average weekly wages are less than \$5 a week the weekly compensation shall be the full amount of the average weekly wages, but where the disability is permanent the weekly compensation in such cases shall be \$5. In case the total disability begins after a period of partial disability, the period of partial disability shall be deducted from the aforesaid total period of 312 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.

Sec. 3617. Partial disability.—(a) *Partial disability.* Where the injury causes partial disability for work, the employer, during such disability and for a period of 312 weeks beginning with the first day of disability, shall pay the injured workman a weekly compensation equal to 50 per cent of the difference between his average weekly wages before the accident and the weekly wages he will most probably be able to earn thereafter, but not more than \$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 312 weeks, nor shall the amount of compensation paid in any case exceed in the aggregate the sum of \$5,000. But no adjudication of disability shall be made until after two weeks from the date of injury.

(b) *Permanent partial disability.* In case of disability partial in character but permanent in quality the compensation shall be 50 per cent 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, 60 weeks.

First finger. For the loss of a first finger, commonly called index finger, 46 weeks.

Second finger. For the loss of a second finger, 30 weeks.

Third finger. For the loss of a third finger, 25 weeks.

Fourth finger. For the loss of a fourth finger, commonly called the little finger, 15 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 re-

ceived 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, 38 weeks.

Other toes. For the loss of one of the toes other than the great toe, 16 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, 244 weeks.

Arm. For the loss of an arm, 312 weeks.

Foot. For the loss of a foot, 205 weeks.

Leg. For the loss of a leg, 88 weeks.

Eye. For the loss of an eye, 128 weeks.

Ear. The permanent and complete loss of hearing in both ears, 312 weeks. The permanent and complete loss of hearing in one ear, 60 weeks. The loss of both ears, 128 weeks. The loss of one ear, 60 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.

In cases of permanent partial disability, due to injury to a member named in this schedule, resulting in less than total loss of the member or in less than total loss of use thereof, and where the disability is not otherwise compensated in this schedule, compensation shall be paid at the rate prescribed in this schedule for the total loss of or the total loss of use of the member, and for a period to be determined as follows: The percentage of permanent partial disability to total disability for the same member in the schedule shall be determined and the compensation hereinabove prescribed shall be paid for such portion of the period hereinabove prescribed for total loss or total loss of use of the member, as such percentage of disability bears to total disability of the member.

Amputation. 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 compensation, except the benefits provided in sections 3615 and 3616; *Provided, however,* That payments of compensation under this section shall not commence until after the period of total or partial disability shall have terminated.

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 \$5,000.

Other cases. In all other cases in this class of disability the compensation shall be 50 per cent of the difference between his average weekly wages and his wage-earning capacity thereafter in the same employment or otherwise, payable during the continuance of such partial disability, but subject to reconsideration of the degree of such impairment by the board on its own motion or upon application of any party in interest; *Provided, however,* That in no case under this paragraph shall the weekly payments continue for a longer period than 312 weeks. The total compensation under this section and the total compensation under section 3616, taken together, shall not exceed in the aggregate the sum of \$5,000.

Sec. 3618. *Computation of wages.*—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 12 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 12 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 larger regular wages, only such larger wages shall be taken into consideration in computing his average weekly wages.

SEC. 3619. *Advances.*—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 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 3616 and 3617.

SEC. 3620. *Time of payments.*—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.

SEC. 3621. *Lump sums.*—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.

SEC. 3622. *Trustees.*—Whenever for any purpose the board deems it expedient any lump sum which is to be paid as provided in section 3621 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.

SEC. 3623. *Medical examinations.*—[During disability an injured workman, whenever ordered by the board, must submit to examination by a physician designated and paid by the employer, but may have his own physician present. Refusing or obstructing examination suspends benefits, and no compensation shall be payable for the period of such refusal or obstruction.]

SECS. 3624–3628. *Notice and claim.*—[Notice of injury must be given as soon as practicable and claim placed within three months, or in case of death within three months after the death; death claims must be submitted whether or not the employee himself has applied for compensation. If medical, etc., benefits or compensation payments have been voluntarily made, the making of claim as above is not required. Notice and claim are to be made in writing, and may be made at the same time, either by the claimant himself or someone in his behalf. Notice to one of the parties, or the agent or officer of a corporation may be construed as notice to the employer and shall be by delivery or by registered letter. Inaccuracies not actually misleading will not invalidate notice, nor will want or delay of notice be a bar to the claim if it appears that the employer, the agent or representative had knowledge of the accident, or that the employer was not prejudiced by such delay or want of notice. Limitations of time do not run against minors or incompetent persons so long as they have no guardian or next friend.]

SECS. 3629–3632. *Industrial accident board.*—[Boards of five members appointed by the governor for each county of the territory are provided for. Appointees hold office for terms of five years, one term expiring each year. Each board has jurisdiction in its own county unless the principal business or occupation of the employer is in another county, when the board of such county has jurisdiction. No salary is provided for the members, though their expenses are to be paid. Salaried employees may be appointed as deemed necessary.]

Boards have power to make rules for carrying out the provisions of the act, may subpoena witnesses, administer oaths, examine books and records, etc. Process and procedure are to be summary and as simple as reasonably may be. The circuit court has power to enforce attendance, the testimony of witnesses, and the production and examination of books, papers, and records. The board is to furnish free of charge necessary blanks for employers and employees.]

SECS. 3633–3645. *Procedure.*—[The parties may agree as to compensation, and file a memorandum with the board, which, if approved by it becomes enforceable as an award. No agreement for a less sum than that found by the board to be due will be a bar to a determination of the controversy upon

its merits, or to the award of a larger sum by the board. If the claim is not settled by agreement, the board may provide for a full trial and an award, stating conclusions of fact and rulings of law. Prior to the filing of the claim either party may apply to the board for the formation of a committee of arbitration of three members, one of whom shall be a member of the board, the other two being named by the parties, or after seven days, the board may fill the vacancy. Such arbitration committee proceeds the same as the board.

Each board may appoint a duly qualified impartial physician to examine the injured employee, fees and expenses of arbitrators to be paid out of the funds appropriated by the legislature.

The board may review an award, or take action if the committee fails to make an award within 30 days after its formation. It may at any time, either on its own motion or on the application of any party, reopen any case on the ground that fraud has been practiced; reviews may be had not oftener than once in six months on the ground of a change of conditions. Modification may be made, but does not affect commutations of payments as provided in section 3621.

Awards of boards are conclusive unless within 20 days appeal is taken to the circuit court, which may prescribe the procedure to be followed. The right of trial by jury shall be deemed to be waived unless claimed within 10 days from the date the appeal was entered. Questions of law may be certified by the board to the supreme court of the Territory.

A certified copy of an award not appealed from, or if appealed from not suspended by supersedeas or stay, or a certified copy of a memorandum of agreement approved by the board, may be filed with the circuit court and be enforceable as a decree or judgment by the court. Where an award is appealed from, but payments are not staid, it must be provided that the award will become null and void in the event of the court setting aside the decision or award of the board.

If on any proceedings the committee or court finds that proceedings have been brought, prosecuted, or defended without reasonable ground, the whole cost may be assessed against the offending party.

In general all questions under the act not settled by an agreement of the parties are determinable by the board, except as otherwise herein provided. Appeals do not operate as a supersedeas or stay unless so ordered. If awards are revoked or modified, the court in which they have been filed shall revoke or modify its prior decree or judgment.]

Sec. 3646. *Injuries outside the Territory.*—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.

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.

Secs. 3647, 3648. *Preferences and assignments.*—[Claims for compensation have the same preferences as unpaid wages. They are not assignable, and are exempt from the claims of creditors. Physicians and attorneys' fees are not a valid claim against the person unless and until approved by the board.]

Secs. 3649-3657. *Insurance.*—[Private employers must secure compensation for their employees by insuring, depositing securities, or furnishing satisfactory proof of their ability as self-insurers. Questions of sufficient security or financial ability are subject to review by the circuit court of appeals. Employers must notify the board of insurance taken out under the above requirements. Failure to comply entails a penalty of \$1 a day for each employee, and after 30 days default, the employer may be enjoined from carrying on his business until compensation is secured as required. Policies must cover the entire liability of the employer and enable the employees to enforce in their own names their individual rights. Policies must be of a standard form, approved by the board, and must contain a provision that, as between the employee and the insurance carrier the employer's notice or knowledge shall be deemed to be notice or knowledge on the part of the carrier, and that it accepts juris-

diction in case of awards, etc., against him. The employer's insolvency does not relieve the carrier as respects payments on account of injuries sustained during the life of the policy. Cancellation of policies is not permitted during a term without at least 10 days' notice. The Territory and its municipalities may insure with any authorized carrier. No agreement by employees to pay any portion of the insurance premium, or to contribute to benefit funds is valid; deductions from wages for such purposes are a misdemeanor.]

SEC. 3658. *Inspections.*—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.

SEC. 3659. *Reports of accidents.*—[Employers must keep records of all known injuries to employees, and report those causing absence from work of one day or more on blanks to be procured from the board. Supplemental reports are to be made on the termination of disability, or within 60 days, if the disability extends beyond that period, with a final supplemental report. Reports are to give prescribed data, and such other information as the board may require. Reports of total compensation paid, and of medical services are to be made within 60 days after the termination of the disability.]

SEC. 3660. *Interstate commerce.*—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.

SEC. 3661. *Reports of boards.*—Annually on or before the 1st 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.

SEC. 3662. *Acts of majority.*—Whenever under this chapter 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.

SEC. 3663. *Definitions.*—In this chapter, unless the context otherwise requires:

(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 \$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.

It does not include the employment of public officials who are elected by popular vote or who receive salaries exceeding \$1,800 a year.

(f) The word "board" or words "industrial accident board," whenever used in this chapter, 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 corporation or mutual associations from any of which employees have obtained workmen's compensation insurance or guaranty insurance in accordance with the provisions of this chapter.

(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.

SEC. 3664. *Provisions severable.*—If any part or section 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 which can be given effect without the part so decided to be unconstitutional or invalid.

SEC. 3665. *False representations.*—If for the purpose of obtaining any benefit or payment under the provisions of this chapter, 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 \$250.

SEC. 3666. *Rules of construction.*—(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.

SEC. 3667. *Title.*—This chapter may be cited as the "Workmen's compensation law."

IDAHO

COMPILED STATUTES—1919

CHAPTER 236.—*Compensation of workmen for injuries*

ARTICLE 1

SECTION 6213. *Employments covered.*—This chapter shall apply to all public employment as defined in section 6215 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 6216.

SEC. 6214. *Common-law system abolished.*—[The nature and effects of the common-law system of action for injuries to employees are set forth, and the redress for such injuries is "withdrawn from private controversy," all jurisdiction of the courts over such causes is abolished except as in this chapter provided.]

SEC. 6215. *Public employment.*—This chapter 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 \$2,400 a year. Policemen and firemen and others entitled to pensions shall be deemed employees within the meaning of this chapter. If, however, any policeman or fireman or other person entitled to a pension claims compensation under this chapter 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.

SEC. 6216 (as amended 1921, ch. 220). *Excluded employments.*—None of the provisions of this chapter shall apply to (1) Agricultural pursuits; (2) household domestic service; (3) casual employment; (4) employment by charitable organizations; or (5) employment of outworkers; or of (6) members of the employer's family dwelling in his house, unless the employer and employed expressly agree in writing filed with the board that the provisions of the chapter shall apply. Any such agreement may be terminated by either party upon 60 days' notice to the other and to the board in writing prior to any accident. Agricultural pursuits, as used herein, shall include the caretaking and handling of livestock on inclosed lands and public ranges.

ARTICLE 2

SECTION 6217. *Right to compensation.*—If a workman receives personal injury by accident arising out of and in the course of any employment covered by this chapter his employer or the surety shall pay compensation in the amounts and to the person or persons hereinafter specified.

SEC. 6218. *Injuries not covered.*—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.

SEC. 6219. *Remedy exclusive.*—[Rights and remedies for injuries compensable under this act are exclusive, and contracts involving service outside the State will be presumed to include an agreement to that effect.]

SEC. 6220. *Injuries by third persons.*—[Where a person other than the employer is liable in damages, the employee may either claim compensation or sue; but if he claims compensation, the person liable therefor is subrogated to the rights of the injured employee; but any excess recovery, less costs, goes to such employee.]

SECS. 6221, 6222. *Contracting out.*—[Waivers of the obligations fixed by this act are forbidden, but substitute schemes may be adopted, if approved by the board, by which at least equivalent benefits will be secured; and if the employees contribute, corresponding added benefits.]

ARTICLE 3

SECTION 6223 (as amended 1921, ch. 217). *Compensation for death.*—If death results from the injury within two years, the employer or the surety shall pay to the personal representative of the deceased employee burial expenses not to exceed \$200, 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 6237.

(1) To the dependent widow or widower, if there be no dependent children, 45 per cent.

(2) To the dependent widow or widower, if there be a dependent child or children, 55 per cent for such widow or widower and children. Such compensation to the widow or widower shall be for the use and benefit of such widow or widower and of the dependent children, and the board may from time to time apportion such compensation between them in such way as it deems best. If a child has a guardian other than the surviving widow or widower, the compensation payable on account of such child shall be paid to such guardian.

(3) If there be no dependent widow or widower, but a dependent child or children, 25 per cent for one child and 10 per cent for each additional child, not to exceed a total of 55 per cent to be divided equally among such children if more than one.

(4) 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, 25 per cent; if both are wholly dependent, 20 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 55 per cent.

(5) To the brothers, sisters, grandparents, and grandchildren, if one be wholly dependent upon the deceased employee for support at the time of his death, 20 per cent to such dependent; if more than one be wholly dependent, 30 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, 10 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 55 per cent.

(6) 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. In case there are no dependents of deceased employee, the employer shall pay into the State treasury to be deposited in the industrial administration fund the sum of \$1,000.

Sec. 6224. *Dependents.*—The following persons, and they only, shall be deemed dependents and entitled to compensation under the provisions of this chapter:

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. 6225. *Periods of compensation.*—The compensation herein provided for shall be payable during the following periods:

To a widow, until death or remarriage, but in no case to exceed 400 weeks.

To a widower, during disability or until remarriage, but in no case to exceed 400 weeks.

To or for a child, until 18 years of age, but in the case of a child incapable of self-support and unmarried as long as so incapable, but in no case to exceed 400 weeks beyond said age of 18 years.

To a parent or grandparent, during the continuation of a condition of actual dependency, but in no case to exceed 400 weeks.

To or for a grandchild, brother, or sister, during dependency as hereinbefore defined, but in no case to exceed 400 weeks.

Upon the cessation of compensation under this section to or on account of any person, the compensation of the remaining persons entitled to compensation for the unexpired part of the period, during which their compensation is payable shall be that which such persons would have received if they had been the only persons entitled to compensation at the time of the decedent's death.

SEC. 6226. *Aliens*.—Except as otherwise provided by treaty, whenever, under the provisions of this chapter, compensation is payable to a dependent who is an alien not residing in the United States, the employer shall pay 50 per cent of the compensation herein otherwise provided to such dependent and the remaining 50 per cent into the State treasury to be deposited in the industrial administration fund. But if a nonresident alien dependent is a citizen of a government having a compensation law which excludes citizens of the United States, either resident or nonresident, from partaking of the benefit of such law in as favorable a degree as herein extended to nonresident aliens, then all of the compensation which would otherwise be payable to such dependent shall be paid into the industrial administration fund.

SEC. 6227. *Definitions*.—As used in the foregoing sections the term "child" includes stepchildren, adopted children, posthumous children, and acknowledged illegitimate children, but does not include married children unless dependent. The terms "brother" and "sister" include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but do not include married brothers nor married sisters unless dependent. The term "grandchild" includes children of adopted children and children of stepchildren; but does not include stepchildren of children, stepchildren of stepchildren, stepchildren of adopted children, nor married grandchildren, unless dependent. The term "parent" includes step-parents and parents by adoption. The term "grandparent" includes parents of parents by adoption, but does not include parents of step-parents, step-parents of parents, nor step-parents of step-parents. The words "adopted" and "adoption" as used in this act shall include cases where persons are treated as adopted as well as those of legal adoption.

SEC. 6228. *Death benefits*.—In computing death benefits the total weekly compensation shall be subject to a maximum of \$12 per week, and a minimum of \$6 per week, but if at the time of the injury the employee received wages of less than \$6 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 subsequence 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 6225.

The compensation of a person who is insane shall be paid to his or her guardian.

SEC. 6229. *Medical attendance*.—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 chapter.

SEC. 6230. *Hospital contracts.*—Nothing in this act shall be construed as preventing employers and workmen from waiving the provisions of section 6229 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 \$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.

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. 6230A (added 1921, ch. 217). *Bonds.*—[Before approving any such hospital contract, the board may require a surety bond in the penal sum of \$5,000 to secure the faithful performance of the obligation of the chapter as to medical, etc., aid.]

SEC. 6231 (as amended 1921, ch. 217). *Total disability.*—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 weekly compensation equal to 55 per cent of his average weekly wages, but not more than \$12 nor less than \$6 per week for a period not exceeding 400 weeks, and thereafter a weekly compensation of \$6 a week.

If such employee have a wife but no dependent minor child, the employer shall pay to such injured employee weekly compensation equal to 60 per cent of his average weekly wages, but not more than \$13.10 nor less than \$6.55 per week, for a period not exceeding 400 weeks.

If the injured employee have a wife and a dependent minor child or children, or, being a widower, having any such dependent minor child or children, the weekly payments in the preceding paragraph shall be increased by 5 per cent of the average weekly wage for each such child, but the total weekly compensation shall not exceed \$16 per week. If such total disability shall exceed a period of four weeks, then he shall receive compensation for three weeks and four days and for one day additional for each week after the expiration of four weeks up to and including the seventh week. In no case shall the weekly payments continue after the disability ends. 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. 6232. *Presumptions.*—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:

- (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 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.

SEC. 6233 (as amended 1921, ch. 217). *Partial disability.*—Where the injury causes partial disability for work, the employer during such disability and for a period not exceeding 150 weeks, shall pay the injured workman a weekly compensation equal to 55 per cent of the difference between this [his] average weekly wages before the accident and the weekly wages he is able to earn thereafter, but not more than the weekly compensation provided

in section 6231. 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.

Sec. 6234 (as amended 1921, ch. 217). *Schedule*.—In the case of the following injuries the compensation shall be 55 per cent of the average weekly wages, but not more than the weekly compensation provided in Section 6231, in addition to all other compensation, for the periods stated against such injuries respectively, to wit:

For the loss of—	Weeks
One arm at or near the shoulder.....	200
One arm at the elbow.....	180
One arm between the wrist and elbow.....	100
One hand.....	150
One thumb and the metacarpal bone thereof.....	60
One thumb at the proximal joint.....	30
One thumb at the second distal joint.....	20
One first finger and the metacarpal bone thereof.....	30
One first finger at the proximal joint.....	20
One first finger at the second joint.....	15
One first finger at the distal joint.....	10
One second finger and the metacarpal bone thereof.....	30
One second finger at the proximal joint.....	15
One second finger at the second joint.....	10
One second finger at the distal joint.....	5
One third finger and the metacarpal bone thereof.....	20
One third finger at the proximal joint.....	12
One third finger at the second joint.....	8
One third finger at the distal joint.....	4
One fourth finger and the metacarpal bone thereof.....	12
One fourth finger at the proximal joint.....	9
One fourth finger at the second joint.....	6
One fourth finger at the distal joint.....	3
One leg at or near the hip joint as to preclude use of 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
Total deafness of one ear.....	35
Total deafness of second ear.....	115

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.

Sec. 6235. *Hernia*.—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.

Sec. 6236. *Malingering*.—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.

Sec. 6237. *Computation of wages*.—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 12 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 12 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. 6238. Voluntary payments.—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 chapter, 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.

SEC. 6239. Times of payments.—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.

SECS. 6240, 6241. Lump sums.—[If the board determines that it is for the best interest of all parties, awards may be commuted to one or more lump sums, not exceeding the present worth computed at 4 per cent true discount, compounded annually. Life expectancies are to be determined according to the American experience table of mortality, but lump sums allowed a widow or widower shall not exceed 100 weeks' compensation, and shall not be commuted except at her or his request. If the board deems it expedient, it may secure the appointment of a trustee to whom the lump sum may be paid, to be administered as the board may provide.]

ARTICLE 4

SECTION 6242. Medical examinations.—[During the period of disability the injured workman must, if requested by the employer or ordered by the board, submit to a medical examination at reasonable times and places. He may have his own physician present. Refusal or obstruction to an examination bars compensation for the period of such refusal or obstruction. Compensation may also be suspended or reduced if sanitary or unreasonable practices tending to prevent or retard recovery are practiced.]

SECS. 6243-6247. Notice and claim.—[Notice of injury must be given as soon as practicable after its occurrence, and claims submitted within one year after date of injury or death, the latter whether compensation has been claimed or not. Ordinary language is required and lack of accuracy not in effect misleading does not invalidate. Notice and claim must be in writing signed by the claimant or person in his behalf and may be rendered in person or by registered letter. Limitations do not run against minors or mentally incompetents so long as there is no committee, guardian or next friend.]

ARTICLE 5

SECTIONS 6248-6260. Industrial accident board.—[A board of three members, to be appointed by the governor and approved by the senate, serves for terms of six years. Employers and employees are to be represented, and not more than two members of the board shall belong to the same political party. One term expires every two years. The salary is \$3,000. The board organizes itself, a majority being a quorum. It has a seal and office in the capital, may employ necessary assistants and employees and is to provide necessary forms, publish and distribute an annual report and other reports and bulletins as deemed advisable, and should be represented in its proceedings by the attorney general of the State.]

ARTICLE 6

SECTIONS 6261, 6262, 6263 (as amended 1921, ch. 217), **6265** (as amended 1921, ch. 217), **6266, 6268** (as amended 1921, ch. 217), **6269, 6270, 6270A** (added 1921, ch. 217), **6271** (amended 1921, ch. 217), **6272** (amended 1921, ch. 217),

6272A (added 1921, ch. 217), 6273, 6274. *Procedure.*—[The board or any member may subpoena witnesses, administer oaths, examine books and records, enforcement being by the district court by proper proceedings. Process and procedure are to be summary and simple, following the rules of equity. Approved agreements have the same force and effect as awards. In the absence of agreement, hearing by a member of the board is provided for, the same to be held in a convenient place within the county where the accident occurred. The findings of fact, rulings of law, and a transcript of the evidence are to be filed with the board by the member holding the hearing. In the absence of claim for review the provision is enforceable the same as a decision of the board. An impartial physician may be appointed by the board or any member to examine the injured employee and report. The fee is fixed at \$10 and traveling expenses, but reasonable amounts may be added in extraordinary cases. Such costs are to be paid by the State, but either party may, at his own cost, have his own physician present.]

A claim for review must be filed within 30 days, whereupon the board shall hear the parties and may revise the decision of the member or refer it back to him for further findings of fact. Second hearings on questions of fact are not allowed as a matter of right. The board may also review any agreement or award on the ground of change in conditions, or on its own motion or on the application of either party, but not oftener than once in six months. Awards are final and conclusive unless within 30 days either party appeals to the district court, whose jurisdiction is limited to a review of the questions of law. Such appeal is taken by filing with the board and with the clerk of the court a notice of appeal, with notice also to the adverse party or his attorney. Within 10 days the board files a transcript of the evidence and the case thereafter shall be tried by the court, a record of the case to be transmitted to the board within 20 days after any order or judgment of the court unless appealed from, or of a memorandum of agreement approved by the board entitles the party to a decree without notice which shall have the same effect as a judgment of the court. In case of proceedings brought, prosecuted, or defended without reasonable ground, the offending party may be charged with the whole cost of the proceedings. If an employer appeals a case involving compensation, and the court finds in favor of the employee in an amount equal to or greater than the award of the board, interest shall be added on the whole amount of the judgment at 7 per cent per annum from the date of the award by the board; but if the award is reduced, interest is not required until the date of final judgment of the court. The same rule applies where the employee or his dependents made the appeal. Changes in awards must be filed with the district court which shall modify its prior decree or judgment so as to conform thereto.]

SEC. 6275. *Injuries outside of State.*—If a workman who has been hired in this State receives personal injury by accident arising out of and in the course of such employment, he shall be entitled to compensation according to the law of this State even though such injury was received outside of this State.

If a workman who has been hired outside of this State is injured while engaged in his employer's business, and is entitled to compensation for such injury under the law of the State where he was hired, he shall be entitled to enforce against his employer his rights in this State if his rights are such that they can reasonably be determined and dealt with by the board and the courts in this State.

ARTICLE 7

SECTIONS 6276, 6277. *Status of awards.*—[Rights to compensation under this chapter have the same preference or priority as unpaid wages, and are not assignable and are exempt from claims of creditors. Claims of attorneys and physicians are subject to the approval of the board.]

ARTICLE 8

SECTIONS 6278-6280, 6281 (as amended 1921, ch. 217), 6281A (added 1921; ch. 217), 6281B (added 1921, ch. 217), 6282-6287. *Security of payments.*—[Private employers must secure compensation by insurance in the State insurance fund or deposit satisfactory security; if the latter, notice of the security must be filed with the State insurance manager in a form prescribed by the board. Notice of compliance must be posted conspicuously in and about the place of the employer's business. Failure to comply with the requirement as to security is a misdemeanor punishable by fine or imprisonment, or both.]

Insurance policies and guarantee contracts must cover the entire liability of the employer and give to the employees a right to enforce their claims directly, notice to the employer being also notice to the insurer, who accepts the jurisdiction of the employer as to orders, findings, and awards. The policy must also provide that insolvency or bankruptcy of an employer does not discharge the surety as to liabilities accruing during the life of the policy or contract. Ten days' notice of cancellation is required. Insurance costs for municipalities are considered part of the ordinary and necessary expenses of the corporation.

No agreement by which an employee is to pay any portion of the premiums of insurance or to contribute to a benefit fund, except as authorized by the board, or the cost of security to guarantee compensation payments is valid.]

SEC. 6287A (added 1921, ch. 217). *Contractors, etc.*—An employer subject to the provisions of this act shall be liable for compensation to an employee of a contractor or subcontractor under him or who has not complied with the provisions of section 6278 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 the contractor or subcontractor for whom the employee was working at the time of the accident. Section 6287A shall be in force as to all contracts made subsequent to March 15, 1921.

ARTICLE 9

SECTION 6288 (as amended 1921, ch. 104). *State insurance fund.*—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 law. Such fund shall consist of all premiums and penalties received and paid into the fund, of property and securities acquired by and through the use of moneys belonging to the fund, and of interest earned upon moneys belonging to the fund and deposited or invested as herein provided.

Such fund shall be administered by the department of finance without liability on the part 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 article.

SECS. 6289-6296 (all as amended 1921, ch. 104). *Duties of department of finance.*—[The department of finance is vested with full authority over the State insurance fund, determines the rates to be charged, and may conduct all business in relation thereto. The department may sue in its official name and be sued in the State courts, may make contract of insurance and employ necessary assistants, experts, accountants, clerks, etc. No personal liability will be incurred for or on account of any act performed or contract entered into in an official capacity in good faith and without intent to defraud. The department may act through proper deputies and delegate to them such powers as are deemed necessary or expedient, including the making of contract of insurance, making agreements as to the settlements of claims subject to the approval of the industrial accident board, and contracting with physicians, surgeons, and hospitals for medical and surgical treatment and care of injured persons entitled to compensation from the fund.]

SEC. 6297. *Custody.*—[The State treasurer is custodian of the fund, giving separate bond, and making payments on warrants or vouchers authorized and signed by the proper authorities. Portions of the fund not needed for immediate use may be deposited, interest earned to be placed to the credit of the fund.]

SEC. 6298 (as amended 1921, ch. 104).¹ *Surplus and reserve.*—Ten per centum of the premiums collected from employers insured in the fund shall be set aside by the department of finance for the creation of a surplus until

¹ This act amends the administrative law of the State, abolishing the department of commerce and industry and transferring its duties to a newly created department of finance. The substitution is made in subsequent sections without reference to this amending act.

such surplus shall amount to the sum of \$100,000, and thereafter 5 per centum of such premiums, until such time as in the judgment of the department such surplus shall be sufficiently large to cover the catastrophe hazard and all other unanticipated losses. The department shall also set up and maintain a reserve adequate to meet anticipated losses and carry all claims and policies to maturity.

SEC. 6299 (as amended 1925, ch. 129). *Investments*.—[This section specifies the nature of investments that may be made with any surplus or reserve fund belonging to the State insurance fund, as United States bonds and those issued by Federal farm loan banks or warrants of the State, and its municipalities, other States and their municipalities and first mortgage security on Idaho real estate.]

SEC. 6301. *Classifications*.—Employments insured in the State insurance fund shall be divided by the department of finance, 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 department of finance 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 employment to set up new classes in its discretion. The department of finance 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.

SEC. 6302. *Separate accounts*.—The department of finance 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.

SECS. 6303-6307. *Dividends; premiums; policies*.—[Annually, and at such other times as the department may determine, a readjustment of rates shall be made, and any balance to any class may be credited to the individual members of such class. If the premiums fixed have been too small, added assessments may be made, payable 30 days after notice. Premiums based on estimated pay roll expenditures are subject to readjustment at the end of the period for which the estimate was made.

Employers receive policies of insurance from the department of finance, on which premium payments are to be made semiannually, or at such times as may be prescribed. If an employer is in default the amount due may be collected in a civil action in the name of the State or of the department, and the date of such payment shall be the date of the employer's compliance with the law. Default for 10 days entails liability to a penalty of \$1 per day for each employee, which penalty may be waived in the discretion of the department, for good cause shown, if the employer pays the premium.]

SEC. 6308 (as amended 1921, ch. 217). *Withdrawals*.—[Employers not in arrears may withdraw from the fund by depositing satisfactory security for the payment of compensation that may become due; but payments must continue until all liabilities are terminated.]

SEC. 6309. *Reinsurance*.—The department of finance 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.

SECS. 6310-6314. *Duty of employers; inspections*.—[Employers in the State fund must keep accurate records of employees and wages paid, and, on demand, furnish a sworn statement of the same to the department of finance. Such records and the plants of employers may be inspected to verify such statements. Falsification entails a penalty of ten times the difference between the premium paid and the amount that should have been paid, to be

collected in a civil action in the name of the State. Willful misrepresentation is a misdemeanor.

Information acquired by the department in pursuance of the provisions of this chapter is not to be open to public inspection, and unlawful disclosure is a misdemeanor.]

SEC. 6315. *Payment of compensation.*—[Payments from the treasury are to be made on approved monthly estimates as to current expenditures.]

SEC. 6316. *Public corporations.*—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.

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SEC. 6317. *Reports of accidents.*—[Employers are to keep a record of all injuries to their employees received in the course of employment, and report the same within 48 hours, not including Sundays and holidays, if they cause absence from work of one day or more. A supplemental report is to be made on the termination of disability, or within 60 days if still disabled, with a final report on recovery. Prescribed data are to be presented in such reports, with such other information as the board may require. Within 60 days after the termination of disability a report must be filed with the board showing the total payments made or to be made for compensation and medical services.]

SEC. 6317A (added 1921, ch. 217). *Names of employers.*—[The department of finance is required to file monthly a list of all employers insured in the State fund during the calendar month preceding.]

SEC. 6317B (added 1921, ch. 217). *Employers' reports.*—[Employers under the act are to make semiannual reports of the average number of employees on their pay roll.]

SEC. 6318. *Interstate commerce.*—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.

SEC. 6319. *Definitions.*—In this chapter, unless the context otherwise requires, words and phrases shall have the meanings defined in the sections following.

SEC. 6320. *Employer.*—“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.

SEC. 6321 (as amended 1921, ch. 217). *Workman.*—“Workman” is used as synonymous with “employee” and means any person who has entered into the employment of, or works under contract of service or apprenticeship with, an employer. It does not include any person engaged in any of the excepted employments enumerated in section 6216, unless an agreement as provided in said section is in force between employer and employee making the provisions hereof applicable. 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 chapter, but in the event of a lump-sum payment becoming due under this chapter 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.

SEC. 6322. *Outworkers.*—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.

SEC. 6323. *Injury.*—“Injury” or “personal injury” includes death resulting from injury within two years.

SEC. 6324. *Scope.*—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.

SEC. 6325. *Employment.*—"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 6216 when the employer and the employee shall have elected to come under the chapter as in said section provided.

SEC. 6326. *Board.*—The word "board," whenever used in this chapter, unless the context shows otherwise, shall be taken to mean the industrial accident board.

SEC. 6327. *Partial disability.*—"Partial disability." Diminished ability to obtain employment owing to disfigurement resulting from an injury may be held to constitute partial disability.

SEC. 6328. *Wages.*—"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.

SEC. 6329. *Surety.*—"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.

SEC. 6330. *Number and sex.*—Any terms shall include the singular and both sexes where the context so requires.

SEC. 6331. *Provisions severable.*—If any part or section 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 which can be given effect without the part so decided to be unconstitutional or invalid.

SEC. 6332. *False statements.*—If for the purpose of obtaining any benefit or payment under the provisions of this chapter, 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 chapter after conviction for such offense.

SEC. 6333. *Prior injuries.*—The provisions of this chapter shall not apply to injuries sustained, or accidents which occur, prior to the taking effect hereof.

SEC. 6334. *Construction.*—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.

SEC. 6335. *Appropriation.*—For the purpose of carrying out article 9 of this chapter there is hereby appropriated out of the funds in the State treasury not otherwise appropriated, the sum of \$20,000 or so much thereof as may be necessary to be placed in the State insurance fund and to be refunded as provided in section 6300 of this act. There is also hereby appropriated out of the funds in the State treasury not otherwise appropriated the sum of \$15,000, or so much thereof as may be necessary, to be placed in the industrial administration fund.

SEC. 6336. *Title.*—This chapter may be cited as the workman's compensation law.

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Workmen's Compensation Act

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SECTION 1 (as amended 1917, p. 505; 1921, p. 446). *Employer's election.*—An employer in this State, who does not come within the classes enumerated by section 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 until January 1 of the next succeeding year and for terms of each year thereafter: *Provided*, Any such employer who may have once elected, may elect not to provide and pay the compensation herein provided for accidents resulting in either injury or death and occurring after the expiration of any such calendar year by filing notice of such election with the industrial board at least 60 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 employees, at least 60 days prior to the expiration of any such calendar year.

(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 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 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.

(d) Any such employer or employees may, without prejudice to any existing right or claim, withdraw his election to reject this act by giving 30 days' written notice in such manner and form as may be provided by the industrial board.

SEC. 2. [Repealed.]

SEC. 3. (as amended 1925, p. 378). *Application of the act.*—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 all their employees engaged in any department of the following enterprises or businesses which are declared to be extra hazardous, 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, water, or aerial service 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 or 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.

7½. Any enterprise in which sharp-edged cutting tools, grinders, or implements are used, except as provided in subparagraph 8 of this section.

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 anyone 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 1917, p. 490). *Pleadings*.—(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.

(b) A certificate of the fact of the filing by an employer of the notice of nonelection provided in section 2 and of the nonwithdrawal thereof shall be prima facie proof in any action mentioned in section 3 of the fact of the filing of such notice of nonelection and of the nonwithdrawal thereof. Such certificate may be under the seal of the industrial board and signed by any member or the secretary thereof, of which seal and signature as such officer the court shall take judicial notice. Said certificate may be in substantially the following form:

This is to certify that the attached is a correct copy of notice filed with the industrial board by _____ on the _____ day of _____, 19____, electing not to provide and pay compensation according to the provisions of the workmen's compensation act of Illinois, and that the original of said notice is now on file in the office of the industrial board and has not been withdrawn since the date of the filing thereof.

In witness whereof this certificate has been subscribed and the seal of the industrial board affixed this _____ day of _____, 19____.

of Industrial Board.

SEC. 4 (as amended 1917, p. 505). *Employers*.—The term "employer" as used in this act shall be construed to be:

First. The State and each county, city, town, township, incorporated village, school district, body politic, or municipal corporation therein.

Second. Every person, firm, public or private corporation, including hospitals, public service, eleemosynary, religious, or charitable corporations or associations who has any person in service or under any contract for hire, express or implied, oral or written, and who is engaged in any of the enterprises or businesses enumerated in section 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.

SEC. 5 (as amended 1925, p. 378). *Employees defined*.—The term "employee" as used in this act, shall be construed to mean:

First. Every person in the service of the State, county, city, town, township, incorporated village, 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 and except any duly appointed member of the fire department in any city whose population exceeds 200,000 according to the last Federal or State census: *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 such pension or benefit as is in excess of the amount of compensation recovered and received by such employee, his personal representative, beneficiaries or heirs under this act. *And, provided, further*, That one employed by a contractor who has contracted with the State, or a county, city, town, township, incorporated village school district, body politic or municipal corporation, therein, through its representatives, shall not be considered as an employee of the State, county, city, town, township, incorporated village, school district, body politic or municipal corporation which made the contract.

Second. Every person in the service of another under any contract of hire, express or implied, oral or written, including persons whose employment is outside of the State of Illinois, where the contract of hire is made within the State of Illinois, and 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.

SEC. 6. *Suits abolished.*—No common law or statutory right to recover damages for injury or death sustained by an 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.

SEC. 7 (as amended 1925, p. 378). *Compensation for death.*—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 \$1,650 and not more in any event than \$3,750. 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 \$1,650, and not more in any event than \$3,750. Any compensation payments other than necessary medical, surgical, or hospital fees or services shall be deducted in ascertaining the amount payable on death.

(c) If no amount is payable under paragraphs (a) or (b) of this section and 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 \$1,650 and not more in any event than \$3,750. 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 pro-

vided 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. Any compensation payments other than necessary medical, surgical, or hospital fees or services shall be deducted in ascertaining the amounts payable on death.

(c) If no amount is payable under paragraphs (a), (b), (e), or (d) of this section, a sum not to exceed \$150 for burial expenses to be paid by the employer to the undertaker or to the person or persons incurring the expense of burial, and the further sum of \$500 which shall be paid into a special fund, of which the State treasurer shall be ex-officio custodian, such special fund to be held and disbursed for the purposes hereinafter stated in paragraph (f) of section 8, either upon the order of the industrial commission or of a competent court.

(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 the percentage of the average earnings as provided for in section 8 of this act, at the same intervals at which the wages or earnings of the employees 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 person 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 \$1,650 is provided, such minimum shall be increased in the following cases to the following amounts:

Two thousand dollars in case of one child under the age of 16 years at the time of the death of the employee.

Two thousand one hundred dollars in case of two or more children under the age of 16 years at the time of the death of the employee.

2. Whenever in paragraph (a) of this section a maximum of \$3,750 is provided, such maximum shall be increased in the following cases to the following amounts:

Four thousand one hundred dollars in cases of one child under the age of 16 years at the time of the death of the employee.

Four thousand three hundred fifty dollars in case of two or more children under the age of 16 years at the time of the death of the employee.

SEC. 8 (as amended 1925, p. 378). *Nonfatal injuries*.—The amount of compensation which shall be paid to the employee for an injury not resulting in death shall be:

(a) The employer shall provide the necessary first-aid medical and surgical services, and all necessary medical, surgical, and hospital services thereafter, limited, however, to that which is reasonably required to cure or relieve from the effects of the injury. The employee may elect to secure his own physician, surgeon, and hospital services at his own expense. Any injury resulting in the amputation of an arm, hand, leg, or foot, or the enucleation of an eye, the employer shall furnish an artificial of any such member lost in accidental injury arising out of and in the course of the employment, and shall also

furnish the necessary braces in all proper and necessary cases, provided the furnishing by the employer of any such services or appliances shall not be construed to admit liability on the part of the employer to pay compensation, and the furnishing of any such services or appliances by the employer shall not be construed as the payment of compensation.

(b) If the period of temporary total incapacity for work lasts more than six working-days, compensation equal to 50 per cent of the earnings, but not less than \$7.50 nor more than \$14 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 the 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.

(c) For any serious and permanent disfigurement to the hand, head, or face, the employee shall be entitled to compensation for such disfigurement, the amount fixed by agreement or by arbitration in accordance with the provisions of this act, which amount shall not exceed one-quarter of the amount of the compensation which would have been payable as a death benefit under paragraph (a), section 7, if the employee had died as a result of the injury at the time thereof, leaving heirs surviving, as provided in said paragraph (a), section 7: *Provided*, That no compensation shall be payable under this paragraph where compensation is payable under paragraph (d), (e), or (f) of this section: *And provided further*, That when the disfigurement is to the hand, head, or face, as a result of any injury, for which injury compensation is not payable under paragraph (d), (e), or (f) of this section, compensation for such disfigurement may be had under this paragraph.

(d) If, after the injury has been sustained, the employee as a result thereof becomes partially incapacitated from pursuing his usual and customary line of employment, he shall, except in the cases covered by the specific schedule set forth in paragraph (e) of this section, receive compensation, subject to the limitations as to time and maximum amounts fixed in paragraphs (b) and (h) of this section, equal to 50 per cent of the difference between the average amount which he earned before the accident and the average amount which he is earning or is able to earn in some suitable employment or business after the accident.

(d-1) An injured employee, to be entitled to compensation for hernia, must prove:

1. The hernia was of recent origin;
2. Its appearance was accompanied by pain;
3. That it was immediately preceded by trauma arising out of and in the course of the employment;
4. That the hernia did not exist prior to the injury.

(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, 50 per cent of the average weekly wage during 66 weeks.

2. For the loss of a first finger, commonly called the index finger, or the permanent and complete loss of its use, 50 per cent of the average weekly wage during 39 weeks.

3. For the loss of a second finger, or the permanent and complete loss of its use, 50 per cent of the average weekly wage during 33 weeks.

4. For the loss of a third finger, or the permanent and complete loss of its use, 50 per cent of the average weekly wage during 22 weeks.

5. For the loss of a fourth finger, commonly called the little finger, or the permanent and complete loss of its use, 50 per cent of the average weekly wage during 16 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, 50 per cent of the average weekly wage during 33 weeks.

9. For the loss of one toe other than the great toe, 50 per cent of the average weekly wage during 11 weeks, and for the additional loss of one or more toes other than the great toe, 50 per cent of the average weekly wage during an additional 11 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, 50 per cent of the average weekly wage during 165 weeks.

13. For the loss of an arm, or the permanent and complete loss of its use, 50 per cent of the average weekly wage during 220 weeks.

14. For the loss of a foot, or the permanent and complete loss of its use, 50 per cent of the average weekly wage during 135 weeks.

15. For the loss of a leg, or the permanent and complete loss of its use, 50 per cent of the average weekly wage during 180 weeks.

16. For the loss of the sight of an eye, or for the permanent and complete loss of its use, 50 per cent of the average weekly wage during 110 weeks.

17. For the permanent partial loss of use of a member or sight of an eye, 50 per cent of the average weekly wage during that portion of the number of weeks in the foregoing schedule provided for the loss of such member or sight of an eye which the partial loss of use thereof bears to the total loss of use of such member 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, suffered in one accident, or the permanent and complete loss of use thereof, suffered in one accident, 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: *Provided further,* That any employee who has in a previous and independent accident suffered the loss or permanent and complete loss of the use of any one of said members, and in a subsequent independent accident loses another or suffers the permanent and complete loss of the use of any one of said members, the employer for whom the injured employee is working at the time of said last independent accident shall be liable to pay compensation only for the loss or permanent and complete loss of the use of the member occasioned by said last independent accident.

(f) In case of complete disability, which renders the employee wholly and permanently incapable of work, compensation equal to 50 per cent of his earnings but not less than \$7.50 nor more than \$14 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: *Provided,* Any employee who receives an award under this paragraph and afterwards returns to work, or is able to do so, and who earns or is able to earn as much as before the injury, payments under such award shall cease; if such employee returns to work, or is able to return to do so and earns or is able to earn part but not as much as before the injury, such award shall be modified so as to conform to an award under paragraph (d) of this section: *Provided further,* That disability as enumerated in subdivision 18, paragraph (e) of this section shall be considered complete disability. If an employee who had previously incurred

loss or the permanent and complete loss of the use of one member, through the loss or the permanent and complete loss of the use of one hand, one arm, one foot, one leg, or one eye, incurs permanent and complete disability through the loss or the permanent and complete loss of the use of another member, he shall receive, in addition to the compensation payable by the employer and after such payments have ceased, an amount from the special fund provided for in paragraph (e) of section 7, which, together with the compensation payable from the employer in whose employ he was when the last injury was incurred, will equal the amount payable for permanent and complete disability as provided in this paragraph of this section.

(g) In case death occurs as a result of the injury before the total of the payments made equals the amount payable as a death benefit, then in case the employee leaves any widow, child or children, parents, grandparents, or other lineal heirs, entitled to compensation under section 7, the difference between the compensation for death and the sum of the payments made to the employee, shall be paid 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.

(h) In no event shall the compensation to be paid exceed 50 per cent of the average weekly wage, or exceed \$14 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.

(i) 1. All compensation provided for in paragraphs (b), (c), (d), (e), and (f) of this section, other than in case 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:

2. *Provided*, That any payments of compensation by the employer to an injured employee prior to the filing of application for adjustment of claim, shall not be construed against the employer as admitting liability to pay compensation; and

3. *Provided, further*, That all compensation payments named and provided for in paragraphs (b), (c), (d), (e), and (f) of this section, shall mean and be defined to be for injuries and only such injuries as are proven by competent evidence, of which there are or have been objective conditions or symptoms proven, not within the physical or mental control of the injured employee himself.

(j) 1. Wherever in this section there is a provision for 50 per cent, such per cent shall be increased 5 per cent for each child of the employee, including children who have been legally adopted, under 16 years of age at the time of the injury to the employee until such per cent shall reach a maximum of 65 per cent.

2. Wherever in this section a weekly minimum of \$7.50 is provided, such minimum shall be increased in the following cases to the following amounts:

Eleven dollars in case of an employee having one child under the age of 16 years at the time of the injury to the employee;

Twelve dollars in case of an employee having two children under the age of 16 years at the time of the injury to the employee;

Thirteen dollars in case of an employee having three children under the age of 16 years at the time of the injury to the employee;

Fourteen dollars in case of an employee having four 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 \$14 is provided, such maximum shall be increased in the following cases to the following amount:

Fifteen dollars in case of an employee with one child under the age of 16 years at the time of the injury to the employee.

Sixteen dollars in case of an employee with two children under the age of 16 years at the time of the injury to the employee.

Eighteen dollars in case of an employee with three children under the age of 16 years at the time of the injury to the employee.

Nineteen dollars in case of an employee with four or more children under the age of 16 years at the time of the injury to the employee.

SEC. 9 (as amended 1915, p. 400). *Lump sums.*—[If it appears to be to the interest of the parties, the board may, on application, after hearing, commute future payments on a basis of their present worth calculated at interest of 3 per cent per annum with annual rests; but in cases of complete disability, no petition for commutation will be entertained until after the expiration of six months from the date of the injury. Arrangements may be made for the appointment of a conservator or guardian of a person under disability. Either party may reject a lump sum award except an award under section 7 or paragraph (e) of section 8.]

SEC. 10. *Basis for computing compensation.*—The basis for computing the compensation provided for in sections 7 and 8 of the act shall be as follows:

(a) The compensation shall be computed on the basis of the annual earnings which the injured person received as salary, wages, or earnings if in the employment of the same employer continuously during the year next preceding the injury.

(b) Employment by the same employer shall be taken to mean employment by the same employer in the grade in which the employee was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause.

(c) If the injured person has not been engaged in the employment of the same employer for the full year immediately preceding the accident, the compensation shall be computed according to the annual earnings which persons of the same class in the same employment and same location, (or if that be impracticable, of neighboring employment 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 three hundred 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 1917, p. 505). *Responsibility of employer.*—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 3 of this act, or of any employer who is not engaged in any such enterprises or businesses, but who has elected to provide and pay compensation for accidental injuries sustained by any employee arising out of and in the course of the employment according to the 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.

SEC. 12. *Medical examination.*—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 any time and place reasonably convenient for the employee, 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: *Provided, further,* That such examination shall not be made on the day of the hearing. 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, or 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. [As amended 1925, p. 378.]

SECS. 13 (as amended 1917, p. 505), 14 (both as amended 1925, p. 378), 15, 16 (as amended 1925, p. 378), 17, 18. *Industrial board.*—[A board of five members, two representing the employing class, two representing employees, and one a representative citizen identified with neither class who shall act as chairman, is to be appointed by the governor by and with the consent of the senate. The salaries are to be \$6,000 per year, the chairman receiving \$7,500. A secretary, arbitrator, and such assistants and clerical help as may be necessary may be appointed by the commission. The board has jurisdiction over the operation and administration of the act, and may make rules and orders, summon witnesses, administer oaths, require the production of books, papers, and records, and secure punishment for contempt on application to the county court. It also has the power to fix attorneys' and physicians' fees, and hospital costs. It is to print and furnish free of charge upon request such blank forms as are necessary for the efficient administration of the act and keep records of employers and employees who file notices of declination or withdrawal; also of proceedings and awards by the board or by arbitration committees, all such records to be kept in the office of the board. All questions under the act if not settled by agreement are to be determined by the board except as otherwise provided.]

SEC. 19 (as amended 1925, p. 378). *Arbitration.*—[On notification that the parties have failed to reach an agreement, the industrial commission designates an arbitrator, unless in case of permanent disability or death, then either party may procure the determination by a committee of arbitration on which each party is to be represented by its appointee, the commission to designate an arbitrator to act as chairman. The party filing a petition for a committee of arbitration must deposit with the commission the sum of \$20 to be paid to the arbitrators for their services. If no such deposit is made, the election for a committee is void and an arbitrator designated by the commission will act. The arbitrator or committee is to make necessary inquiries and investigations, hear evidence, and file its decision with the industrial commission, which notifies the parties or their attorneys thereof, sending a copy of the same. Unless a petition of review is filed within 15 days after such notification, and within 20 days (or 30 days if the commission allows) a statement of facts is submitted the decision becomes a decision of the commission, and in the absence of fraud is conclusive. The commission may appoint an impartial physician to examine and report on the condition of the injured employee, for which service not more than \$5 will be allowed except in extraordinary cases. Attorneys' and physicians' fees are, upon the request of any party in interest, subject to review by the commission.]

Persistence in unsanitary or injurious practices tending to imperil or retard recovery or rejection of medical, etc., treatment necessary to promote recovery gives the commission power to reduce or suspend compensation.

If the petition for review is properly submitted, the commission considers questions of both law and fact, and such additional evidence as the parties may submit. Hearings may be had at such places as seem advisable, due notice being given of places of taking testimony and hearing arguments. Decisions of the commission acting within its powers and in accordance with prescribed procedure are, in the absence of fraud, conclusive unless by a writ of certiorari the circuit court brings up the claim for review on questions of law and fact presented in the record, no additional evidence to be heard. Findings of the commission are not to be set aside unless contrary to the manifest weight of the evidence except where the decision of the arbitrator or the committee of arbitrators has become automatically the decision of the commission. Provisions for prompt action and due notice to the parties are made. The writ is not to issue in the absence of a bond conditioned to pay the award if the writ be unsuccessfully prosecuted. Decisions may be confirmed, set aside, or remanded to the commission. Judgments and orders of the circuit court may be reviewed only by the supreme court on a writ of error.

On presentation of a certified copy of a decision of the industrial commission, against which no proceedings for review have been taken, to the circuit court of the county, such court shall render judgment in accordance therewith, and unless proceedings for review are taken, the court may enter judgment, taxing costs, with the same effect as though the judgment were rendered in an action by the court. Awards for continuing payments may be reviewed at any time within 18 months after the agreement or award on grounds of change of physical condition, 15 days' notice of hearing being required. Added time is allowed for attendance from a distance, together with travel costs. This provision for review does not apply where lump-sum settlements have been made.

In case of the death of an employee during proceedings, the testimony taken may be subsequently introduced with the same force and effect as though he were present testifying in person. If unreasonable or vexatious delay of payments or intentional underpayment or frivolous conditions appear to have been made, the commission may award additional compensation equal to 50 per cent of the normal amount payable.]

SEC. 20. *Reports.*—[Annual reports to the governor covering the details and results of the administration of the act are required, and such other bulletins and reports as the board deems advisable.]

SEC. 21 (as amended 1919, p. 538). *Exemption, etc., of payments.*—No payment, claim, award, or decision under this act shall be assignable or subject to any lien, attachment, or garnishment, or be held liable in any way for any lien, debt, penalty, or damages. 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.

SEC. 22. *Agreements within seven days.*—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.

SEC. 23. *Waivers.*—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.

SEC. 24 (as amended 1919, p. 538; 1921, p. 446; 1925, p. 373). *Notice; claim.*—[Notice of action must be given to the employer, as soon as practicable, not later than 30 days, or in cases of hernia not less than 15 days after the accident. In case of mental incapacity, six months is allowed. Claim must be submitted within six months after the accident, or if payments have been made, within six months after their cessation. The bar is absolute unless a written claim for compensation is filed within one year after the date of the injury or at the date of the last payment of compensation.]

SEC. 25 (as amended 1921, p. 446). *Release from liability.*—[An employer may be relieved from liability under an order of the industrial commission by depositing the commuted value of the total unpaid compensation computed at its present worth at 3 per cent per annum in some approved depository, or by purchasing an annuity for the proper amount.]

SEC. 26 (as amended 1919, p. 538). *Security.*—[Employers under the act must furnish proof of financial ability to pay compensation, furnish security, indemnity or both, insure their liability in some authorized organization or corporation, or make other provision for securing payment. Evidence of compliance with the foregoing may be required as often as the commission thinks necessary. If an insurer is found to be insolvent or financially unsound, or practices a policy of delay or unfairness in the adjustment of payments of benefits, the commission may, after reasonable notice and hearing, order it to discontinue writing workmen's compensation insurance in the State. Such order is subject to review by the courts. Failure on the part of an employer to comply with the provisions of this section is punishable by a fine for each day's failure or neglect of not less than \$1 nor more than \$50 per day.]

SEC. 27. *Existing and additional insurance.*—[This act is not to affect or disturb existing forms of insurance or benefits, nor prevent the organization of mutual aid, benefit, or relief associations among employees, nor are such existing mutual associations or departments to be discontinued without first discharging the obligations thereunder. No wages may be withheld as premium payments.]

SEC. 28 (as amended 1919, p. 538). *Direct liability.*—[In case of employer's failure to pay the compensation for which he is liable, his insurer becomes primarily liable to pay to the employee, his personal representative, or beneficiary, the compensation provided by the act to be paid by the employer.]

SEC. 29 (as amended 1917, p. 505). *Liability of third party.*—[Where the injury occurs under circumstances involving the liability of a third party, if such party is an employer under the act, he becomes liable to the injured workman in an amount not exceeding the compensation payable under the act; but if the third party was not under the act, a suit for damages may be instituted, and on recovery of any judgment, the employer is to be reimbursed to the extent of any compensation paid by him for the injury; but where the employee or his personal representative accepts compensation or proceeds therefor against the employer, the latter becomes subrogated to all rights against such third party, or may continue an action already instituted, but from any recovery made by him, the excess over the outlay in compensation and costs goes to the injured man or his personal representative.]

SEC. 30. *Reports of accidents.*—[Employers are to make immediate report of all accidental injuries to their employees resulting in death, and monthly reports of all accidental injuries on which compensation has been paid. If permanent disability results, a further report must be made as soon as its nature is determined. Prescribed details are to be given as to the nature of the injury, term of disability, wages, compensation paid, and other items of cost.]

SEC. 31 (as amended 1919, p. 538). *Contractors.*—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.

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.

Sec. 32 (as amended 1919, p. 505). *Constitutionality; current cases.*—[This section provides for possible findings of unconstitutionality, existing claims, etc.]

Sec. 33. *Penalties.*—[Willful noncompliance with the terms of the act or its administration is a misdemeanor.]

Sec. 33½ (added 1915, p. 400). *Title.*—This act may be cited as the Workmen's compensation act.

Sec. 34. *Provisions severable.*—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.

Occupational diseases

[An act of 1911, page 330, enumerates certain dangerous processes of manufacture and labor, requiring protective devices, medical examinations, and factory equipment adapted to the circumstances. A right of action for injuries to health caused by violation of these provisions was given.

As amended in 1923, page 351, compensation is payable for the disability or death by occupational disease of any person employed in the occupations covered by the act, in the same manner as provided for accidental injuries.

The occupations covered are those involving the use or handling of lead in its various forms, including smelting; also the smelting of zinc or use of Paris green.]

INDIANA
ACTS OF 1915

CHAPTER 106.—*Compensation of workmen for injuries*

PART I

SECTION 1. *Title.*—This act shall be known as “The Indiana workmen’s compensation act.”

Sec. 2 (as amended, 1917, ch. 165). *Acceptance presumed.*—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.

Sec. 3. *Waiver.*—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.

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. *Contracts of service.*—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.

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, 1919, ch. 57). *Insurance.*—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.

Sec. 6. *Remedy.*—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 repre-

sentatives, dependents, or next of kin, at common law or otherwise on account of such injury or death.

Sec. 7. *Violation of statute.*—Nothing in this act shall be construed to relieve any employer or employee from penalty for failure or neglect to perform any statutory duty.

Sec. 8 (as amended 1919, ch. 57). *Willful misconduct, etc.*—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.

Sec. 9 (as amended 1919, ch. 57). *Exemptions.*—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.

Sec. 10. *Defenses abrogated.*—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.

Sec. 11. *Employee rejecting act.*—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.

Sec. 12. *Rejection by both parties.*—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.

Sec. 13 (as amended 1919, ch. 57). *Liability of third persons.*—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.

Sec. 14 (as amended 1919, ch. 57). *Principals and contractors.*—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 employe 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 1919, ch. 57). *Waivers.*—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. *Preferences.*—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. *Assignments, etc.*—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 1919, ch. 57). *Public employments.*—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 employes thereof.

SEC. 19. *Interstate commerce.*—That 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. *Injuries outside State.*—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. *Prior injuries.*—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

SECS. 22, 23 (both as amended 1919, ch. 57). *Notice.*—[Unless the employer or his representative has actual knowledge, notice of injury or death must be given as soon as practicable, and unless within 30 days, no compensation will be paid until notice is given or knowledge obtained. Lack of notice will not bar compensation unless the employer was prejudiced thereby, and then only to the extent of the prejudice. Notice is to be in writing, signed by the claimant or someone in his behalf, and may be delivered personally or sent by registered letter.]

SEC. 24. *Claim.*—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.

SEC. 25 (as amended 1919, ch. 57). *Medical, etc., aid.*—During the first 30 days after an injury the employer shall furnish or cause to be furnished free of charge to the injured employe 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.

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 30 days, the industrial board may require the employer to furnish such treatment for an additional period, not exceeding 30 days. The refusal of the employe 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.

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 30 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.

SEC. 26. *Charges.*—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.

SEC. 27. *Medical examination.*—[During disability the injured employee must submit to medical examination as requested by the employer or ordered by the board, and may have his own physician present. Facts coming to the knowledge of physicians who attend or examine such employees are not privileged. Refusal or obstruction of examination suspends compensation, and none will be paid for the period unless the board finds such refusal or obstruction justifiable. An autopsy may be had in any case of death, at the expense of the party requiring it.]

SEC. 28 (as amended 1917, ch. 81). *Waiting time.*—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 1917, ch. 81). *Total disability.*—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 55 per cent of his average weekly wages for a period of not to exceed 500 weeks.

SEC. 30 (as amended 1917, ch. 81). *Partial disability.*—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 300 weeks.

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 1919, ch. 57). *Schedule.*—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 55 per cent of his average weekly wages for the periods stated for said injuries respectively, to wit:

(a) Amputations: For the loss by separation, of the thumb 80 weeks, of the index finger 40 weeks, of the second finger 35 weeks, of the third or ring finger 30 weeks, of the fourth or little finger 20 weeks, of the hand by separation below the elbow joint 200 weeks, of the arm above the elbow joint 250 weeks, of the big toe 60 weeks, of the second toe 30 weeks, of the third toe 20 weeks, of the fourth toe 15 weeks, of the fifth or little toe 10 weeks, of the foot below the knee joint 150 weeks, and of the leg above the knee joint 200 weeks. The loss of more than one phalange of a thumb or toe shall be considered at 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 of 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.

(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, 500 weeks.

(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, 500 weeks.

(f) For the permanent loss of the sight of an eye or its reduction to one-tenth of normal vision with glasses, 150 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, 100 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 500 weeks.

(i) In all cases of permanent disfigurement, which may impair the future usefulness or opportunities of the employee, compensation, in the discretion of the industrial board, not exceeding 200 weeks.

(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 55 per cent of his average weekly wages for a period not to exceed 500 weeks.

(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 55 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 300 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.

(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.

Sec. 32. Refusing employment.—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.

Sec. 33. Subsequent injuries.—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.

Sec. 34. Double injury.—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.

Sec. 35. Two permanent injuries.—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.

Sec. 36. Death during compensation period.—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.

SEC. 37 (as amended, 1919, ch. 57). *Death benefits*.—When death results from the injury within 300 weeks, there shall be paid a weekly compensation equal to 55 per cent of the deceased's average weekly wages during such remaining part of 300 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 earnings 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 1919, ch. 57). *Dependents*.—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 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 18 years upon the parent with whom he or she is living at the time of the death of such parent.

(d) A child under 18 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 18 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 18 years of age.

SEC. 39 (as amended 1919, ch. 57). *Burial expenses*.—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 \$100.

SEC. 40. *Basic wages*.—In computing compensation under the foregoing sections the average weekly wages of an employee shall be considered not to be more than \$24 nor less than \$10: *And provided further*, That the total compensation payable under this act shall in no case exceed \$5,000.

SEC. 41. *Advance payments*.—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.

SEC. 42 (as amended 1919, ch. 57). *Time of payments*.—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.

SECS. 43 (as amended 1919, ch. 57), 44. *Lump sums*.—[After 26 weeks' compensation payments, in unusual cases, on agreement of the parties and approval of the board, remaining benefits may be redeemed in whole or in part in a lump sum, representing the present worth computed at 3 per cent interest, compounded annually. Compensation for permanently disabling injuries to a minor may be commuted at any time if the board so orders. Lump sums may be paid to trustees if the board thinks it expedient.]

SEC. 45 (as amended 1919, ch. 45). *Reviews*.—[The board has continuing jurisdiction over each case and may, on its own motion or application of either party, modify awards on account of change of condition, but not to effect past payments. Such power does not extend beyond one year after the termination of the compensation period originally fixed. The board may at any time correct clerical errors or mistakes of fact.]

SEC. 46 (as amended 1919, ch. 57). *Small awards*.—When the aggregate payments of compensation awarded by agreement or upon hearing to an employee or dependent under 18 years of age do not exceed \$100 the payment thereof may be made directly to such employee or dependent, except when the industrial board shall order otherwise.

Whenever the aggregate payments of compensation due to any person under 18 years of age exceed \$100 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 18 years of age or over may be made directly to such person.

SEC. 47 (as amended 1919, ch. 57). *Incompetents, etc.*—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.

SEC. 48 (as amended 1919, ch. 57). *Limitation*.—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.

SEC. 49. *Two or more employers*.—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

SECTIONS 50, 51 (both as amended 1919, ch. 57), 52-55, 56 (as amended 1919, ch. 57). *Industrial board*.—[An industrial board consisting of five members, two to be attorneys and not more than three to be of the same political party, is to be appointed by the governor. An attorney of recognized qualifications is to be chairman. Terms are four years and until successors are appointed and qualified, unless removed by the governor. Rotation is provided for. Members may be removed for incompetency, neglect of duty, or other good cause. Annual salaries are \$4,000 each, and a secretary and such clerical and other assistants as are deemed necessary may be employed, not more than 60 per cent to be of the same political party.

The board is given charge of the administration of various industrial and safety laws, and is to have offices and keep records in the city of Indianapolis. It may make rules not inconsistent with this act. Process and procedure are to be summary and simple as reasonably may be. The board or any member may administer oaths, subpoena witnesses to be served by the county sheriff, and may procure the attendance of witnesses on application to the circuit or superior court. Forms, records, and annual reports to the governor are to be prepared and furnished as needed.]

SECS. 57 (as amended 1917, ch. 81), 58 (as amended 1919, ch. 57), 59-61 (as amended 1917, ch. 63), 62, 63 (as amended 1919, ch. 57), 64, 65 (as amended 1919, ch. 57). *Procedure*.—[Agreement may be made after seven days from the date of an injury or death in a form prescribed by the board, and filed

with it and approved, and becomes enforceable, but in the absence of filing is voidable by the employee or his dependents. If no agreement is reached, or a disagreement arises as to continuance of payments on account of change in conditions, either party may apply to the board for a determination of matters in dispute. Hearings are to be had and a summary determination of the matters in issue. If the award is not by a full board and application for review is made within seven days, the full board shall review the evidence or hear the parties, their representatives and witnesses and make an award. Such an award, or an award by less than a full board if not appealed from, is conclusive and binding as to all questions of fact, but appeals on questions of law lie to the court. The board may also of its own motion certify questions of law to the appellate court. Appeals are to be advanced and determined at the earliest possible date. If an award of the full board is affirmed on appeal it shall be increased thereby 5 per cent.

An agreement or award not appealed from may be filed by any party in interest in the circuit or superior court of the county, and shall thereupon have the same effect as a judgment of the court. It shall be notified in accordance with any changes made in an award by the board. Costs are to be awarded and taxed as in ordinary civil actions in the circuit court. The board or a member may on application, or its own motion, appoint a physician to make necessary medical examinations and testify in respect thereto. A reasonable fee not exceeding \$10 is allowed, though in case of extraordinary cases this may be increased. Fees and expenses of such physicians are to be paid by the State.

Attorney and medical fees and charges of nurses and hospitals are subject to approval by the board. The fixing of an attorney's fee is binding upon both the claimant and the attorney, and the employer is to pay such fee out of the award.]

Sec. 66. Settlement of disputes.—[Questions under this act not settled by agreement are to be settled by the board, except as otherwise herein provided.]

Sec. 67. Reports of injuries.—[Employers are required to keep a record of all injuries to their employees and report those causing absence from work of more than one day within one week after their occurrence; also to make supplementary reports on the details of the disability, or within 60 days in a protracted case, the termination of which is also to be reported.]

Secs. 68-70 (all as amended 1917, ch. 57), 71, 72, 73 (as amended 1919, ch. 57), 74, 75. Registration and insurance of employees.—[Every employer in the State, except employers of farm and domestic labor, must annually register with the board and procure a certificate therefrom, giving the name of the employer, post-office address, nature and location of business, and number of employees by sex. Every employer under the act must insure his liability thereunder or furnish satisfactory proof of financial ability to make direct payments of compensation as it may become due. Evidence of compliance with this provision must be filed with the board. A certificate permitting self-insurance is furnished, but may be revoked on satisfactory evidence after notice of hearing, subject to renewal on a proper showing. Mutual companies and reciprocal associations are authorized on compliance with the requirements of the board. A substitute scheme may also be established subject to approval of the board and determination by it. If on notice and hearing it appears not to be fairly administered, in danger of insolvency, or for other substantial reason not accomplishing the purposes of the act, it may be terminated. If contributions of employees are required, benefits must be provided in addition to those provided for by the act, insurance policies must be submitted to and approved by the board, and all policies issued are conclusively presumed to cover all the employees and the entire compensation liability of the insured employer, including medical and surgical aid, burial expenses, etc. Modifications or limitations are void. As between insurer and employer, notice to the employer and his jurisdiction are notice and jurisdiction as to the insurer. Payments are to inure directly to the benefit of claimants, and default of an employer after injury or failure to give notice required by the policy or otherwise does not relieve the obligation of the insurer. Failure of any insurer to pay final awards and judgments, except during the pendency of an appeal, or noncompliance

with the act entails a revocation of the board's approval of its policy form, and it may not accept further business until the approval of the board is renewed.]

SEC. 76 (as amended 1919, ch. 57; 1923, ch. 76). *Definitions.*—In this act unless the context otherwise requires:

(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. The term "employee" as used in this act and in the act of which this act is amendatory shall be construed to include every person, including a minor 14 years of age or over, 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. Except as herein provided, all such minor employees are hereby made of full age for all purposes under, in connection with, or arising out of 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. Except as hereinafter otherwise provided, if the employee be a minor of the age of 14 years or over who at the time of the accident is employed, required, suffered, or permitted to work in violation of any of the provisions of any of the child labor laws of this State, the amount of compensation and death benefits as provided in this act shall be double the amount which would otherwise be recoverable. The insurance carrier shall be liable on its policy for one-half of the compensation or benefits that may be payable on account of the injury or death of such minor and the employer shall be wholly liable for the other one-half of such compensation or benefits: *Provided*, That if such employee be a minor who is not less than 16 years and not more than 18 years of age and who at the time of the accident is employed, suffered, or permitted to work at any occupation which is not prohibited by law, the provision of this act prescribing double the amount otherwise recoverable shall not apply.

The rights and remedies herein granted to a minor subject to this act on account of personal injury or death by accident shall exclude all rights and remedies of such minor, his parents, his personal representatives, dependents, or next kin at common law, statutory or otherwise, on account of such injury or death.

This act shall not apply to minors under 14 years of age.

(b) [Repealed.]

(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. Provisions severable.—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.

Sec. 78. [Repealed.]

Sec. 80. Appropriation.—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.

Sec. 81. Pending cases.—The provisions of this act shall not affect pending litigation.

IOWA
CODE, 1924

Workmen's compensation

SECTION 1361. *Exempt employments.*—This chapter shall not apply to—

1. Any household or domestic servant.
2. Persons whose employment is of a casual nature.
3. Persons engaged in agriculture, in so far as injuries shall be incurred by employees while engaged in agricultural pursuits or any operations immediately connected therewith, whether on or off the premises of the employer.

4. 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, except as otherwise provided by law.

SEC. 1362. *Compulsory, when.*—Where the State, county, municipal corporation, school district, or city under any form of government is the employer, the provisions of this chapter for the payment of compensation and amount thereof for an injury sustained by an employee of such employer shall be exclusive, compulsory, and obligatory upon both employer and employee, except as otherwise provided in the preceding section.

SEC. 1363. *Election presumed.*—Except as provided by this chapter, it shall be conclusively presumed that every employer has elected to provide, secure, and pay compensation according to the provisions of this chapter 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.

SECS. 1364—1369. *Rejection.*—[Employers may reject by written notice posted in their establishments and filed with the industrial commissioner; employees by written notice to the employer, likewise filed. The forms of employers' and employees' notices to reject are prescribed, and are to be substantially compiled with. An employer's notice of rejection, when posted, is binding on subsequent employees the same as on those in current employment.

If an employee rejects, the employer retains the common-law defenses in any action against him for injuries, but assumption of risks can not be pleaded if the injury is due to the failure of the employer in respect of statutory requirements as to safety.]

SEC. 1370. *Affidavit of employee as to rejection.*—When an employee or one who is an applicant for employment rejects the provisions of this chapter he shall, in addition to such notice, state in an affidavit to be filed with said notice who, if any person, requested, suggested, or demanded of such person to reject the provisions of this chapter. If such request, suggestion, or demand has been made of such employee by any person, such employee shall state the name of the person who made the request, suggestion, or demand, and all of the circumstances relating thereto, the date and place made, and persons present, and if it be found that the employer of such employee, or an employer to whom an applicant for employment has applied, or any person a member of the firm, association, corporation, or agent or official of such employer, made a request, suggestion, or demand to such employee or applicant for employment to reject the provisions of this chapter, the rejection made under such circumstances shall be conclusively presumed to have been fraudulently procured, and such rejection shall be null and void and of no effect, unless such employee has a permanent disability at the time of making the affidavit, then and in that event such rejection shall be presumed to have been fraudulently procured.

SEC. 1371. *Who may administer oath.*—No person interested in the business of such employer, financially or otherwise, shall be permitted to administer the oath to the affiant required in case an employee or applicant for employment elects to reject the provisions of this chapter. And the person administering

such oath to such affiant 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 chapter 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 industrial commissioner shall refuse to file the notice and affidavit unless the same fully and in detail comply with the requirements hereof. If such rejection, affidavit, or certificate is found insufficient for any cause, they shall be returned to the person who executed the instrument, with the reasons indorsed thereon by the industrial commissioner.

Secs. 1872-1876. Term and effect of rejection.—[An election to reject is effective until waived in writing in the same manner as the election to reject. When an employer rejects he can not plead the defenses of assumed risks, fellow service, or contributory negligence unless willful or the injury was due to the injured person's intoxication. Injuries due to the willful intent to injure one's self or another, or proximately to intoxication are not compensable.]

Secs. 1877, 1878. Agreement implied.—[In the absence of notice to reject, all contracts of hire are construed as agreements to compensate and accept compensation as in this act provided; and no contract of waiver can operate to relieve the employer of his liability hereunder.]

Sec. 1879. Presumption as to negligence.—[Where a rejecting employer is sued in an action for damages for injury to his employee it is to be presumed that such injury was the direct result of the employer's negligence, and the burden of rebuttal rests on the employer.]

Sec. 1880. Remedy exclusive.—[Until notice in writing to the contrary, employees are conclusively presumed to have accepted the provisions of this act as the exclusive remedy in case of injury, the same being binding on personal representatives, dependents, and next of kin.]

Sec. 1881. Subsequent rejection.—[An employer rejecting the act after acceptance must secure the payment of any compensation due or to become due to employees previously injured.]

Sec. 1882. Injuries due to third parties.—[Where the injury is such as to create a legal liability in a third party the injured person, or in case of his death, his legal representative, may both claim compensation and sue such third party, giving notice to the employer of the suit. If the employer pays compensation he is to be indemnified therefor, and also has a lien against the judgment for any future payments. If the employee does not sue, the employer may do so, and from the recovery retain a sum equal to past compensation payments, plus the present worth of future payments computed on a basis of 6 per cent, the balance, if any, to go to the employee. In case of a settlement, the consent of all parties in interest must be had, and a written notice filed by the employee in the office of the industrial commissioner.]

Sec. 1883. Notice of injury.—Unless the employer or his representative 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 15 days after 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 such notice is given or knowledge obtained within 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 thereby, and then only to the extent of such prejudice; but 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; but unless knowledge is obtained or notice given within 90 days after the occurrence of the injury, no compensation shall be allowed.

Secs. 1884-1886. Form; service; limitation.—[A suggested form of notice is given, but it may be varied. Notice may be served on anyone on whom an original notice in civil causes might be served. Verified returns are required. Proceedings are barred unless begun within two years from date of injury.]

Sec. 1887. Surgical and medical services.—In addition to other compensation hereinafter provided for, 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 industrial commissioner, shall furnish reasonable surgical, medical, and hospital services and supplies therefor, or any other appropriate treatment agreed to in writing by the employee and the employer and the insurer, not exceeding \$100; but, in exceptional cases, the employer shall furnish such additional medical, surgical, and hospital services and supplies for such period and in such amount as the industrial commissioner shall order, but in no event to exceed \$100 for such additional services and supplies.

SEC. 1388. *Burial expense.*—When death ensues from the injury, the employer shall pay the reasonable expenses of burial of such employee, not to exceed \$150, which shall be in addition to other compensation or any other benefit provided for in this chapter.

SEC. 1389. *Liability of employer in case of death and no dependents.*—When the injury causes death of an employee who leaves no dependents, then the employer shall pay the reasonable expense of the employee's last sickness, if any, and the expense of burial, as provided in the last two preceding sections, and this shall be the only compensation: *Provided*, that if from the date of the injury to the date of the death any weekly compensation shall have become due and unpaid up to the time of the death, the same shall be payable to the estate of the deceased employee.

SEC. 1390. *Basis of compensation.*—In all cases where an employee receives a personal injury for which compensation other than for medical, surgical, and hospital services and burial expenses, is payable, such compensation shall be upon the basis of 60 per cent per week of the average weekly earnings but not to exceed \$15 nor less than \$6 per week, except if at the time of his injury his earnings are less than \$6 per week, then he shall receive in weekly payments a sum equal to the full amount of his weekly earnings.

SEC. 1391. *Time of payments.*—Compensation payments shall be made each week beginning on the 22d day after the injury, and each week thereafter during the period for which compensation is payable, and if not paid when due, there shall be added to such weekly compensation payments interest at 6 per cent from date of maturity.

SEC. 1392. *Compensation in death cases; dependents; aliens.*—1. When death results from the injury, the employer shall pay the dependents who were wholly dependent on the earnings of the employee for support at the time of his injury, the weekly compensation for a period of 300 weeks from the date of his injury.

2. When the injury causes the death of a minor employee whose earnings were received by the parent, the compensation to be paid such parent shall be two-thirds the weekly compensation for an adult with like earnings.

3. 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.

4. When weekly compensation has been paid to an injured employee prior to his death, the compensation to dependents shall run from the date to which compensation was fully paid to such employee, but shall not continue for more than 300 weeks from the date of the injury.

5. Where an employee is entitled to compensation under this chapter 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 balance for such injury shall cease and all liability therefor shall terminate.

6. Except as otherwise provided by treaty, whenever, under the provisions of this and the two following chapters, compensation is payable to a dependent who is an alien not residing in the United States at the time of the injury, the employer shall pay 50 per cent of the compensation herein otherwise provided to such dependent, and the other 50 per cent shall be paid into the State treasury. But if the nonresident alien 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 benefits of such law in as favorable degree as herein extended to the nonresident alien, then said compensation which would otherwise be payable to such dependant shall be paid into the State treasury.

SEC. 1393. *Waiting time.*—Except as to injuries resulting in permanent partial disability, compensation shall begin on the fifteenth day of disability after the injury.

If the period of incapacity extends beyond the thirty-fifth day following the date of injury, then the compensation for the fifth week shall be increased by adding thereto an amount equal to two-thirds of one week of compensation.

If the period of incapacity extends beyond the forty-second day following the date of injury, then the compensation for the sixth week shall be increased by adding thereto an amount equal to two-thirds of one week of compensation.

If the period of incapacity extends beyond the forty-ninth day following the date of injury, then the compensation for the seventh week shall be increased by adding thereto an amount equal to two-thirds of one week of compensation.

If the period of incapacity extends beyond the forty-ninth day following the date of injury, then the compensation thereafter shall be only the weekly compensation.

SEC. 1394. *Temporary disability.*—For injury producing temporary disability, and beginning on the fifteenth day thereof, the employer shall pay the weekly compensation during the period of such disability, but not exceeding 300 weeks, including the periodical increase in cases to which the preceding section applies.

SEC. 1395. *Permanent total disability.*—For an injury causing permanent total disability, the employer shall pay the weekly compensation during the period of his disability, not, however, beyond 400 weeks.

SEC. 1396. *Schedule.*—Compensation for permanent partial disability shall begin at the date of injury and shall be based upon the extent of such disability, and for all cases of permanent partial disability included in the following schedule compensation shall be paid as follows:

1. For the loss of a thumb, weekly compensation during 40 weeks.
2. For the loss of a first finger, commonly called the index finger, weekly compensation during 30 weeks.
3. For the loss of a second finger, weekly compensation during 25 weeks.
4. For the loss of a third finger, weekly compensation during 20 weeks.
5. For the loss of a fourth finger, commonly called the little finger, weekly compensation during 15 weeks.
6. The loss of the first or distal phalange of the thumb or of any finger shall equal the loss of one-half of such thumb or finger and compensation shall be one-half of the time for the loss of such thumb or finger.
7. The loss of more than one phalange shall equal the loss of the entire finger or thumb.
8. For the loss of a great toe, weekly compensation during 25 weeks.
9. For the loss of one of the toes other than the great toe, weekly compensation during 15 weeks.
10. The loss of the first phalange of any toe, shall equal the loss of one-half of such toe and the compensation shall be one-half of the time provided for the loss of such toe.
11. The loss of more than one phalange shall equal the loss of the entire toe.
12. For the loss of a hand, weekly compensation during 150 weeks.
13. The loss of two-thirds of that part of an arm between the shoulder joint and the elbow joint shall equal the loss of an arm and the compensation therefor shall be weekly compensation during 225 weeks.
14. For the loss of a foot, weekly compensation during 125 weeks.
15. The loss of two-thirds of that part of a leg between the hip joint and the knee joint shall equal the loss of a leg, and the compensation therefor shall be weekly compensation during 200 weeks.
16. For the loss of an eye, weekly compensation during 100 weeks.
17. For the loss of an eye, the other eye having been lost prior to the injury, weekly compensation during 200 weeks.
18. For the loss of hearing in one ear, weekly compensation during 50 weeks, and for the loss of hearing in both ears, weekly compensation during 150 weeks.
19. 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 equal permanent total disability, to be compensated as such.
20. In all other cases of permanent partial disability, the compensation shall bear such relation to the periods of compensation stated in the above schedule as the disability bears to those produced by the injuries named in the schedule.

Sec. 1397. Basis of computation.—1. 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.

2. Employment by the same employer shall mean 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. The annual earnings, if not otherwise determinable, shall be three hundred times the average daily earnings in such computation.

4. 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. 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 the basis for the computation.

5. 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 kind is not obtainable, then the class most kindred or similar in the same general employment in the same neighborhood.

6. For employees 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 instead of 300 shall be the basis for computing the annual earnings; but the minimum number of days which shall be used as a basis for the year's work shall not be less than 200.

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 the 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 provisions of this chapter the compensation for each subsequent injury shall be apportioned according to the proportion of disability caused by the respective injuries which he shall have suffered.

Sec. 1398. Employees' contributions.—The compensation herein provided shall be the measure of liability which the employer has assumed for injuries or death that may occur to employees in his employment subject to the provisions of this chapter, and it shall not be in any wise reduced by contribution from employees or donations from any source.

Sec. 1399. Examination of injured employe.—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 requests, 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 any compensation for the period of such refusal. When a right of compensation is thus suspended, no compensation shall be payable for the period of suspension.

Sec. 1400. Statement of earnings.—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 thereto during the year or part of the year that such employee was in the employment of such employer for the year preceding the injury; but not more than one report shall be required on account of any one injury.

Sec. 1401. Penalty.—On failure of the employer to furnish such statement of earnings for 30 days after receiving written request therefor from an injured employee, his agent, attorney, dependent, or legal representative, such employer shall pay a penalty of \$25 for each offense to be collected by the commissioner in any court having jurisdiction and paid into the State treasury.

Sec. 1402. Persons conclusively presumed wholly dependent.—The following shall be conclusively presumed to be wholly dependent upon the deceased employee:

1. The surviving spouse, with the following exceptions:

(a) When it is shown that at the time of the injury the surviving spouse had willfully deserted deceased without fault of the deceased, then such survivor shall not be considered as dependent in any degree.

(b) When the surviving spouse was not married to the deceased at the time of the injury.

(c) When the deceased leaves no dependent children and the surviving spouse remarries, then all compensation shall cease on the date of such marriage.

2. A child or children under 16 years 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. An adopted child or children or stepchild or stepchildren shall be regarded the same as issue of the body.

3. A parent of a minor who is receiving the earnings of the employee at the time when the injury occurred. Step-parents shall be regarded as parents.

Sec. 1403. Payment to spouse.—If the deceased employee leaves a surviving spouse, the full compensation shall be paid to her or him, subject to the exceptions in the preceding section.

If the spouse dies before full payment, the balance shall be paid to the person or persons wholly dependent on deceased, if any, share and share alike. If there are none wholly dependent, then such balance shall be paid to partial dependents, if any, in proportion to their dependency.

Sec. 1404. Actual dependents.—In all other cases, questions of dependency in whole or in part shall be determined in accordance with the facts as of the date 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. If there is no one wholly dependent and more than one person partially dependent, the death benefit shall be divided among them in the proportion each dependency bears to their aggregate dependency.

Sec. 1405. Lump sums.—Future payments of compensation may be commuted to a present-worth lump-sum payment on the following conditions:

1. When the period during which compensation is payable can be definitely determined.

2. When the written approval of such commutation by the industrial commissioner has been filed in the proceedings to commute.

3. When it shall be shown to the satisfaction of the court or a judge thereof that such commutation will be for the best interest of the person or persons entitled to the compensation, or that periodical payments as compared with a lump-sum payment will entail undue expense, hardship, or inconvenience upon the employer liable therefor.

Secs. 1406–1408. Commutation proceedings.—[Commutation may be had on petition to the district court or a judge thereof, with notice to the opposite party; or by agreement approved by the industrial commissioner. Present worth shall be calculated on a basis of 5 per cent interest per annum. Partial commutation may be made, with provision for weekly payment of the portion not commuted.]

Secs. 1409, 1410. Trustees.—[Trustees may be appointed for minors and mental incompetents, to receive and expend benefits under this chapter; such trustees must make annual reports to the court as to their transactions, and shall be paid such compensation by the county as the court may direct.]

Secs. 1411–1413. Nonresident aliens.—[Consular officers or agents, or a representative resident in the State, is to be regarded as the exclusive representative of alien dependents residing outside the United States. On filing credentials in the district court, such officer or representative shall be appointed trustee for such dependents; and on filing credentials with the industrial commissioner he shall notify such officer or representative of the death of all employees leaving alien dependents, so far as the same comes to his knowledge.]

Sec. 1414. Payment of premiums by employees.—[No device by which employees pay any premium for insurance is valid, and employers withholding wages for such purpose are guilty of a misdemeanor.]

Sec. 1415. Waivers.—No employee or dependent to whom this chapter applies, shall have power to waive any of the provisions of this chapter in regard to the amount of compensation which may be payable to such employee or dependent hereunder.

Sec. 1416. Agreements.—Any contract or agreement made by any employer or his agent or attorney with any employee or any other dependent under the provisions of this chapter within 12 days after the injury shall be presumed to be fraudulent.

Sec. 1417. Interstate and intrastate commerce.—So far as permitted, or not forbidden, by any act of Congress, employers engaged in interstate or foreign commerce and their employees working only in this State shall be bound by the provisions of this chapter in like manner and with the same force and effect in every respect as by this chapter provided for other employers and employees.

Sec. 1418. Public employces.—All valid claims now due or which may hereafter become due employees of the State under the provisions of this chapter shall be paid out of any funds in the State treasury not otherwise appropriated.

SECS. 1419, 1420. Warrant to issue.—[The auditor of the State must issue warrants for compensation awarded State employees under this chapter, and the approval of the board of audit is not required.]

Sec. 1421. Definitions.—In this and chapters 71 and 72, unless the context otherwise requires, the following definitions of terms shall prevail:

1. "Employer" includes and applies to any person, firm, association, or corporation, State, county, municipal corporation, city under special charter and under commission form of government, school district, and the legal representatives of a deceased employer.

2. "Workman" or "employee" means a person who has entered into the employment of, or works under contract of service, express or implied, or apprenticeship, for an employer, except as hereinafter specified.

3. The following persons shall not be deemed "workmen" or "employees":

(a) A person whose employment is purely casual and not for the purpose of the employer's trade or business.

(b) A person engaged in clerical work only, but clerical work shall not include any one who may be subject to the hazards of the business.

(c) An independent contractor.

(d) A person 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, city under special charter or commission form of government.

4. The term "workman" or "employee" shall include the singular and plural of both sexes. Any reference to a workman or employee who has been injured shall, when such workman or employee is dead, include his dependents as herein defined or his legal representatives; and where the workman or employee is a minor or incompetent, it shall include his guardian, next friend, or trustee.

5. The words "injury" or "personal injury" shall be construed as follows:

(a) They shall include death resulting from personal injury.

(b) They 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.

(c) They shall not include a disease unless it shall result from the injury.

6. The words "personal injury arising out of and in the course of the 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.

7. The word "court" wherever used in this and the two succeeding chapters, unless the context shows otherwise, shall be taken to mean the district court.

Sec. 1422. Peace officers.—Any policeman (except those pensioned under the policemen's pension fund created by law), any sheriff, marshal, constable, and any and all of their deputies, and any and all other such legally appointed or elected law-enforcing officers, who shall, while in line of duty or from causes arising out of or sustained while in the course of their official employment, meaning while in the act of making or attempting to make an arrest or giving pursuit, or while performing such official duties where there is peril

or hazard peculiar to the work of their office, be killed outright, or become temporarily or permanently physically disabled, or if said disability result in death, shall be entitled to compensation, the same to be paid out of the general funds of the State for all such injuries or disability.

Where death occurs, compensation shall be paid to the dependents of the officer, as in other compensation cases. Such compensation shall be the maximum allowed in compensation cases. The industrial commissioner shall have jurisdiction as in other cases.

SECS. 1423-1432. *Industrial commissioner*.—[The governor is to appoint an industrial commissioner for a term of six years, who shall appoint a deputy to serve during his pleasure, and to have all the powers and perform all the duties of the commissioner in his absence or disability. The commissioner may not be financially interested in any business enterprise coming under or affected by this chapter during his term of office. He is charged with administering the compensation law and the law relating to compensation liability insurance, and to make and enforce necessary rules and regulations to that end. He presides as chairman on boards of arbitration and keeps a record of all proceedings and decisions, and may issue subpoenas, administer oaths, and examine books and records. A biennial report to the governor is directed.]

SECS. 1433-1435. *Records; reports of injuries*.—[Employers are required to keep a record of injuries causing disability for more than one day, and report the same in writing to the industrial commissioner on blanks to be procured from him. Such report is to be made within 48 hours after knowledge of the occurrence, and on the termination of disability a supplemental report is to be made. If the disability continues beyond 60 days a report is then to be made and a final report on termination.]

SEC. 1436. *Agreements*.—[Agreements between employers and employees are to be filed with the industrial commissioner, and if not disapproved by him within 20 days they become enforceable for all purposes except as otherwise provided in this act. A minor or his trustee may make such agreement and give a valid and binding release for compensation paid.]

SECS. 1437-1446. *Arbitration*.—[In case of failure of the parties to agree, either party may request the appointment of a board of arbitration. On the receipt of such request the commissioner notifies each party to name a member, he himself or his deputy being the third, who shall act as chairman; or if either party fails to name an arbitrator within the time fixed, the commissioner may appoint one. Arbitrators take an oath to perform their duties impartially, and are authorized to make inquiries and hear evidence, applying liberal rules, not being bound by common law, by legal or technical requirements as to procedure. If a party or the parties desire, they may employ a shorthand reporter to be appointed by the commission, the expense to be taxed with other costs. Provision is made for transcripts of the evidence, and the taking of depositions. District courts may enforce by proper proceedings the attendance of witnesses and the giving of evidence. Findings of the board of arbitration, with a statement of evidence submitted and findings of fact, rulings of law, and other pertinent matters shall be filed with the industrial commissioner.]

SECS. 1447-1460. *Reviews and appeals*.—[Any party aggrieved by the decision or findings of a board of arbitrators may within 10 days thereafter file a petition for review with the industrial commissioner, who shall thereupon fix a hearing at which the evidence will be considered, with additional evidence, if offered. Notice of such additional evidence must be given the opposite party or his attorney five days in advance. The commissioner may affirm, modify, or reverse a decision, or remand it to the board of arbitration. The findings must be in writing, stating findings of fact and conclusions of law. Appeal may be taken within 30 days to a district court, the commissioner, on notice, to furnish a transcript of all documents in the case. Such an appeal has precedence on the docket over all other civil business; only matters of law can be considered, findings of fact being conclusive in the absence of fraud. The order of the industrial commissioner may be modified, reversed, or set aside if the commissioner acted without or in excess of his powers, if the order or decree was procured by fraud, or if it is not supported by the facts found, or if there is not sufficient competent evidence in the record to warrant such order or decision. In such case the court may remand

the case for further proceedings or may enter the proper judgment. No costs except filing and transcript fees shall be charged so far as clerks are concerned, the taxation cost being in the discretion of the court.

An appeal may be taken from the district court to the supreme court, to be docketed and submitted in the same time and manner as criminal cases.

Any award or agreement of continuing payments may be reviewed by the industrial commissioner at the request of either party, and if the condition of an employee warrants a change, he may end, diminish, or increase the compensation. Such review will be had on petition, the commissioner to give notice to the parties in interest as to the time fixed. The place will be at the seat of the government unless by stipulation the hearing is to be elsewhere.]

Sec. 1461. Examination by physician.—[The industrial commissioner may appoint an impartial physician to examine a claimant and make report, allow a fee of \$5, or additional amounts in extraordinary cases. Such physician may testify before the commissioner or other body as to the results of his examination or the condition of the injured employee.]

Secs. 1462-1464. Fees.—[Fees and claims for legal, medical, hospital, and burial services are subject to the approval of the industrial commissioner, and give rise to no lien without such approval. The appointed arbitrators receive fees of \$5 each, but additional amounts may be allowed in extraordinary cases. The employer pays such fees but may deduct one-half the sum from any compensation found due the employee. Other costs incurred in hearings before a board of arbitration or the commission shall be taxed in his or its discretion. Witness fees are the same as allowed in the district court.]

Secs. 1465, 1466. Judgments on awards.—[On presentation to the district court of the county of a certified copy of an order or decision of the commissioner or an award of the board or arbitration not appealed from, it shall be filed and judgment entered thereon of the same effect as though rendered in a suit duly heard and determined by said court. If an award is subsequently modified, the judgment of the court shall be modified to conform.]

Secs. 1467-1478. Insurance.—[Employers under the act must give proof of solvency or insure in some approved corporation, association, or organization, evidence of which must be submitted to the commissioner. Employers failing to insure must post a notice to their employees to that effect, failure being a misdemeanor. The commission on compensation reinsurance is limited to 15 per cent of the premium charged. Mutual companies may be formed by groups of employers by themselves or an association of their workmen; also approved schemes of compensation or benefit insurance may be provided in lieu of other provision, but added benefits must be furnished commensurate with any contributions required of the workmen. Certificates of approval of such schemes or of self-insurers may be withdrawn on notice and hearing if the facts warrant such action.

Policies may not provide for a release of insurer in case of the insolvency of the employer, and must contain a provision for direct payment by the insurer to beneficiaries, workmen having a fixed lien upon any amount becoming due on the policy to the employer from the insurance carrier. Notice, knowledge, and jurisdiction on the part of the employer must be accepted as applying to the insurer.]

Sec. 1479 (as amended 1925, ch. 162). Five or more employees.—When any employer has more than five persons employed in hazardous employment, excepting the employments recited in the first section of chapter 70, Code, 1924, and such employer has elected to reject the compensation provisions of said chapter, or when any such employer has not rejected the terms and provisions thereof by filing and posting notices as provided in chapter 70, Code, 1924, but has failed to insure his or its liability in one of the ways provided in this chapter, unless relieved from carrying such insurance as provided in the second preceding section, then any such employer's employee who has not rejected the provisions of this chapter, in case of personal injury in the course of, and arising out of such employment, shall have the right to elect to collect compensation as provided in chapters 70 and 71, Code, 1924, or collect damages at common law as modified by said chapter 70.

Secs. 1480, 1481. Election by employee.—[The election provided for in the preceding section must be made in writing within 60 days after the receipt of an injury giving rise to a claim for compensation for damages; otherwise it

will be conclusively presumed that compensation has been elected. On receipt of notice by the commissioner, he must within five days inform the employer of the election made.]

[Other provisions of law give a lien against any railway, interurban railway, or street-railway corporation or copartnership to secure a judgment or claim for compensation under the Iowa workmen's compensation act for personal injuries to employees (Code, sec. 5100); exempt compensation awards from garnishment, attachment, and execution (Acts of 1923, ch. 20); and authorize cities and towns to provide hospital, nursing, and medical attention for members of the police and fire departments, the amounts received by members of such departments under the compensation law to be deducted from the amount paid by such city or town under this authorization.]

KANSAS

GENERAL STATUTES—1915

Compensation of workmen for injuries

SECTION 5896 (as amended 1917, ch. 226). *Compensation, payable, when.*—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.

Sec. 5897. *Fines, etc.*—Nothing in this act shall affect the liability of the employer or employee to a fine or penalty under any other statute.

Sec. 5898. *Contractors.*—(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.

Sec. 5899. *Injuries by third parties.*—Where the injury for which compensation is payable under this act was caused under circumstances creating a legal liability against some person other than the employer to pay damages in respect thereof, (a) the workman may take proceedings against that person to recover damages and against any person liable to pay compensation under this act for such compensation, but shall not be entitled to recover both damages and compensation; and (b) if the workman has recovered compensation under this act, the person by whom the compensation was paid, or any person who has been called on to indemnify him under the section of this act relating

to subcontracting, shall be entitled to indemnity from the person so liable to pay damages as aforesaid, and shall be subrogated to the rights of the workman to recover damages therefor.

SEC. 5900 (as amended 1917, ch. 226). *Scope of law.*—This act shall apply only to employment in the course of the employer's trade or business on, in or about a railway, factory, mine or quarry, electric, building or engineering work, laundry, natural gas plant, county and municipal work, and all employments wherein a process requiring the use of any dangerous explosive or inflammable materials is carried on, which is conducted for the purpose of business, trade or gain; each of which employments is hereby determined to be especially dangerous, in which from the nature, conditions or means of prosecution of the work therein, extraordinary risk to the life and limb of the workman engaged therein are inherent, necessary, or substantially unavoidable, and as to each of which employments it is deemed necessary to establish a new system of compensation for injuries to workmen. This act shall not apply in any case where the accident occurred before this act takes effect, and all rights which have accrued, by reason of any such accident, at the time of the publication of this act, shall be saved the remedies now existing therefor and the court shall have the same power as to them as if this act had not been enacted. Agricultural pursuits and employments incident thereto are hereby declared to be non-hazardous and exempt from the provisions of this act: *Provided*, That employers whose work, trade, or business is not such as described and included in this section of this act, and employers commencing or renewing in this State any work, trade, or business, may elect to come within the provisions of this act by filing with the secretary of state a written statement of election to accept thereunder, and such election shall be effective when so filed, and such election shall continue in effect unless and until such employer thereafter desiring to change his election shall do so by filing a written declaration thereof with the secretary of state, and the employee of any such employer so filing such election shall be included herein unless such employee elects not to come within this act as provided by section * * * [5930], 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.

SEC. 5901. *Interstate commerce.*—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.

SEC. 5902. *Small employers.*—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.

SEC. 5903 (as amended 1917, ch. 226). *Definitions.*—In this act, unless the context otherwise requires, (a) "Railway" includes street railways and interurbans; and "employment on railways" includes work in depots, power houses, roundhouses, machine shops, yards, and upon the right of way, and in the operation of its engines, cars, and trains, and to employees of express companies while running on railroad trains, except as provided in section 5901 of General Statutes of 1915. (b) "Factory" means any premises wherein power is used in manufacturing, making, altering, adapting, ornamenting, finishing, repairing, or renovating any article or articles for the purpose of trade or gain or of the business carried on therein, including expressly any brickyard, meat-packing house, foundry, smelter, oil refinery, lime-burning plant, steam heating plant, electric lighting plant, electric power plant, and water power plant, grain elevator, powder plant, blast furnace, paper mill, printing plant, flour mill, glass factory, beet-sugar factory, cement plant, artificial-gas plant, machine or repair shop, salt plant, and chemical manufacturing plant. (c) "Mine" means any opening in the earth for the purpose of extracting any minerals and all underground workings, slopes, shafts, galleries, and tunnels, and other ways, cuts, and openings connected therewith, including those in the course of being opened, sunk, or driven; and includes

all the appurtenant structures at or about the openings of the mine and any adjoining adjacent work place where the material from a mine is prepared for use or shipment. (d) "Quarry" means any place, not a mine, where stone, slate, clay, sand, gravel, or other solid material is dug or otherwise extracted from the earth for the purpose of trade or bargain or of employer's trade or business. (e) "Electrical work" means any kind of work in or directly connected with the construction, installation, operation, alteration, removal, or repair of wires, cables, switchboards, or apparatus used for the transmission of electrical current or operation of telegraph or telephone lines. (f) "Building work" means any work in the erection, construction, extension, decoration, alteration, repair, or demolition of any building or structural appurtenances. (g) "Engineering work" means any work in the construction, alteration, extension, repair, or demolition of a railway (as hereinbefore defined), bridge, jetty, dike, dam, reservoir, underground conduit, pole lines constructed or used for carrying conductors, sewer, oil or gas well, oil tank, gas tank, water tower, or waterworks (including 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 herein-after 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 step-parents, 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.

Sec. 5904. *Incompetent persons.*—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.

SEC. 5905 (as amended 1917, ch. 226). *Medical, etc., treatment; schedule of payments.*—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 \$3,800 and not less than \$1,400: *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 \$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 \$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 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 60 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. The payment of compensation for total permanent disability shall not extend over a period exceeding eight years from the date of injury. Loss of both eyes, both hands, both arms, both feet, or both legs shall, in the absence of proof to the contrary, constitute total permanent disability. Substantially total paralysis, or incurable imbecility or insanity, resulting from an injury independent of all other causes, shall constitute total permanent disability. In all other cases total permanent disability shall be determined in accordance with the facts. (b) Where temporary total disability results from the injury no compensation shall be paid during the first week of disability, except that provided in paragraph 1 of this section, but after the expiration of said first week payment shall be made in accordance with the provisions of section 5907 of the General Statutes of 1915, during such temporary total disability, of a sum equal to 60 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.

(1) For the loss of a thumb, 50 per cent of the average weekly wages during 60 weeks.

(2) For the loss of a first finger, commonly called the index finger, 50 per cent of the average weekly wages during 37 weeks.

(3) For the loss of a second finger, 50 per cent of the average weekly wages during 30 weeks.

(4) For the loss of a third finger, 50 per cent of the average weekly wages during 20 weeks.

(5) For the loss of a fourth finger, commonly called the little finger, 50 per cent of the average weekly wages during 15 weeks.

(6) The loss of the first phalange of the thumb or of any finger shall be considered to be equal to the loss of one-half of such thumb or finger, and the compensation shall be one-half of the amounts specified above. The loss of the first phalange and any part of the second phalange of any finger, which includes the 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.

(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 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.

(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.

(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.

(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.

(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.

SEC. 5906 (as amended 1917, ch. 226). *Earnings computed, how.*—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, fifty-two times the average weekly amount which, during the 12 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 fifty-two 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 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. *Payments.*—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.

Sec. 5908. *Payments to dependents.*—Where death results from the injury and the dependents of the deceased workman, as herein defined, have agreed to accept compensation, and the amount of such compensation and the apportionment thereof between them has been agreed to or otherwise determined, the employer may pay such compensation to them accordingly (or to an administrator if one be appointed) and thereupon be discharged from all further liability for the injury. Where only the apportionment of the agreed compensation between the dependents is not agreed to, the employer may pay the amount into any district court having jurisdiction, or to the administrator of the deceased workman, with the same effect. Where the compensation has been so paid into court or to an administrator, the proper court, upon the petition of such administrator or any of such dependents, and upon such notice and proof as it may order shall determine the distribution thereof among such dependents. Where there are no dependents, medical and funeral expenses may be paid and distributed in like manner.

Sec. 5909 (as amended 1917, ch. 226). *Payments exempt from execution, etc.*—No claim for compensation, or compensation agreed upon, awarded, adjudged, or paid, shall be assignable or subject to levy, execution, attachment, garnishment, or any other remedy or procedure for the recovery or collection of a debt, and this exemption can not be waived

Sec. 5910. [Repealed 1917, ch. 226.]

Secs. 5911 (as amended 1917, ch. 226), 5912, 5913–5915 (as amended 1917, ch. 226). *Medical examinations.*—[An injured workman must submit at reasonable times and places to examination by a physician selected by his employer, but not oftener than once in four weeks, unless ordered by a judge of the district court. The employee may have a physician selected and paid by him in attendance, and unless such physician has a reasonable opportunity to participate in the examination in the presence of the employer's physician, the latter will not be permitted to give evidence as to matters in dispute. Either party may require a report of any examination made by a physician employed by the other on the payment of \$1. A special examination may be made by a neutral physician at the instance of a committee, arbitrator, or judge hearing a dispute, on petition of either or both parties, and at their expense. Refusing, obstructing, or preventing examination suspends compensation for such period of refusal, etc. Reports of physicians must be supported in any court proceedings by their testimony.]

Secs. 5916, 5917–5919 (as amended 1917, ch. 226), 5920, 5921–5923 (as amended 1917, ch. 226). *Procedure.*—[Notice of an accident must be given within 10 days thereafter, and claim for compensation within 3 months, or, if fatal, within 6 months. Delivery must be personal or by registered mail. Want of or defect in notice or in service is not a bar in the absence of actual prejudice to the employer, nor if occasioned by a mistake, incapacity, or other reasonable cause; failure to make a claim within the specified time is a bar, except that the limitation does not run during any period of incapacity. Compensation may be settled by agreement, but if not, a committee, representative of the parties and organized for the purpose, may act, or arbitrators elected by it, in the absence of objection by either party. If there be no such committee, or objection is made, or the reference is not determined within 60 days, a single arbitrator agreed on by the judge of a court may act. A committee or arbitrator is not bound by technical rules of procedure, but must act reasonably and without partiality. The finding is to be filed in the office of the clerk of the proper district court within 60 days after the committee meets or the arbitrator is elected, though the parties may agree in writing to extend the time. If not so filed, the court may order an award to be filed within 10 days. Arbitrator's fees are to be fixed by the consent to agreement entered into by the parties, or if not, shall not exceed \$10 per day for not more than 10 days,

with expenses. Costs are to be taxed or apportioned in the discretion of the arbitrator.

Awards are to be in writing, with specified amounts due and unpaid, and the amounts to be paid subsequently. No lump sum may be awarded except of amounts in arrears. Any award may be modified by subsequent written agreement of the parties, but such modifications will not be valid as against the workman unless filed in the office of the clerk of the district court within 60 days after their execution. Final receipts are to be acknowledged and verified by the workman and filed with the court as above.

Review may be had at any time before the final payment of the application of either party, at which time the court may appoint physicians or surgeons to examine the workman and report. It shall hear all competent evidence, and if action in excess of power, or obtained by fraud is discovered, or if the award is grossly excessive or inadequate, or the condition of the workman has changed, the court may modify the award according to its findings; or if it appears that the workman is earning an equal or greater income, or has absented himself from reasonable examination by a physician or has gone outside the United States or the Dominion of Canada, the court may cancel the award and end the compensation. The provisions as to review do not apply to awards under the schedule for specific injuries.]

Sec. 5924. [Repealed 1917, ch. 226.]

SECS. 5925-5927 (as amended (sec. 5926 repealed), 1917, ch. 226). *Lump sums*.—[At any time during a term of periodic payments a workman may apply, with notice to his employer, for commutation by the court to a lump sum equal to 80 per cent of the unpaid portion of the award, and if the court, taking the circumstances into consideration, is satisfied that the application is made because of doubt as to the security of the compensation, it shall compute the sum and enter judgment as if in an action at law; but if the employer gives good and sufficient bond approved by the court, no execution will issue so long as payments are continued in accordance with the original award, undiminished by the discount. The employer may stay proceedings in regard to the application by furnishing a certificate of insurance or giving bond. Where payments have been made for not less than six months the liability under the award may be redeemed by the employer at his option by the payment of a lump sum equal to 80 per cent of the unpaid balances, such amount to be determined by agreement, or on application of either party, by the court.]

SEC. 5928. *Insurer's rights*.—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.

SEC. 5929. *Courts*.—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.

SECS. 5930-5932 (as amended 1917, ch. 226). *Legal enforcement*.—[In the absence of agreement or consent to arbitration, a right to compensation shall be determined and enforced by action in any court of competent jurisdiction, but not until the workman has consented to an arbitration or applied to the court for an arbitrator. Cases are to be tried by the court without a jury unless demanded. Judgments will be for lump sums except in cases where the injury is not ascertainable by objective examination, when periodical payments during incapacity will be ordered, subject to review after the expiration of six months, at which time the award may be modified in accordance with the evidence. In cases of death, proper distribution must be made to the various dependents if more than one. An action to set aside a release or other discharge of liability on the ground of fraud or mental incapacity may be joined with an action for compensation. Proceedings may not be brought or maintained outside the State, and notice will be given by publication against non-residents.]

Rights under this act accrue at the time of the occurrence of the accident, and limitations run from that date.

Claims for attorneys' fees for services under the act shall not be an enforceable lien unless the services were rendered under the terms of a written contract approved in writing by the judge of the county of the workman's residence.]

SECS. 5933-5937. *Substitute schemes.*—[Schemes maintained by one or more employers and their workmen providing benefits not less favorable than those of the act, or, if employees contribute, providing added corresponding benefits, may be approved by the superintendent of insurance with the advice and approval of the attorney general; and while a certificate of such approval is not in force, employers operating thereunder are liable only in accordance with such scheme. Suitable provisions must be made for the equitable distribution of any moneys or securities held for the purpose of this scheme, and certificates may be revoked for cause. The superintendent of insurance may make necessary rules and regulations and require such reports as he thinks necessary.]

SECS. 5938-5941 (as amended 1917, ch. 226). *Elections; defenses.*—[Employers entitled to come within the act according to the terms are presumed to have done so with the exception of those who are privileged to act in accordance with sections 5900 and 5902, in the absence of a written statement filed with the secretary of state rejecting the act. A change of election may be made only by filing a similar declaration. Notice of such election must be posted by the employer conspicuously in and about his place of business. Employees rejecting the act must file notice thereof with the secretary of state before injury, a duplicate being filed with employer at the same time; change may be similarly made. A contract wherein an employer requires rejection as a condition of employment is void. Employers entitled to come within the act, but electing not to do so, may not, in any action for injuries due to their negligence, plead the common-law defenses of assumed risk, fellow service, or contributory negligence: but if an employee electing not to come within the act sues an employer thereunder, the aforesaid defenses are available, but not where the injury was caused by the willful negligence of the employer or his agent.]

SEC. 5942. *Railroad employees.*—[This statute does not affect the law relating to the liability of railroad companies for injuries to their employees.]

ACTS OF 1919

CHAPTER 222.—*Waiver of compensation or damages by blind persons*

SECTION 1. *Waiver.*—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.

KENTUCKY

ACTS OF 1916

CHAPTER 33.—*Compensation for injuries to workmen*

SECTION 1 (as amended 1918, ch. 176; 1922, ch. 50; 1924, ch. 70). *Scope of act.*—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: *Provided, however,* It shall apply to operators of threshing machines used in threshing or hauling grain or seeds. 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 the 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 but shall include injuries or death due to the inhalation in mines of noxious gases or smoke, commonly known as "bad air," and also shall include the injuries or death due to the inhalation of any kind of gas.

Any employers and employees who are, by the provisions of this section, excepted from the provisions of this act, including employers having less than three employees, 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.

SEC. 2 (as amended 1926, ch. 193). *Public employments.*—[The term "employer" as used in this act shall be construed to include municipal corporations and any subdivisions or corporations thereof; and the term "employer" as used in this act shall also be construed to include all departments of the State government, and any election with reference to this act shall be exercised by the head of such department so electing: *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 employee of such municipal employer, or any of the employes of any State department, or the widows, children, or dependents of such employes, or in any manner interfering with the same as now or hereafter established.]

SEC. 3. *Remedy exclusive.*—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 com-

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.

Notwithstanding anything hereinbefore or hereafter contained no employee or dependent of any employee shall be entitled to receive 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 (as amended 1920, ch. 37). *Medical, etc., treatment.*—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 nor exceeding a total expense to the employer of more than \$100 on account of the benefits provided by this section, unless the board shall, by order made within that time, direct an extension of said period of treatment or direct an extension of said limit of expense to not exceeding \$200, 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. 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 (as amended 1924, ch. 70). *Hernia.*—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:

1. That there was an injury resulting in hernia.
2. That the hernia appeared suddenly and immediately followed the injury.
3. 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 so 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 his actual disability following such operation. 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. *Change of physician.*—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.

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. Fees.—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 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.

SEC. 7. (as amended 1918, ch. 176.) *Waiting time, etc.*—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 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: *Provided, however,* This section as amended shall not become effective until August 1, 1918.

SEC. 8. Work outside State.—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 this State.

SEC. 8a. Waivers.—No contract or agreement, written or implied, no rule, regulation, or other device, shall in any manner operate to relieve any employer in whole or in part of any obligation created by this act except as herein provided.

SEC. 9 (as amended 1922, ch. 50). *Liability of third parties.*—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 either the employer or his insurance carrier, having paid the compensation or having become liable therefor, shall have the right to recover in his or its 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.

SEC. 10 (as amended 1922, ch. 50; 1924, ch. 70). *Employees of contractors.*—A principal contractor, intermediate or subcontractor shall be liable for compensation to any employee injured while in the employ of any one of his intermediate or subcontractors and engaged upon the subject matter of the contract, to the same extent as the immediate employer. Any principal, intermediate, or subcontractor [or their insurance carrier] 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 contract [control] otherwise or management.

SEC. 11 (as amended 1924, ch. 70). *Minors*.—A minor 16 years of age or over and a minor under 16 years of age who has procured his employment upon the written certification of his parent, guardian, or one having legal authority over him that he is over 16 years of age, 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 a lump sum of compensation to such minor employee, payment shall be made to the guardian of such minor. Such certificate shall be in form as follows: "To (name of employer). This is to certify that (name of minor employee), of whom the undersigned is the _____, is over the age of 16 years. Signed this _____ day of _____." Identification of such signature of the parent, guardian, or person having legal authority over such minor employee shall constitute conclusive proof of such procurement of his employment in any hearing or proceeding in which the same may be material or in issue.

SEC. 12. Compensation for death.—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:

(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.

SEC. 13. Persons wholly dependent.—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.

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 compensa-

tion 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.

Sec. 14. Definitions.—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.

Sec. 15. Payments a release.—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.

Sec. 16 (as amended 1918, ch. 176; 1920, ch. 37). Total disability.—When 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 \$15 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 a maximum sum of \$6,000. In case the period of total disability begins after a 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 \$6,000. 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, and 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.

Sec. 17 (as amended 1918, ch. 176; 1920, ch. 37). Partial disability.—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 333 [335?] weeks from the date of injury, nor exceeding the sum of \$15 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. Schedule.—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:

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 metacarpel 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 compensation is paid and the amount thereof shall be deducted respectively from the maximum period and maximum amount which may be paid under this paragraph.

Sec. 19. Refusal to work.—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.

SEC. 20. *Second injury.*—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 an [on] account of the prior injury or injuries had they been compensated for thereunder.

SEC. 21. *Review of awards.*—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.

SEC. 22. *Alien dependents.*—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.

SEC. 23. *Service of notice.*—[Notices required by this act may be served by registered mail directed to the last known address in due season, or by service as notices in civil actions. Notices to a consular representative of the nation of a nonresident dependent will be deemed notice to such dependent.]

SEC. 24. *Computing wages.*—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.

SEC. 25. *Advances.*—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.

SECS. 26, 27. *Lump sums.*—[After six months' payments have been made either party may apply for commutation to a lump sum. If found to be to the best interests of either party and not subjecting the employer or his insurer to undue risk of overpayment, the board may commute all or any part of the unpaid amount to a present-worth payment discounted at a 5 per cent basis. If deemed expedient such sum shall be paid to a trustee.]

SEC. 28. *To whom payments made.*—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.

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. *Failure to comply with safety statutes.*—Where an accident is caused in any degree by the intentional failure of the employer to comply with any specific statute or lawful regulation 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 or 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 3 of this act.

SEC. 30 (as amended 1924, ch. 70). *Minors unlawfully employed.*—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: *Provided, however,* That in case a minor under 16 years of age who procures his employment upon the written certification by his parent, guardian, or one having legal authority over him, as provided in section 11 of this act, that he is over 16 years of age, his parents, statutory guardian, or personal representative of a minor who is killed can not elect to claim either compensation under the terms of this act or sue to recover damages as if this act had not been passed, but he must rely on his claim, if any he has, for compensation under the terms of this act. 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.

SEC. 31. *Claims preferred.*—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. 32. *Assignments, etc.*—No claim for compensation under this act shall be assignable, and all compensation and claims therefor shall be exempt from all claims of creditors.

SECS. 33, 34, 35 (as amended 1922, ch. 50), 36 (as amended 1924, ch. 70), 37, 38 (as amended 1924, ch. 70). *Notice and claim.*—[Notice must be given to the employer of an accident as soon as practicable. Claim for compensation must be presented within one year, either by the claimant or some one in his behalf. If payments have been voluntarily made, the making of a claim within such period is not required but shall become requisite following the suspension of such payments. Notice and claim must be in writing, in ordinary language, giving the necessary details, and may be included in the same communication. Service may be to an employer, one of two or more partners or the agent of a corporation, and may be by personal delivery or by registered mail. Inaccurate compliance with the requirements as to details does not invalidate unless the employer was in fact misled to his injury thereby; nor will want of notice or delay be a bar to proceedings if the employer had knowledge of the injury or if the delay or failure was occasioned by mistake or other reasonable cause.

During the compensation period, the workman must, on request, submit himself at reasonable times and places to medical examination, at which he may have present a physician employed by himself. Refusal or obstruction of examination suspends compensation, and no compensation shall be paid for a period during which it continues.

Limitations do not run against minors or mental incompetents so long as there is no committee, guardian, or other person authorized to claim compensation for him.]

SECS. 39-41, 42 (as amended 1920, ch. 37; 1924, ch. 70; 1926, ch. 193), 42a, 42b (as amended 1920, ch. 37), 43, 44, 45 (as amended 1918, ch. 176), 46, 47. *Workmen's compensation board.*—[The workmen's compensation board of three members is to be appointed by the governor, members to hold terms for four years and until their successors have been appointed and qualified. A rotation of expirations of terms is provided for. Qualifications of age, character, and service in any other public office (which is forbidden) are provided for. The governor may remove for cause after hearing. Salaries and expenses are met from the maintenance fund provided for in section 85 of this act. Members receive \$3,500 each, a secretary at \$2,500, and a medical director and such other assistants and employees as are necessary, salaries fixed by the period within proscribed limits, \$3,000 being the maximum for the medical director.

The members take oath, file bonds, and are allowed their traveling expenses, together with rooms and lodging not exceeding \$5 per day.

Offices must be obtained in the city of Frankfort, a seal procured, and regular meetings held. A majority of the board constitutes a quorum, and any investigation, inquiry, or hearing may be held or undertaken by one member of the board, or an authorized referee. Findings, when approved by a majority of the board, shall be deemed the order of the board. The board is authorized to make suitable rules, is to observe summary and simple process and procedure, may subpoena witnesses, administer oaths, and examine books and papers. Fees are the same as in civil cases, and the circuit court must, on the application of the board, enforce the attendance and testimony of witnesses, or the production for examination of books and papers.]

Sec. 48-54, 55 (as amended 1926, ch. 193), 56-58, 59 (as amended 1926, ch. 193), 60. *Procedure*.—[If a claimant and the employer reach an agreement conformable to the provisions of this act, a memorandum thereof shall be filed with the board, and if approved by it, becomes enforceable as an award of the board. Voluntary payments may be made without formal agreement, but nothing shall operate as a final settlement except an approved memorandum of agreement filed with the board, or an expiration of rights by limitation. If the parties fail to reach an agreement, or disagreement arises subsequent to an agreement filed, application may be made to the board for a hearing. On receipt of such application the date of a hearing will be set, the members to be notified; an attempt may be made for informal adjustment by means of conference with the parties, but a hearing may not be delayed for such purpose over the objection of either party. At the hearing witnesses shall be heard and the decision arrived at in summary proceedings. The award made together with the findings of fact and rulings of law must be filed with the commission and copies of the award sent to the parties in interest. Application for review may be made within seven days, whereupon the full board, if the first hearing was not before it, must review the evidence or may hear the parties and their witnesses and make an award as above provided. Awards or orders not subject to application for review, or made by the board on review, are conclusive and binding as to all questions of fact; but appeal may be taken within 30 days by either party to the circuit court on petition stating the grounds on which a review is sought which are limited to the determination of whether or not the board acted without or in excess of its powers, the order or award was procured by fraud, whether the decision was in conformity with the provisions of the act, or if finding of fact were in issue whether such findings support the order, decision, or award. No new or additional evidence may be produced at the court except as to the fraud or misconduct of some person engaged in the administration of the act. The court may affirm, modify, or set aside the award or may remand the cause for further proceedings. If a sufficient amount under existing laws is involved, an appeal lies to the circuit court of appeals, in which proceeding is the same as in a civil action, the exceptions limiting the field of review. On motion of either party and a sufficient showing of reason or necessity therefor, orders or awards appealed from may be continued in force by the court pending its decision of the appeal. Any judgment rendered by a circuit court or modified by mandate of the appellate court is subject to such modifications as are necessary to make it conform with a decision of the board ending, diminishing, or increasing weekly payments under the provisions of section 21 of the act.

If the board determines that proceedings have been brought, prosecuted, or defended without reasonable grounds, the whole cost of such proceedings may be assessed against the offending party.

The board, may on its own motion, or on the application of either party appoint a physician to make any necessary medical examination of the injured employee and testify in respect thereto. The fee may not exceed \$10 except in extraordinary cases, fees and expenses to be paid out of the maintenance fund. All attorneys' and medical and hospital fees are subject to the approval of the board. Attorneys' fees may not exceed 15 per cent of the first \$1,000 recovered, or fraction thereof, or 10 per cent of the excess, if any, of such recovery over \$1,000. All questions not settled by agreement of the parties with the approval of the board are to be determined by the board except as otherwise provided for.]

Sec. 61. *Reports of injuries*.—[Employers under the act must keep records of all injuries to their employees, and within one week after the occurrence

and knowledge thereof, must report injuries causing absence from work of more than one day, a supplementary report to be made at the end of 60 days, if the disability continues so long, and at the termination of any case of disability. Prescribed data are to be incorporated in the report and such other information as the board may require.]

Sec. 62. *False claims, etc.*—[Persons knowingly filing or permitting or causing the filing of false or fraudulent claims for compensation or benefits, or receiving compensation payments to which he is not lawfully entitled, or aiding another so to do, is guilty of a misdemeanor; so also are persons who fraudulently prevent or conspire to prevent or procure any person entitled to compensation to omit to make claim therefor or to accept payment of less than the amount due.]

Secs. 63, 64, 65 (as amended 1922, ch. 150), 66-72. *Insurance.*—[Employers under the act must insure and keep insured their liability in some authorized organization, or furnish satisfactory proof of financial ability to make direct payments. In the latter case, security, indemnity, or bond may be required. Evidence of compliance with these provisions must be filed annually, or as often as necessary. Failure to comply with these provisions makes the employer liable for an action for damages the same as if the employer had refused to accept the provisions of the act, or to a claim for compensation. The making of such a claim will be deemed a waiver of the right to sue. Self-insurers are to be granted certificates for periods fixed by the board, which may, however, be revoked on at least 60 days' notice, on hearing. Renewal certificates may be subsequently granted but right to a hearing for this purpose does not accrue sooner than six months after such revocation. Self-insurance may relate to the employer's entire risk or such part or class as the board may direct. In the latter case protection for the remainder must be as the board requires. Persons authorized as self-insurers may independently insure the whole or any part of their liability.]

In compliance with the requirements as to insurance, employers are authorized to form mutual insurance associations or reciprocal or interinsurance exchanges subject to the general laws of the State on the subject, and such regulations as the board may reasonably fix. The board is authorized to require such mutual or reciprocal or interinsurance organizations to purchase annuities or effect reinsurance or to make deposits in banks or trust [companies] to secure the payment of deferred installments of any claim for compensation; but if such organizations have prescribed amounts of surplus and capital they are exempt from these requirements. Substitute schemes for compensation benefits or insurance are authorized if approved by the board. They must confer at least equivalent benefits to those provided by the act, and corresponding added benefits if the employees contribute. Such substitutes are subject to termination for cause. Policies of insurance must provide for knowledge and jurisdiction of the employer to apply to the insurer and the subjection of the latter to awards and judgments rendered against the employer. Provision must also be made for prompt payment of all benefits conferred by the act to the person entitled thereto without regard to default in notice required by the policy or otherwise. Forms must be approved, and every policy for insurance of compensation will be deemed subject to the provisions of the act. Policies must cover the entire liability of the employer except as provided in respect of self insurers, and must indicate the risks or classes covered. Changes in form are not effective until filed with the commissioner of insurance at least 30 days prior to their issue or delivery. Premium rates of all classes of carriers must be fair, reasonable, and adequate, with due allowance for merit rating, and all risks of the same kind and degree of hazard must be written at the same rate by the same carrier. Rates must be approved by the board and reports must be made to the State insurance commissioner in accordance with such reasonable rules as he may prescribe for the purpose of determining the solvency of the carrier and the adequacy of its rates.]

Secs. 73 (as amended 1922, ch. 50), 74 (as amended 1922, ch. 50; 1926, ch. 193), 75-76b. *Election.*—[Election to operate under the act is effected by the employer by filing a prescribed notice with the name, nature of industry, and other prescribed details including average number of employees during the preceding 12 months and the method of securing compensation payments selected by the employer. Employees likewise elect by signing a notice in a register kept by the employer so that employees may at all times have oppor-

tunity to sign the same in acceptance of the act. Such election is effective from and including the date of signing which shall be entered opposite the employee's signature. If employment is intermittent or is temporarily suspended, an original acceptance continues effective in subsequent employment of the same employer. Such notices of election by employees must be preserved by the employer during the continuance of the term of employment, the willful destruction, conversion, or secretion of such notice with fraudulent intent being a misdemeanor.

Election may be withdrawn at any time by filing written notice to that effect and by giving personal written notice to the employees or posting notices in conspicuous places to be effective within not less than one week. Employees may file withdrawal notices with the employer stating the date such withdrawal is to become effective. Employers operating under the act must keep notices thereof conspicuously posted in such form as the board may prescribe. Employers within the terms of the act who do not elect to operate thereunder are deprived of the common-law defenses in case of 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. Employees rejecting the act and suing an employer who accepts it may be defended against the same as if this law had not been enacted.]

SEC. 77. *Payment of premiums.*—[Agreement by which an employee pays any part of insurance premiums is void, and deductions from wages for this purpose constitute a misdemeanor.]

SEC. 78. *Prosecution.*—[On request of the board the attorney general of the State or county is to institute and prosecute necessary actions or proceedings for the enforcement of the act or to defend in actions against the board or its members.]

SECS. 79, 80. *Forms; reports.*—[The board is to prepare and furnish the different forms of literature deemed proper and necessary to the official administration of the act. Annual reports are to be made to the governor covering operations of the board administering the law with statistics as to accepted premiums and such other facts and recommendations as the board may deem proper.]

SECS. 81, 82. *Act in effect.*—[The act was made effective August 1, 1916, and an appropriation was made to initiate it.]

SEC. 83 (as amended 1920, ch. 37). *Administrative fund.*—[An administrative fund is to be created and maintained for the purpose of paying the salaries and necessary expenses of the board in administering the act. Every insurance carrier insuring employers in the State under the provisions of this act is required to pay a tax at the rate of 2 per cent of the amount of the premiums collected, less credit for canceled or returned premiums actually refunded during the year and premiums of reinsurance with licensed companies. Necessary rates are provided for and enforcement thereof. Insurers must pay a similar tax against their pay rolls, premiums being chargeable at the rate used against the same or other similar industry or business in accordance with the annual rates then in force. Provision is made for withdrawal from business, suspension of authority, and other contingencies. The board may not incur expenses on indebtedness chargeable against the maintenance fund in excess of the premium tax payable to such fund for the period. If there is a surplus to the credit of the fund on June 30 of any year in excess of \$60,000, no assessment may be collected for that year and the tax on premiums which would otherwise have been payable to the maintenance fund shall be paid to the State treasury and credited to the general fund.]

SEC. 84. *Employees' insurance association.*—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 provided herein and with all the general corporate powers incident thereto.

SEC. 85. *Directors.*—The board of directors of the association shall consist of 15 members, 8 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.

SEC. 86. First meeting.—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.

SEC. 87. Powers of directors.—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.

SEC. 88. Officers.—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.

SEC. 89. Quorum.—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.

SEC. 90. Subscribers.—Any employer in the Commonwealth may become a subscriber.

SEC. 91. Votes.—In any meeting of the subscribers each subscriber shall be entitled to 1 vote, and if a subscriber has 250 employees to whom the association is bound to pay compensation he shall be entitled to 2 votes, and he shall be entitled to 1 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.

SEC. 92. Issue of policies.—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.

SEC. 93. Matter to be filed.—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.

SEC. 94. Classification.—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.

SEC. 95. Contingent liability.—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.

SEC. 96. Assessments.—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.

SEC. 97. Dividends.—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. Premiums, etc., to be approved.—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.

Sec. 90. Rules.—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.

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. Perjury.—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.

Approved March 23, 1916.

LOUISIANA

ACTS OF 1914

No. 20.—*Compensation of workmen for injuries*

SECTION 1. Scope of law.—This act shall apply only to the following:

1. Every person in the service 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, 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:

(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, saw-mills, shingle mills, planing mills, and sirup 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, slaughter houses, meat-packing plants, ice plants, warehouses, marble or stone cutting or polishing plants, shipbuilding 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, threshing machines, cotton gins, cotton compresses, sugarhouses, sugar and other refineries, sash and door factories, woodworking 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 manu-

facture, 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.

"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 barter 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.

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.

Sec. 2 (as amended 1918, No. 38). *Compensation payable, when.*—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.

Secs. 3-5 (all as amended 1918, No. 38). *Election; defenses.*—[Except for the provisions abrogating the common-law defenses, the act does not apply to employers and employees engaged in the trades, businesses, or occupations above designated, unless prior to the injury they have elected to accept the act; but such election is presumed, every contract of hiring in the occupations named being presumed to be made subject to the provisions of the act in the absence of a specific statement in writing rejecting the same. Such implied or presumed agreement may be terminated by either party on written notice not less than 30 days prior to any accident; and such rejection may be waived on notice in writing, such notice to take effect immediately. Minors 18 years of age and upward may act for themselves in such election, rejection or waiver, but for those under that age, the father, mother, tutor, or the court shall act. The statute does not apply to minors unlawfully employed. If an employee accepts the act and his employer rejects it, in any action by the employee or his dependent to recover damages for personal injury, the employer may not plead the common-law defenses, and it shall be presumed that the injury was the direct result and arose out of the negligence of the employer, and that such negligence was the proximate cause of the injury; but

if the employer has accepted the act and the employee rejects, the common-law defenses remain.]

SEC. 6 (as amended 1918, No. 38; 1923, No. 85). *Contractor*.—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.

2. Where the principal is liable to pay compensation under this section, he shall be entitled to indemnity from any person who independently of this section would have been liable to pay compensation to the employee or his dependent 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 a codefendant, and the principal contractor shall be entitled to indemnity from his subcontractor for compensation payments paid by the principal contractor on account of an accidental injury to the employee of the subcontractor.

SEC. 7 (as amended 1918, No. 38; 1920, No. 24). *Liability of third parties*.— [Where a third party is liable for the injury sustained by the employee, the injured person or his dependents may claim compensation under the act and payment or award thereunder shall not affect his right of action against such third person, nor be regarded as establishing the measure of damages for the injury. The employer having paid or become obligated to pay compensation may himself bring action against the third party to recover such amount; but if either employer or employee brings suit the other must be notified and may intervene as party plaintiff in such suit. In case of recovery the damages are to be apportioned so that the claim of the employer for compensation actually paid shall take precedence over the claim for damages by the employee or his dependent, but if there is an excess of recovery over compensation paid and costs, that sum shall go to the employee or his dependent and the liability of the employer for unpaid compensation, computed at 6 per cent per annum, shall be satisfied to the extent of such payment. Neither party may compromise with such third party without the assent of the other.]

SEC. 8 (as amended 1918, No. 38; 1920, No. 247; 1922, No. 43; 1924, No. 216; 1926, No. 85). *Schedule*.—1. Compensation shall be paid under this act to an injured employee in accordance with the following schedule of payments:

(a) For injury producing temporary total disability to do work of any reasonable character, 65 per cent of wages during the period of disability, not, however, beyond 300 weeks.

(b) For injury producing permanent total disability to do work of any reasonable character, 65 per cent of wages during the period of disability, not, however, beyond 400 weeks.

(c) For injury producing partial disability to do work of any reasonable character, 65 per cent of the difference between wages at the time of injury and wages which the injured employee is able to earn thereafter during the period of disability, not, however, beyond 300 weeks.

(d) In the following cases the compensation shall be as follows:

(1) For the loss of a thumb, 65 per cent of wages during 50 weeks.

(2) For the loss of a first finger, commonly called the index finger, 65 per cent of wages during 30 weeks.

(3) For the loss of any other finger, or a great toe, 65 per cent of wages during 20 weeks.

(4) For the loss of any toe, other than a great toe, 65 per cent of wages during 10 weeks.

(5) For the loss of a hand, 65 per cent of wages during 150 weeks.

(6) For the loss of an arm, 65 per cent of wages during 200 weeks.

(7) For the loss of a foot, 65 per cent of wages during 125 weeks.

(8) For the loss of a leg, 65 per cent of wages during 175 weeks.

(9) For the loss of an eye, 65 per cent of wages during 100 weeks.

(10) For the loss of both hands, or both feet, or both eyes, or one hand and one foot, 65 per cent of wages during 400 weeks.

(11) The loss of the first phalanx of the thumb or big toe, or 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.

(12) 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 the foot.

(13) Amputation between the elbow and the wrist shall be considered as equivalent to the loss of a hand, and amputation between the knee and the ankle shall be equivalent to the loss of a foot.

(14) The permanent total loss of the use of a member shall be equivalent to the amputation of the member.

(15) In all cases involving a permanent partial loss of the use of function of the member mentioned herein above, compensation shall bear such proportion of the amounts named herein for the total loss of such member as the disability to such member bears to the total loss of the member: *Provided,* That in no case shall compensation for an injury to a member exceed the compensation payable under this act for the loss of such member.

(16) 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 physical function is seriously permanently impaired, the court may allow such compensation as is reasonable in proportion and as is in proportion to the compensation hereinabove specifically provided in the case of specific disability above named, not to exceed 65 per cent of wages during 100 weeks.

(17) [Hernia is defined as a disease, ordinarily of gradual development, and not compensable. Only traumatic hernia resulting from the application of force directly to the abdominal wall, either puncturing or tearing the wall, will be considered as compensable, unless conclusive proof is offered of descent of the hernia immediately following sudden effort or severe strain with severe pain and such prostration that the employee was compelled to cease work immediately. These facts must be communicated to the employer within 48 hours, and the distress must be such that the attendance of a licensed physician within 48 hours was required. Compensation will be paid only until the employee is able to resume work with the aid of a truss or other mechanical appliance furnished by the employer. If the employee refuses an operation, compensation is limited to 26 weeks unless death results. If an operation by a physician selected by the employer is accepted the employer must pay the expenses, not in excess of \$250, together with compensation for a period prior to and following the operation, not exceeding 26 weeks if the operation is successful. If the employee selects the physician the employer is released from obligations as to medical expense, but must pay compensation as above. If death results from a hernia or operation, death benefits as provided must be paid.]

(18) Where compensation has been paid under subdivisions (a), (b), or (c) of this schedule, the amount of such payment shall be deducted from any compensation allowed under subdivision (d) or subsection 2 of the section.

2. For injury causing death within one year after the accident there shall be paid to the legal dependents of the employee, actually and wholly dependent upon his earnings for support at the time of the accident and death, a weekly sum as hereinafter provided. If the employee leaves legal dependents only partially actually dependent upon his earnings for support at the time of the

accident and death, 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 in the year prior to his death bears to the earnings of the deceased at the time of the accident.

(a) The following persons shall be conclusively presumed to be wholly and actually dependent upon the deceased employee:

(b) A wife upon a husband with whom she was living at the time of her accident or death.

(c) A husband, mentally or physically incapacitated from wage earning upon a wife with whom he was living at the time of her accident or death.

(d) A child or children under the age of 18 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 injury of such parent. In case there are both surviving wife and child or children, or surviving husband and child or children entitled to compensation, the compensation due under this act shall be paid entirely to the surviving husband or surviving wife for the common benefit of such wife or husband and the child or children. In all other cases the question of legal and actual dependency in whole or in part shall be determined in accordance with the facts as they may be at the time of the accident and death; and in such other cases, if there are a sufficient number of persons wholly dependent to take up the maximum compensation under this act, the death benefit shall be divided equally 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, so much of the death benefit as each is entitled to under this act shall be divided among them according to the relative extent of their dependency. No person shall be considered a dependent unless he is a member of the family of the deceased employee or bearing to him the relation of husband or widow, or lineal descendant or ascendant, or brother or sister, or child.

(e) Payment to such dependents shall be computed and divided among them on the following basis:

(1) If the widow or widower alone, $32\frac{1}{2}$ per cent of wages.

(2) If widow or widower and one child, $46\frac{1}{4}$ per cent of wages.

(3) If widow or widower and two or more children, 65 per cent of wages.

(4) If one child alone, $32\frac{1}{4}$ per cent of wages of deceased.

(5) If two children, $46\frac{1}{4}$ per cent of wages.

(6) If three or more children, 65 per cent of wages.

(7) If there be neither widow, widower, nor child, then to the father or mother, $32\frac{1}{2}$ per cent of wages of the deceased. If there be both father and mother, 65 per cent of wages.

(8) If there be neither widow, widower, nor child, nor dependent parent entitled to compensation, then to one brother or sister, $32\frac{1}{2}$ per cent of wages of deceased, with 11 per cent additional for each brother or sister in excess of one. If other dependents than those enumerated, $32\frac{1}{2}$ per cent of wages for one and 11 per cent additional for each such dependent in excess of one, subject to a maximum of 65 per cent of wages for all, regardless of the number of dependents.

(f) The marriage or death of a dependent shall terminate payments to such dependent, but shall not affect payments allowed other dependents. Should the widower become capable of self-support, compensation shall cease as to him. Compensation payments to dependents shall also terminate when the condition of dependency ceases, except in the case of a widow or child.

Where any minor dependent who is not mentally or physically incapable of wage earning shall become 18 years of age, payment of the proportion of compensation due such minor shall cease.

(g) Where there is a surviving widow, widower, and 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 child or children, and the appointment of a tutor shall not be necessary. Where there is no surviving parent and a child who is entitled to compensation, payment shall be made to the duly appointed tutor.

(h) The term "child" or "children" shall cover only legitimate children, stepchildren, posthumous children, adopted children, and illegitimate children

acknowledged under the provisions of Civil Code articles 203, 204, and 205, the term "brother" and "sister" shall include stepbrothers and stepsisters and brothers and sisters by adoption.

(i) In all cases provided for under this section the relation or dependency must exist at the time of the accident and at the time of death, and the mere expectation or hope of future contributions to the support of an alleged dependent by an employee shall not constitute proof of dependency as a fact.

(j) Where payments of compensation have been made to the employee before his death, the compensation for dependents as provided for in this section shall begin on the date of the last of such payments and shall not continue for more than 300 weeks from the date of the accident.

(k) No compensation shall be payable under this section to a widow unless she be living with her deceased husband at the time of the injury and death, or be then actually dependent upon him for support. No compensation shall be payable under this section to a widower unless he be living with his deceased wife at the time of the injury and death or be at such time incapable of self-support and actually dependent upon her for support.

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 \$20 per week and the minimum compensation shall be \$3 per week: *Provided*, That if at the time of the injury the employee was receiving wages at the rate of \$3 or less per week, then compensation shall be full wages.

4. No compensation shall be paid for the first week after the injury is received: *Provided, however*, That in cases where disability from injury continues for six weeks or longer, after date of the accident, that after six weeks have elapsed, compensation for the first week shall be paid.

5. The employer shall in every case coming under this act, furnish reasonable medical, surgical, and hospital services and medicines not to exceed \$250 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 reasonable expenses of the burial of the employee, not to exceed \$100 and the reasonable contingent expenses in connection therewith not to exceed \$50.

6. Any voluntary payments made by the employer or his insurer either in money or otherwise, to the injured employee, or his dependents, and which are accepted by the employee, which, by the terms of this act, were not due and payable when made, may, subject to the approval of the court, be deducted from the payment to be paid as compensation: *Provided*, That in case of disability, such deductions shall be made by shortening the period during which compensation shall be paid, and not by reducing the amount of the periodical payments.

7. Payments of compensation under this act, shall be paid as near as may be, at the times and places, as wages were payable to the injured employee before the accident, but such payments may be made at last known address of employee, when employee is not living at place where wages were paid, a longer interval, not to exceed one month, may be substituted by agreement without the approval of the court, but a longer interval than one month shall be approved by the court.

8. For injury producing temporary total or temporary partial disability the court, may in its discretion, award compensation for a fixed number of weeks to be based upon the probable duration of such disability.

9. The accounts [amounts] payable as compensation may be commuted to a lump sum settlement by agreement of the parties after having been approved by the court as reasonably complying with the provisions of this act: *Provided*, That in making such lump settlement, the payment due the employee or his dependents, under this act, shall not be discounted at a rate greater than 8 per cent per annum, [;] if such lump sum settlement be made without the approval of the court, the employer shall be liable for compensation at one and one-half times the rate fixed in this act, and the employee or his dependents shall, at all times within two years after date of the payment of the lump sum settlement and notwithstanding any other provisions of this act, be entitled to

demand and receive in a lump sum from the employer such additional payment as together with the amount already paid will aggregate one and one-half times the compensation which would have been due under this act, but for such lump sum settlement. But upon the payment of a lump sum settlement commuted on a term agreed upon by the parties, discounted at not more than 8 per cent per annum and with the approval of the court, the liability under this act of the employer making such payment shall be fully satisfied: *Provided*, That for injuries scheduled in paragraphs 1 (d) and 2 of this section, no shorter term than therein set forth shall have been agreed upon.

SECS. 9, 10 (both as amended 1918, No. 38). *Medical examinations*.—[An injured employee must submit himself for medical examination at the cost of the employer as demanded and reasonably necessary during the pendency of his claim or receipt of payment. The employee is to receive a copy of the report of the physician as to such examination within six days: but if the employer does not have the examination made and the report furnished, the employee shall furnish a report of the examination made by his physician, for which he shall be entitled to receive from the employer the sum of \$1. In the absence of dispute, such reports are to be prima facie evidence of the facts stated. If subsequent disputes arise, the court may, on application of either party, order an examination to be made by a physician appointed by it. The fee will be fixed by the court at not to exceed \$10 and paid by the party applying for the examination. Refusing or obstructing the examination suspends employee's right to compensation until the examination takes place, and no compensation shall be paid in respect of the period of suspension.]

SEC. 11 (as amended 1916, No. 243; 1920, No. 247). *Notice*.—[Notice of injury must be given within six months after the date of injury or death, either by the claimant or by anyone in his behalf. The facts do not invalidate unless in fact misleading to the employer; nor shall want of notice or delay be a bar to proceedings under the act if the employer or his agent is shown to have had knowledge of the accident or the employer is not prejudiced by the delay or want of notice.]

SECS. 12-14 (all as amended 1918, No. 38), 15. *Statement to be posted; form of notice*.—[An employer under the act must post and maintain in some convenient and conspicuous place a printed notice informing employees of the necessity of giving the notice above required within the period of six months. Otherwise the limitation is extended to 12 months from the date of the injury. Notice to the employer must be in writing and state the facts as to the injury in ordinary language, and may include the claim. Delivery may be personal to an employer or one of a partnership, or to an agent of a corporation, or it may be sent by mail by registered letter.]

SEC. 16 (as amended 1918, No. 48). *Incompetents; payments valid*.—[Limitations do not run against incompetent persons or minors until the appointment of a curator or tutor, who shall act in his behalf. Payments made by an employee to a dependent subsequent in right to another are valid unless and until such superior claimant gives notice of the fact to the employer. Disputed rights may be referred to the court.]

SECS. 17 (as amended 1918, No. 38), 18 (as amended 1920, Nos. 234, 247; 1926, No. 85), 19 (as amended 1924, No. 21), 20 (as amended 1918, No. 38; 1923, No. 85). *Procedure*.—[The interested parties may settle claims between themselves, agreements to be in writing, substantially in accord with the provisions of the act, and approved by the court. Such agreement, verified by both parties, presented to the court on joint petition and approved is entered as a judgment of the court with the same force and effect as other judgments. In case of dispute, a verified complaint may be presented to the judge of the court setting forth the facts and stating the matters in dispute, whereupon the judge shall fix a time and place for hearing not less than three weeks after the date of the service of the complaint. Verified answers and amendments are provided for, but if none is submitted, then the judge may enter a judgment in favor of the petitioner in accordance with the statement made. If an answer is filed, witnesses may be presented and hearings conducted, the parties being entitled to appear personally or through attorneys. Proceedings will be summary, the judge not being bound by technical or formal rules or proceedings. Costs may be awarded in the discretion of the judge, and judgment rendered by him shall have the same force and effect as other judgments of the same court.]

Provision is made for appeal to the appellate court, in which preference in hearing shall be given. Judgments for compensation may be modified at any time by subsequent agreements between the parties with the approval of the judge that rendered the judgment under consideration, or may be reviewed after six months on grounds of change of condition, or of error or fraud. The provisions as to medical examination contained in section 9 apply in such cases.]

SEC. 21 (as amended 1916, No. 243; 1920, No. 247; 1926, No. 85). *Preference; fees.*—[Claims and payments under the act have the same preference and priority as allowed unpaid wages, are not assignable, and are exempt from attachment, garnishment, etc., except under a judgment for "alimony in favor of a wife, or ascendant or descendant." Legal and medical fees must be reasonable and approved by the court. Attorneys' fees may not exceed 20 per cent of the award, nor \$1,000 in any case. Soliciting compensation business for one's self or another is a misdemeanor.]

SECS. 22 (as amended 1920, No. 247), 23 (as amended 1926, No. 85), 24-26. *Insurance.*—[Employers under the act must file with the clerk of the district court of the locality evidence of provisions of insurance or give bond for the payment of liabilities arising under the act, unless executed by the court on proof of financial solvency. Failure so to do entails liability at twice the rate fixed by the act, to be paid in a lump sum. In case compensation has accrued, and the court finds reasonable room for uncertainty as to the financial responsibility of an employer to pay the same, and the employer is not insured or has not furnished bond, the court may order such bond to be furnished forthwith, conditioned for the faithful payment of all liability under the act.

Insurance policies must contain an agreement to pay promptly and directly all installments of compensation that may be awarded or agreed upon without regard to default of the insured after the injury or default in giving notice required by the policy or otherwise. Policies must cover the entire liability of the employer under the act and must provide that, as between the employee and the insurer, the employer's knowledge and jurisdiction is that of the insurer for purposes of this act, and that the latter is bound by awards and judgments against the employer. The liability of the insurance company to the employee or his dependents is not affected by the insolvency of the employer, but they may enforce the claims to the same extent that the employer could have enforced them had he made the payments to his employees under the act. The policies insuring compensation shall be deemed to be made subject to the provisions of this act, and their form must be approved by the secretary of state.]

SEC. 27 (as amended 1918, No. 38). *Additional benefits.*—[Employers and employees may agree between themselves in writing for additional benefits, which may be secured by insurance, the premiums to be paid by the employer.]

SEC. 28. *Injuries not compensated.*—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.

SEC. 29. *Bonds of tutors, etc.*—[Tutors and curators must furnish bonds for the faithful performance of their duties in respect of awards under this act, and furnish annual reports or accounting of the funds administered by them.]

SEC. 30. *Interstate commerce.*—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.

SEC. 31 (as amended 1926, No. 85). *Limitation.*—[Claims for payment are forever barred unless within one year after the accident or death an agreement is made or claim prosecuted; but if any payments have been made the limitation runs from the date of the last.]

SEC. 32. *Two or more employers.*—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.

SEC. 33 (as amended 1918, No. 38). *Failure to pay installments.*—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 receives payments thereunder this right shall not accrue.

SEC. 34 (as amended 1918, No. 38). *Remedies exclusive.*—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.

SEC. 35. *Other statutes.*—1. Nothing in this act shall affect the liability of the employer to a fine or penalty under any other statute.

SEC. 36. *Waivers.*—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.

SEC. 37 (as amended 1926, No. 85). *Deception.*—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 wilfully makes a false statement or representation, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding \$500 or imprisoned not exceeding 12 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.

2. Whenever a person, firm, or corporation has been declared in this act to be guilty of a misdemeanor, such person, firm, or corporation upon conviction of the acts declared to be a misdemeanor shall be fined not exceeding \$500 or imprisoned not exceeding 12 months, or both, in the discretion of the court.

SEC. 38 (as amended 1918, No. 38). *Definitions.*—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.

SEC. 39 (as amended 1918, No. 33). *Same.*—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 \$100, unless said court shall not have jurisdiction on account of the amount involved, in which event it shall mean the court having jurisdiction; or where there is more than one judge of said court, then either or any of said judges of said court.

SEC. 40. *Use of words.*—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.

SEC. 41. *Provisions severable.*—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.

ACTS OF 1918

Act No. 39.—*Insurance—Deductions from wages*

[This act makes it a misdemeanor for an employer to collect from the employees, directly or indirectly, or accept in any way, any amount as whole or part payment of any premium of compensation insurance under the act.]

MAINE

ACTS OF 1919

Chapter 238.—Compensation of workmen for injuries

SECTION 1 (as amended 1921, ch. 222). *Title; definitions.*—The first 50 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.

The following words and phrases as used in the first 50 sections of this chapter shall, unless a different meaning is plainly required by the context, have the following meaning:

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.

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 50 of the Revised Statutes. The governor and council shall order such compensation as shall be assessed paid from the State contingent fund.

III. "Assenting employer" shall include all employers who have complied with the provisions of section 6 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 29 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 compensation 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.

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 18 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 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 accident. 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. 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.

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 52. 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 52.

(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 300 and dividing by 52.

SEC. 2. Abrogation of defenses.—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. Employers of five or less workmen.—The provisions of section 2 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. Exemptions.—The provisions of section 2 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. Remedy exclusive.—The provisions of section 2 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 6 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 sustained, assenting employers shall be exempt from suits either at common law or under section 9 of chapter 92, or under sections 51 to 58, both inclusive, of this chapter.

SEC. 6. Election; insurance.—[Employers wishing to come under the act may file with the commission a written assent in such form as it approves, filing also a copy of an insurance policy with a company authorized to do business in the State of Maine, such policy being approved by the insurance commissioner.

The commissioner may require the filing of specific rates and classifications, and make such investigations as may be deemed necessary to satisfy himself that such rates are correct and proper before approval. Proposed changes must also be filed, and are not effective until approved. Approval may be

withdrawn and a revised classification approved at any time, but the assent once filed continues in force without renewal during the life of the original policy, so that there shall be no interim between policies. Employers furnishing satisfactory proof of solvency, and depositing cash, securities, or bond, may also assent. On compliance with either requirement, the commission issues a certificate to that effect, to remain in force during the term of the policy or policies of insurance, or until approval of self-insurance is withdrawn.

In lieu of the foregoing an employer may continue an existing substitute scheme of benefits if approved and conferring at least equivalent benefits on injured employees; and if it requires contributions from them, commensurate additional benefits must be provided. Such substitute system may be terminated on reasonable notice and hearing for a cause shown. A notice in an approved form, stating that the employer has conformed with the provisions of the act, giving the date of the expiration of his insurance policy, and other matters as the commission may determine, must be posted in a conspicuous place accessible to the employees.]

SEC. 7 (as amended 1921, ch. 222). *Presumptions as to employees.*—[Employees of employers who have accepted the act are presumed to have waived their right to sue for damages unless notice to the contrary is given at the time of hiring, and within 10 days thereafter a copy of such written notice be filed with the commission. Such presumed waiver continues in force from year to year unless at least 60 days' prior notice in writing is given the commission and within 10 days also to the employer of a wish to claim a right of action at common law. A minor legally employed may make such elections, but if a minor has a parent or guardian living he may give the notice provided by this section, which will bind the minor in the same manner that adult employees are bound; but if no such notice is given the minor will be held to have accepted the compensation provisions. Rejection of the act may be set aside by notice in writing effective five days after delivery to the employer.]

SEC. 8. *Willful misconduct, etc.*—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.

SEC. 9 (as amended 1921, ch. 222). *Waiting time.*—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 seven days after the accident. If incapacity exists at the expiration of seven days, compensation shall begin on the eighth day. If incapacity arises after seven days, compensation shall begin on the date such incapacity begins.

SEC. 10. *Medical, etc., aid.*—[Reasonable medical, etc., aid, including mechanical surgical attention, when needed, must be furnished for the first 30 days after an accident, not to exceed \$100 in value, unless a longer period or a greater sum is allowed by the commission in its discretion, when the nature of the injury or the process of recovery requires it. If incapacity begins at a time subsequent to the action, the 30 days' period commences at the time the incapacity begins. If the employer and employee are unable to agree as to the amount to be allowed for such services, the commission may fix the same, on petition of either party setting forth the facts. In case of emergency or for other justifiable cause, the employee may select another physician than the one provided by the employer, who shall pay the reasonable cost of the services rendered, subject to the approval of the commissioner.]

SEC. 11. *Who may claim compensation.*—[Employees who have not waived the provisions of the statute may claim compensation from employers who have elected to become subject thereto in case of personal injury arising out of and in the course of the employment.]

SEC. 12 (as amended 1921, ch. 222; 1925, ch. 201). *Compensation for death.*—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 two-thirds his average weekly wages, earn-

ings, or salary, but not more than \$18 nor less than \$6 a week, for a period of 300 weeks from the date of the injury, and in no case to exceed \$4,000: *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 or remarriage 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 18 years, or over said age, but physically or mentally incapacitated from earning, who are dependent upon the widow at the time of her death or remarriage. 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 300 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 300 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:

Sec. 13. *No dependents*.—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 \$200: *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 (as amended 1921, ch. 222; 1925, ch. 201). *Total disability*.—While the incapacity for work resulting from the injury is total, the employer shall pay the injured employee a weekly compensation equal to two-thirds his average weekly wages, earnings, or salary, but not more than \$18 nor less than \$6 a week; and in no case shall the period covered by such compensation be greater than 500 weeks from the date of incapacity, nor the amount more than \$6,000; 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.

Sec. 15 (as amended 1921, ch. 222; 1925, ch. 201). *Partial disability*.—While the incapacity for work resulting from the injury is partial, the employer shall pay the injured employee a weekly compensation equal to two-thirds 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 \$18 a week; and in no case shall the period covered by such compensation be greater than 300 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.

SEC. 16 (as amended 1921, ch. 222; 1925, ch. 201). *Schedule*.—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 total or partial incapacity for work resulting from the injury specified, the employee shall receive compensation while such partial incapacity continues under the provisions of sections 14 and 15, respectively, but in no case shall compensation continue more than 300 weeks after the injury. The compensation to be paid for the injuries hereinafter specified shall be as follows, to wit:

For the loss of a thumb, two-thirds the average weekly wages during 50 weeks.

For the loss of the first finger, commonly called the index finger, two-thirds the average weekly wages during 30 weeks.

For the loss of the second finger, two-thirds the average weekly wages during 25 weeks.

For the loss of the third finger, two-thirds the average weekly wages during 18 weeks.

For the loss of the fourth finger, commonly called the little finger, two-thirds the average weekly wages during 15 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, two-thirds the average weekly wages during 25 weeks.

For the loss of one of the toes other than the great toe, two-thirds the average weekly wages during 10 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, two-thirds the average weekly wages during 125 weeks.

For the loss of an arm, or any part at or above the wrist, two-thirds the average weekly wages during 150 weeks.

For the loss of a leg, or any part at or above the ankle, two-thirds the average weekly wages during 150 weeks.

For the loss of a foot, two-thirds the average weekly wages for 125 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, two-thirds the average weekly wages during 100 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 \$18 and not less than \$6 a week, as provided for total or partial disability.

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.

SECS. 17-20. *Notice*.—[Notice of accident must be given within 30 days and claims submitted within 1 year from the date of the occurrence of the same, or within 1 year after death or the termination of a physical or mental incapacity. Such notice is to state in ordinary language the essential facts and be signed by the claimant or by a person in his behalf. Service may be personal or by leaving the notice at the last-known residence or place of business of the employer or sent by registered mail. Inaccuracy not intentionally misleading and in fact having such effect does not invalidate a notice. Want of notice is not a bar to proceedings if it appears that the employer or an agent had knowledge of the injury or that failure to give notice was due to accident or an unforeseen cause.]

SEC. 21. *Medical examinations*.—[During the continuance of disability the injured employee must, if so requested, submit to an examination by a physician

selected and paid by the employer, and may also have a physician or surgeon of his own selected and paid by him present. The chairman of the commission or the associate legal member may also appoint a physician to examine an injured employee, the fees to be fixed and paid by the commission. Refusal to submit to examination or obstruction of the same suspends compensation rights for the period when compensation for such period or suspension may be forfeited.]

Sec. 22. *Savings or insurance.*—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.

Sec. 23. *Incompetents.*—[If an injured employee is mentally incompetent or leaves minor dependents, no limitation will run against a claim while there is no guardian. Trustees may be appointed to act for beneficiaries whom the commission believes on reasonable grounds to be wasting their compensation payments.]

Sec. 24. *Waivers; assignments, etc.*—No agreement by an employee, except as provided in section 30, 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.

Sec. 25. *Injuries outside State.*—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.

Sec. 26 (as amended 1921, ch. 222). *Liability of third parties.*—[Where a third party is liable for the injury to the workman, he may at his option either claim compensation, obtain damages from the third party, or proceed at law to recover the same. If compensation is claimed and awarded, the employer is subrogated to the rights of the injured employee to the extent of such payments, any excess to go to the injured employee less the employer's expense and costs. Settlement of such claim and distribution of the proceeds must be approved by the court, or if there was no suit, by the chairman of the commission. If the employer or his insurer does not proceed against the third party within 90 days after written demand by a compensation beneficiary, the latter may proceed to enforce the liability in his own name, accounting for the proceeds as above provided.]

Sec. 27. *Preferences.*—[Claims and awards have the same preference over the unsecured debts of the employer as wage debts, but nothing herein shall be construed as impairing any lien which the employee may have acquired.]

Sec. 28. *Lump sums.*—[After payments have continued not less than six months, either party may, on notice to the other, ask the commission for an order of commutation. If it appears that such commutation will be to the best interest of the beneficiary, or that the continuance of weekly payments would entail undue expense or hardship on the employer, or that the beneficiary has removed or is about to remove from the United States, commutation will be granted. The basis is that of the present worth, calculated on the basis of interest at 5 per cent per annum.]

Sec. 29 (as amended 1921, ch. 222). *Industrial accident commission.*—[A commission consisting of four members is provided for, the chairman and associate legal member to be "men learned in the law and members in good standing of the bar of the State." The commissioner of labor and industry and the commissioner of insurance are ex officio the third and fourth members respectively. The first two are appointed by the governor for terms of three years, and until their successors are appointed and qualified unless removed for inefficiency, willful neglect of duty, or malfeasance in office, after hearing. The chairman receives a salary of \$3,500; the associate legal member, \$3,000; the commissioner of labor and industry, \$1,000 in addition to his salary; and the commissioner of insurance an addition of \$500. The commission may also appoint a clerk, and an appropriation of \$28,200 is to be made annually for salaries, clerk and other assistants, physicians, witness-fees, traveling, and other expenses.

The commission has general supervision over the administration of the act with power to make rules and regulations, issue subpoenas for witnesses, and compel the production of books and papers. It may appoint a person from any

part of the State to investigate an accident and report; depositions also may be taken either within or without the State.]

SECS. 30 (as amended 1921, ch. 222), 31, 32, 33 (as amended 1921, ch. 222), 34-36. *Procedure.*—[If the parties reach an agreement a memorandum thereof signed by them shall be filed in the office of the commission, and if found to be in conformity with the act shall be approved. In cases of dispute or unapproved agreement any person in interest may file a petition setting forth the necessary facts and the matter in dispute. Within four days thereafter, the commission must notify the other party, and within 10 days the party in opposition must file its answer, furnishing a copy also to the petitioner. Further time for filing answer and amendments may be allowed, but if no answer is filed, the hearing will be held on the petition. Hearings are to be in the place of the accident, but may with the consent of the claimant be held elsewhere, when the claimant will be reimbursed actual traveling expenses. If there appear to be facts in dispute, witnesses may be presented, or the claims of both parties submitted by affidavit. The chairman or associate legal member shall, from the evidence thus furnished, decide in a summary manner on the merits of the controversy. Findings of fact and rulings of law and other pertinent matters will be filed in the office of the commission and copies furnished to all parties interested. In the absence of fraud, such decisions on questions of fact will be final. Any party in interest may present certified copies of orders or decisions to the clerk of the county court, and the justice shall thereupon render a decree in accordance therewith and notify all parties. Such decree shall have the same effect as though rendered in a suit of equity except that no appeal can be taken therefrom as to questions of fact, or where the decree is based on a memorandum of agreement approved by the commission.]

Appeals may be taken on proceedings as in equity, and an award may be reversed or modified on grounds of erroneous ruling or finding of law. Such action must be taken within 20 days after notice of the filing by the commission or its chairman or the associate legal member. Modification of an award submitted to the court will be conformed to by it in its decree.

Agreements filed with the commission and approved by the commissioner or decisions of its chairman or associate legal member have the same effect as a judgment by the court and are enforceable when filed with the clerk of the court of the county. At any time within two years from the date of an agreement by the commission, if the term of compensation has expired, agreements, awards, or findings may be reversed on grounds of change in conditions, and modified in accordance with the facts. Agreements may also be modified at any time by a subsequent agreement between the parties and approved by the commissioner as original agreements are.]

SEC. 37. *Forms, orders, etc.*—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.

SEC. 38. *Death.*—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.

SEC. 39. *Limitation.*—An employee's claim for compensation under this act shall be barred unless an agreement or a petition as provided in section 30 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.

SEC. 40. *Public employments.*—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 6 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.

SECS. 41-43. *Reports; agreements.*—[Employers under the act must promptly report all accidents to their employees and such other particulars as are required by the commission; also when the injured employee resumes employment and the amount of his wages or earnings. Any final settlement made whether by the employer or the insurance company must be filed with the commission,

showing the total amount of money paid, but this is not binding without the approval of the commission or of its chairman or associate legal member.

Insurance companies operating under the act must fill out blanks and answer questions submitted to them relating to their business under the act.

The commission itself makes biennial reports giving full statistical information as to the administration of the act, the number of employees affected, the number injured, compensation received, and costs to the insurer.]

SEC. 44. *Interstate commerce.*—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.

SEC. 45. *Payments to nonresidents.*—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.

SEC. 46. *Provisions severable.*—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.

SEC. 47. *False statements.*—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 \$50, and shall forfeit all right to compensation under this act after conviction for such offense.

SEC. 48. *Impersonating officials.*—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 \$200, or by imprisonment not to exceed 60 days, or by both.

MARYLAND

ANNOTATED CODE—1924

ARTICLE 101.—*Workmen's compensation*

SECTIONS 1-7. *Industrial accident commission.*—[A commission of three members is to be appointed by the governor for terms of six years each, terms expiring in rotation, the commissioners to hold office until their successors are appointed and qualified. Members may be removed for inefficiency, neglect of duty, or malfeasance, but only after hearing. The principal office is in the city of Baltimore but branches may be established elsewhere. A majority of the commission constitute a quorum, and any investigation or hearing may be made or held by one member whose order, when approved by a majority, becomes the order of the commission. A salary of \$5,000 each is provided, together with necessary expenses.]

Sessions are to be continuous excepting Sundays and legal holidays, and are open to the public. Proceedings are to be recorded; but no employee may divulge any information secured by him in regard to the public transactions, property, etc., of any person, firm, or corporation or any other member of the commission.

The commission may employ a secretary, inspectors, accountants, stenographers, and other assistants as are required, and fix their compensation subject to the approval of the governor. Suitable equipment and supplies are to be procured, and the commission is to have an official seal. Members of the commission, the secretary and any special examiner or inspector, may issue subpoenas, administer oaths, and certify to official acts. Depositions may be taken either within or without the State and the production of necessary books, pay rolls, etc., compelled on application to a judge of the appropriate court. No person may be excused from testifying or producing books, papers, or documents when ordered on the ground of incrimination or subjecting himself to penalty or forfeiture, but no one shall be prosecuted, punished, or penalized on account of any act or transaction concerning which he shall have testified under oath by order of the commission, but this shall not exempt from punishment for perjury.]

SECS. 8-13. *Procedure.*—[Officers serving subpoenas receive the same fee as would a sheriff in the city or county, and witnesses are entitled to fees and mileage as provided in civil cases. The commission is to adopt reasonable rules for its procedure, regulate notices, the nature and extent of proofs and evidence, the forms of application, the methods of investigation, physical examinations and inspections, etc. It is not bound by formal or technical rules, but is to carry out justly the spirit of the article. Provision is made for transcripts of evidence, the preparation of blank forms, and for annual reports to the governor.]

SEC. 14. *Compensation to be paid.*—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.

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 extrahazardous 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.

Sec. 15. Insurance.—[Insurance may be in the State accident fund or with any stock corporation or mutual association authorized to transact the business of compensation insurance in the State; self-insurance is permitted on satisfactory proof of financial ability, though the commission may, in its discretion, require the deposit of securities in an amount determined by it to secure compensation payments. Reports may be required annually or at any other time deemed necessary, and an employer may be examined under oath, or such examination made of his business as the commission may determine. If such satisfactory proof is not furnished, the employer may be required to insure in the State fund unless he at once insures voluntarily in some stock or mutual association. Failure to comply with the foregoing provisions is a misdemeanor, but the penalty may be remitted if the employer insures or secures the payment of compensation as provided in this section and has paid or secured the payment of any prior awards.]

An employer desiring to assure the payment of benefits as herein required must submit to the commission the method he wishes to adopt for its approval. The commission may revise or alter its decision as reasonably necessary to protect payments or diminish and prevent accidents. The power of the commission as to the prevention of accidents does not extend to public service corporations under the jurisdiction of the public service commission. The decisions of the commission may be reversed by the courts.

Employers failing to voluntarily insure the payment of compensation benefits are to be compelled by the commission to deposit with the State fund premiums fixed by the commission for the group of employments, industries, or works to which the employer belongs. Failure or refusal to so insure within 10 days after order by the commission incurs a penalty of six months' premiums, which may be collected by the commission in the same manner as provided in section 22 of this article.

When exercising its discretion under this section, the commission is to consider the reputation of any insurance carrier for promptness and fairness of settlements of claims without unreasonable resistance thereto, and shall also consider the financial strength of the employer, the number of his employees, and the hazard of their employments; also the relative influence of the different methods of securing benefits on the prevention of accidents, and other facts or conditions bearing on the security and promptness of payment of compensation and the prevention of accidents.]

Sec. 16. State accident fund.—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. Premiums.—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 1, 1914, the payments for the months of November, 1914, to February, inclusive, 1915, shall be made on or before November 1, 1914, and be preliminarily based upon the pay roll of the operations of the first four months of the year 1914. 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. Several occupations.—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.

SEC. 19. Classification of industries.—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 1st 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 \$100 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.

In case of disability partial in character but permanent in quality the compensation shall be 66⅔ per cent of the average weekly wages, in no case to exceed \$18 per week and not less than a minimum of \$8 per week, unless the employee's established weekly wages are less than \$8 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 \$3,750 in the aggregate.

SEC. 20. Form of pay roll.—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.

SEC. 21. Reports.—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 \$100 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.

Sec. 22. *Default in payment.*—[In case of default of payment to the State accident fund proceedings may be had in a civil action against the employer for the recovery of the same, the action to be brought by the attorney general of the State on certification by the commission. Policies are suspended during the interval between such certification and payment of the premiums due.]

Secs. 23–25. *Surplus; custody of funds.*—[Ten per cent of the premiums collected for the State fund are to be set aside to create a surplus until \$50,000 is accumulated and thereafter 5 per cent until, in the judgment of the commission, the surplus is sufficiently large to cover the catastrophe hazard. A reserve to meet anticipated losses and carry all claims and policies to maturity must also be maintained. The treasurer of the State is custodian of the fund, and payments therefrom are to be by voucher signed by officers of the commission. A separate fund is to be maintained and whenever sums not likely to be required for immediate use are in hand they may be invested in designated interest bearing securities. Funds for current use may be deposited as other State funds.]

Sec. 26. *Withdrawing from fund.*—Any employer, after entering the State accident fund may withdraw from said fund after the period of one year upon giving 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 article.

Sec. 27. *Expenses.*—[The expense of administering the fund is to be charged against it, including the salaries of those employees rendering services exclusively to the fund, and proportionate amounts of the expenses of the commission and other employees. A pay roll of the employers of the State is to be obtained annually, as fully and accurately as possible, whether insured in the State fund or otherwise, or self-insured, and shall also calculate the amount paid by the State for the expenses of the accident commission during the preceding year, including the amount chargeable to the accident fund. A proportionate distribution of such costs and charges shall be assessed against all self-insured employers, and all insurance carried, including the accident fund, as a special tax for the maintenance of the State industrial accident commission. The total amount to be assessed against such insurance carriers and self-insurers is not to exceed \$80,000 for any one year. Payment of such assessments may be enforced in a civil action in the name of the State. The commission is authorized to examine pay rolls and require reports reasonably necessary to carry out the foregoing provisions.]

Sec. 28. *If law repealed.*—[In case this article is repealed, the insurance fund is to be disposed of as the legislature may provide.]

Secs. 29–31. *Policies of insurance.*—[All policies of insurance for compensation under this article are deemed to be made subject to its provisions. A license must first be obtained from the insurance commissioner of the State, who may pass upon the adequacy of premium rates, and must approve the form of policy before it can be used. Such commissioner has power to require the establishment and maintenance of adequate rates for the various risks, and may revoke the license of any company while within the provisions of this section. Policies must provide that the commission may enforce them for the benefit of the beneficiary under this article, that knowledge or notice on the part of the employer, and jurisdiction of the employer, are for the purposes of this article effective as to the insurance carrier. There must also be a provision to the effect that the insolvency of the employer does not relieve the carrier from the payment of compensation on account of injuries sustained during the life of the policy. Policies must cover the liabilities provided for by this article, and may not be canceled within the time of their term without at least 10 days' notice to the commission and the employer. Existing arrangements are not interfered with, but any scheme or system of benefits may not reduce the liability for compensation specified in this article, and a person en-

titled to compensation may, irrespective of any insurance or other contract, have the right to recover directly from the employer.]

Sec. 32. *Extrahazardous employments.*—Compensation provided for in this article shall be payable for injuries sustained or death incurred by employees engaged in the following extrahazardous employments:

1. The operation, including construction and repair, of railways operated by steam, electric, or other motive power, street railways and incline 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 1.

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 3.

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 5 and 6.

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 8.

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, fire-proofing, 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 reg-

isters, adding machines, carriage mountings, bicycles, metal toys, tools, cutlery, instruments, photographic cameras, and supplies, sheet-metal products, buttons.

24. Manufacture of agricultural implements, threshing 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, candies, 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; manilla 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. All salesmen including sales managers employed to solicit orders from customers outside of the establishment for which they are employed, who are citizens or residents of this State, employed by a person, firm, or corporation having a place of business within this State, whether the injury for which compensation is asked was sustained within this State or elsewhere: *Provided, however*, If an employee or the dependents of an employee shall have received 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 article.

44. 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, and to all work of an extrahazardous nature.

SEC. 33. *Who may elect.*—Any employer, his employee or employees engaged in works not extrahazardous within the meaning of this article may, by their

joint election, file with the commission, except 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.

Any workman of the age of 16 years and upward 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 16 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 occupation in which such workman shall be engaged.

The provisions of this article 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 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.

SEC. 34. Interstate commerce.—[This section provides that if Congress enacts an exclusive remedy for compensation for employees of common carriers by railroads in interstate or foreign commerce injured in the course of their employment, such provision may, by agreement between employers and employees, be made applicable to intrastate commerce. (No such law has been enacted.)]

SEC. 35. Public employees.—Whenever the State, county, city, or any municipality shall engage in any extrahazardous work, within the meaning of this article, whether for pecuniary gain or otherwise, in which workmen are employed for wages, this article shall be applicable thereto. In time of peace and while engaged in military service all officers and enlisted men of the organized militia of the State of Maryland shall be deemed workmen of the State for wages within the meaning of the preceding sentence. 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.

SEC. 36. Compensation.—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. **Permanent total disability:** In case of total disability adjudged to be permanent 66 $\frac{2}{3}$ per cent of the average weekly wages shall be paid to the employee during the continuance of such total disability, not to exceed a maximum of \$18 per week and not less than a minimum of \$8 per week, unless the employee's established weekly wages are less than \$8 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 \$5,000. Loss or loss of use 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.

2. **Temporary total disability:** In case of temporary total disability, 66 $\frac{2}{3}$ per cent of the average weekly wages shall be paid to the employee during the continuance thereof, but not to exceed a maximum of \$18 per week and not less than a minimum of \$8 per week, unless the employee's established weekly wages are less than \$8 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 \$3,750 in the aggregate.

3. **Permanent partial disability:** In case of disability partial in character but permanent in quality the compensation shall be 60 $\frac{2}{3}$ per cent of the average weekly wages, in no case to exceed \$18 per week and not less than

a minimum of \$8 per week, unless the employee's established weekly wages are less than \$8 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 exceed more than \$3,750 in the aggregate and shall be paid to the employees for the period named in the schedule, as follows:

Thumb: For the loss of a thumb, 50 weeks.

First finger: For the loss of a first finger, commonly called the index finger, 30 weeks.

Second finger: For the loss of a second finger, 25 weeks.

Third finger: For the loss of a third finger, 20 weeks.

Fourth finger: For the loss of a fourth finger, commonly called the little finger, 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 the 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, 25 weeks.

Other toes: For the loss of one of the toes, other than the great toe, 10 weeks.

Hand: For the loss of a hand, 150 weeks.

Arm: For the loss of an arm, 200 weeks.

Foot: For the loss of a foot, 150 weeks.

Leg: For the loss of a leg, 175 weeks.

Eye: For the loss of an eye, 100 weeks.

Hearing: For the total loss of hearing of one ear, 50 weeks; for the total loss of hearing of both ears, 100 weeks.

Loss of use: Permanent loss of 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, and in arriving at the fractional part of vision lost regard shall not be had for the effect that correcting lens or lenses may have upon the eye or eyes.

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 paid in addition to and consecutively with the compensation hereinbefore provided in subsection 2 of this section.

If an employee dies, the right to any compensation payable under this subsection unpaid at the date of his death shall survive to and vest in his personal representatives.

Other cases: In all other cases in this class of disability the compensation shall be 50 per cent 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 \$18 per week), payable during the continuance of such partial disability, but not to exceed \$3,000, 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 the use of the entire member as the affected or amputated portion thereof bears to the whole.

Disfigurements: For other mutilations and disfigurements not hereinbefore provided for compensation shall be allowed, in the discretion of the commission, for not less than 10 weeks nor more than 100 weeks, as the commission may fix in each case, having due regard to the character of the mutilation and disfigurement as compared with mutilation and injury hereinbefore specifically provided for.

4. Temporary partial disability: In case of temporary partial disability, except the particular cases mentioned in subdivision 3 of this section, an injured employee shall receive 50 per cent 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 \$18 per week, during the continuance of such partial disability, but not in excess of \$3,500, except as otherwise provided in this article.

In case the injury causes death within the period of three 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 expense provided for in section 87 hereof.

If there are wholly dependent persons at the time of death, the payment shall be 66% per cent of the average weekly wages, not to exceed, however, a maximum of \$18 per week and not less than a minimum of \$8 per week, unless the deceased employee's established weekly wages were less than \$8 per week at the time of injury, in which event the compensation shall be an amount equal to the average weekly wages, and to continue for the remainder of the period between the date of death and 416 weeks after the date of injury, and not to amount to more than a maximum of \$5,000 nor less than a minimum of \$1,000.

If there are no wholly dependent persons at the time of the death, but are partly dependent persons, those partly dependent shall receive compensation as follows: The weekly payments to such dependents shall be in an amount not exceeding 66% per cent of the average weekly wages or \$18 per week, but may, in the discretion of the commission, be for a less amount per week, and to continue for all or such portion of the period of 416 weeks after the date of the injury as the commission in each case may determine, and not to amount to more than a maximum of \$3,000.

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 16 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.

The right to any compensation payable to any dependent and unpaid at the date of death of any such dependent shall survive to and be vested in the surviving dependents as the commission may determine, if there be such surviving dependents, and if there be none such, then the compensation shall cease.

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, convert any payments thereafter to become due to such beneficiaries into a lump-sum payment, not in any case to exceed \$2,400, 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. Medical, etc., aid.—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, apparatus, artificial hands, arms, feet, and legs as may be required by the commission in an amount not to exceed \$500. If an 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 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 a like standard of living, and in case death ensues from the injury within three years, reasonable funeral expenses shall be allowed, not to exceed the sum of \$125. Any bill for funeral expenses contracted for an amount in excess of \$125 shall be null and void and uncollectible either out of the compensation allowed or out of the personal assets of those obligating themselves to pay, unless and until said bill is approved by the commission: *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 payments therefor.

SECS. 38-42. *Notice and claim; procedure.*—[Notice of a compensable injury must be given within 10 days after the accident, and of death within 30 days. The facts must be stated in ordinary language, signed by a claimant or person in his behalf. Failure to give such notice bars any claim under the article unless excused on the ground that notice could not be given for some sufficient reason, or that the party liable for payments was prejudiced thereby. Employers must also report the occurrence of accidents at once to the commission. Employees entitled to compensation must file claim within 30 days, failure being a bar unless excused on the same ground as given above. Claims for death must be submitted within a year. The commission is directed to make investigations as deemed necessary, and may, on the application of either party, order a hearing and within 30 days after the claim is submitted or after the hearing is closed must render its decision, filing the same with a statement of the conclusions of fact and rulings of law. If the commission deems proper, or either party makes written application therefor, it may require the claimant to appear before an arbitration committee appointed by the commission representing employees, employers, and the commission. The same procedure may be followed if changes of circumstances warrant a review. Penalties are provided for attempts to secure compensation to which the claimant is not entitled. Any employee entitled to receive compensation may be required to submit himself to medical examination at reasonable times and places as may be provided by the rules of the commission. Refusal or obstruction suspends benefits, and no compensation shall be paid for the period of such suspension.]

SEC. 43. *Second injuries.*—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 at the time of the remarriage, she shall receive compensation for one year after the date of her remarriage, provided there is so much of the compensation previously awarded her outstanding. 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.

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.

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.

SEC. 44. *Removal from State.*—If a beneficiary shall reside or remove out of the United States 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 \$2,400, by paying a sum equal to three-fourths of the then value of such payments.

SEC. 45. *Intentional injury.*—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. *Injuries not compensated.*—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.

SEC. 47. *Learners, etc.*—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.

SEC. 48. *Minors.*—A minor working at an age legally permitted under the laws of this State shall be deemed sui juris for the purposes of this 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.

SEC. 49. *Waiting time.*—No compensation shall be allowed for three days after the beginning of disability, except disbursements herein authorized for medical, nurse, and hospital services and medicines and for funeral expenses.

SEC. 50. *Distribution of death benefits.*—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.

SEC. 51. *Lump sums.*—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, convert the compensation to be paid in a partial or total lump sum.

SEC. 52. *Assignments, etc.*—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.

SEC. 53. *Waivers.*—No employer or employee who is 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 \$200 for each offense.

SEC. 54. *Jurisdiction continuing.*—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.

SEC. 55. *Absence of safeguards.*—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 \$50 or more than \$500 to be paid into the State accident fund.

SECS. 56, 57. *Appeals.*—[Appeals may be taken by any party in interest to the circuit court of the county or the common-law courts of Baltimore city for determination of the action of the commission, whether it has exceeded its powers, or has misconstrued the law and the facts applicable in the case. The court may affirm, reverse, or modify any award. Proceedings are to be informal and summary, but on application of either party, questions of fact

may be submitted to a jury. Appeals must be taken within 30 days following the rendering of the decision appealed from, and do not act as a stay. Further appeals may be taken to the court of appeals as in other civil cases, and such appeals shall have precedence over all except criminal cases. Costs follow the practice prevailing in civil cases, and if the court or commission in any proceedings determines that they have been brought on unreasonable grounds, the entire cost may be assessed against the moving party. Claims for legal and medical services are not enforceable unless approved by the commission; if so approved they become a lien upon the award to be paid therefrom only in the manner fixed by the commission.]

SEC. 58. *Liability of third parties.*—[Where injury or death is caused in such a manner as to create a legal liability of a third party, the injured man or his dependents in case of death may either proceed in an action at law for damages, or claim compensation under this article, or in case of joint tort-feasors, may proceed against both. If an employer or his insurer paying compensation or subject to an award, he may enforce against a third party the liability of the beneficiary. If damages are recovered in excess of the award, including medical and surgical services and funeral expenses, such excess, less expenses and costs of action, shall be paid to the injured employee or his dependents. If the employer or his insurance carrier does not within two months start proceedings against a third party, either the employee or his dependents may enforce his liability in an action at law; but if damages are recovered, the expenses of the action will be first retained, then the employer or his insurer reimbursed and any balance in excess thereof shall inure to the plaintiff.]

SEC. 59. *Unconstitutionality.*—[This section provides for a contingency of a holding of unconstitutionality. As the article has been declared constitutional further notice is omitted.]

SEC. 60. *Records on appeal.*—It shall be the duty of the clerk of the court to which a 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. 61. *Cases outside scope of act.*—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 of 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.

SEC. 62. *Contractors and subcontractors.*—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.

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. 63. *Construction.*—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.

SEC. 64. Presumptions.—In any proceeding for the enforcement of a claim for compensation under this article it shall be presumed in the absence of substantial evidence to the contrary:

- (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.
- (e) That there has been no prejudice caused by failure to file claim within 30 days.

SEC. 65. Definitions.—Definitions as used in this article:

1. "Extrahazardous employment" means a work or occupation described in section 32 of this article.

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 threshing or 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 undertaking 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, unless these employments elect to come under this article as provided in section 33, nor in any case where the accident occurred before this article takes effect, nor to casual employees or any employees who are employed wholly without the State. But for all purposes of this article casual, occasional, or incidental employment outside of this State by the Maryland employer of an employee or employees regularly employed by said employer within this State shall be construed to be employment within this State: *Provided, however*, if an employee or the dependents of 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 article.

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 16 of this article.

10. The term "child" and "children" shall include posthumous children and adopted children, whether members of the deceased employee's household at the time of his accident or death or not, and shall also include stepchildren, illegitimate children, and other children, if such stepchildren, illegitimate children, and other children were members of the household of the decedent at the time of the accident or death and had received contributions toward their support from such deceased employee during any part of the six months immediately preceding the accident or death.

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.

MASSACHUSETTS

GENERAL LAWS—1921

CHAPTER 24.—*Department of industrial accidents*

SECTIONS 1, 2 (as amended 1922, ch. 537; 1923, ch. 477), 3 (as amended 1923, ch. 151), 4 (as amended 1923, ch. 477), 5-9. *Industrial accident board*.—[A department known as the department of industrial accidents consists of the industrial accident board of seven members. One member must be a woman. The chairman is designated by the governor, and terms are five years. The chairman receives a salary of \$6,000, the other members, \$5,000 each, the secretary \$5,000, inspectors at salaries fixed by the department, and other officers, agents, and assistants as are necessary may be appointed. It may also appoint a medical advisor at a salary of \$4,500. Provision is made for a division of industrial training for injured workmen.]

CHAPTER 152.—*Workmen's compensation*

SECTION 1. *Definitions*.—The following words, as used in this chapter shall, unless a different meaning is plainly required by the context or specifically prescribed, have the following meanings:

(1) "Average weekly wages," the earnings of the injured employee during the period of 12 calendar months immediately preceding the date of injury, divided by 52; but if the injured employee lost more than two weeks' time during such period, the earnings for the remainder of such 12 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 12 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.

(2) "Department," the department of industrial accidents.

(3) "Dependents," 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.

(4) "Employee," 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.

(5) "Employer" includes the legal representative of a deceased employer.

(6) "Insured" or "insured person," an employer who has provided by insurance for the payment to his employees of the compensation required by this chapter.

(7) "Insurer," any insurance company which has insured the compensation payable by an employer under this chapter.

(8) "Reviewing board," the reviewing board designated under section three of chapter 24.

SEC. 2. *Powers, etc., of department*.—The department shall make all necessary inspections and investigations relating to causes of injuries for which compensation may be claimed, and for this purpose any member or employee thereof may at any time enter places of employment when being used for business purposes. It shall also have the powers and duties set forth in this chapter.

SEC. 3. [Repealed.]

SEC. 4 (as amended 1921, ch. 462). *Reports*.—The department shall make an annual report.

SECS. 5-17. *Procedure*.—[The department may make rules consistent with this chapter for carrying out its provisions. Process and procedure are to be as simple and summary as reasonably may be. The department and its members may subpoena witnesses, administer oaths and examine books and records relative to questions in dispute. Depositions may be taken or letters rogatory may be sent to courts of other States or countries by the superior court on behalf of the department. Witness fees are prescribed, and provision for enforcement of attendance by proceedings in the superior court.

If the insurer and an employee reach an agreement a memorandum must be filed with the department, and if approved by it, it becomes enforceable. If they fail to agree, or disagree as to continuance of payments under an agreement, either party may notify the department which shall thereupon assign the case for hearing by a member. A decision will be rendered on the evidence, and unless a claim for review is filed within seven days, it becomes enforceable as an award. If a claim for review is filed the reviewing board shall hear the parties and file its decision in accordance with its conclusions. No party is of right entitled to a second hearing upon questions of fact. An impartial physician may be appointed to examine the injured employee and report, the report being admissible as evidence in any proceeding before the department or a member thereof if the parties in interest have been seasonably furnished with copies of such report. The physician's fee is \$5 and traveling expenses but additional reasonable amounts may be allowed in extraordinary cases, and the insurer is to reimburse the department for the amount so paid.

Any party in interest may present a certified copy of an award or decision to the superior court of the county whereupon a decree shall issue with the same effect as if rendered in a suit heard and determined by the court, except for certain restrictions on appeals. If a decision has been ratified the court will modify its decree accordingly. Fees of attorneys are subject to the approval of the department. If there is a disagreement, a hearing may be had, the decision being enforceable as above. If it is determined that proceedings have been brought, prosecuted or defended without reasonable ground, the whole cost thereof is to be assessed against the party responsible therefor.

In case of legal liability in a third party, the employee may at his option proceed at law against such party to recover damages, or against the insurer for compensation under this chapter, but not against both. If compensation is paid the insurer is subrogated to the rights of the injured person, and if he recovers more than the amount paid by him, four-fifths of the excess shall be paid to the employee.

The general questions in dispute are to be determined by the department, enforceable on filing with the court, if no claim for review is made.]

SEC. 18. *Contractors' employees*.—If an insured person enters into a contract, written or oral, with an independent contractor to do such person'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 insured, and the insurer would, if such work were executed by employees immediately employed by the insured, be liable to pay compensation under this chapter to those employees, the insurer shall pay to such employees any compensation which would be payable to them under this chapter if the independent or subcontractors were insured persons. The insurer, 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 insurer has paid compensation under this section, it may enforce, in the name of the employee or in its own name and for its benefit, 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 insured, 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 insured or which are under the control or management of the insured.

SECS. 19, 20. *Records; reports of accidents*.—[Every employer must keep a record of all injuries to his employees received in the course of their employment and report the same to the department within 48 hours, not counting Sundays and legal holidays. A supplemental report is to be made at the termination of every disability, and at the end of 60 days if disability continues

so long, a final supplemental report. Such reports are available for statistical purposes on request of the department of labor and industries. Within 60 days after the termination of a disability a statement is to be filed by the insurer showing total payments made or to be made for compensation and for medical services. Copies of hospital records properly certified are admissible as evidence.]

SECS. 21-25. *Notice of insurance; effect.*—[Insured employers must notify their employees as soon as the policy is secured, also of the expiration of any policy, unless renewed. A copy of such notice is to be filed with the department. If an employee of such insured employer files a claim for compensation or accepts payments or makes any agreement for payment or submits for a hearing as provided above, such action releases the employer of any claims or demands at law, if any, arising from the injury. Waiver of right of action for damages will be presumed if an employee does not notify the employer in writing of his claim to sue. Such notice may be waived in writing effective five days after delivery. Notices required by this section are to be given in such manner as the department approves.]

If an insured employer who has complied with the regulations of the insurer is required to pay damages for injuries to an employee sustained during the period covered by insurance, he is entitled to reimbursement of the full amount and costs if he has given the insurer written notice of the action, with opportunity to appear and defend.]

SEC. 26. *Waivers.*—If an employee who has not given notice of his claim of common-law rights of action, under section 24, or who has given such notice and has waived the same, receives a personal injury arising out of and in the course of his employment, he shall be paid compensation by the insurer, as hereinafter provided, if his employer is an insured person at the time of the injury.

SEC. 27. *Willful misconduct.*—If the employee is injured by reason of his serious and willful misconduct, he shall not receive compensation.

SEC. 28. *Double compensation.*—If the employee is injured by reason of the serious and willful misconduct of an insured person 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 insured shall repay to the insurer the extra compensation paid to the employee. If a claim is made under this section the insured may appear and defend against such claim only.

SEC. 29 (as amended 1923, ch. 163; 1924, ch. 207). *Waiting time.*—No compensation shall be paid for any injury which does not incapacitate the employee for a period of at least seven days from earning full wages, but if incapacity extends beyond such period, compensation shall begin on the eighth day after the injury, and if incapacity extends beyond a period of four weeks, compensation shall be paid from the day of injury. When compensation shall have begun it shall not be discontinued except with the written assent of the employee or the approval of the department or a member thereof: *Provided*, That such compensation shall be paid in accordance with section 35 if the employee in fact earns wages after the original agreement is filed.

SEC. 30. *Medical, etc., aid.*—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 department, for a longer period, the insurer shall furnish adequate and reasonable medical and hospital services, and medicines if needed. The employee may select a physician other than the one provided by the insurer; 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 insurer is called in to treat the injured employee, the reasonable cost of his services shall be paid by the insurer, subject to the approval of the department. Such approval shall be granted only if the department 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. In any case where the department is of opinion that the fitting of the employee with an artificial eye or limb, or other mechanical appliance, will promote his restoration to industry, it may order that he be provided with such an artificial eye, limb, or appliance at the expense of the insurer.

SEC. 31 (as amended 1922, ch. 402). *Compensation for death.*—If death results from the injury, the insurer shall pay the following dependents of the employee wholly dependent upon his earnings for support at the time of his injury compensation as follows: To the widow, so long as she remains unmarried, \$16 a week if and so long as there are more than two children of the employee who are under the age of 18, or over said age and physically or mentally incapacitated from earning, \$14 a week if and so long as there are two such children, \$12 a week if and so long as there is one such child, and \$10 a week if and so long as there is no such child; and, if the widow dies, to such children in equal shares, \$16 a week if and so long as there are more than three such children, \$14 a week if and so long as there are three such children, \$12 a week if and so long as there are two such children, and \$10 a week if and so long as there is one such child; but, if such widow remarries, the aforesaid payments to her shall terminate, and the insurer shall pay each week to each of such children, if and so long as there are more than five, his or her proportionate part of \$16, and shall pay to each of such children, if and so long as there are five or less, \$3 a week. The period covered by the payments provided for by the foregoing provisions of this section shall not be longer than 400 weeks. When weekly payments have been made to an injured employee before his death, the compensation under the foregoing provisions of this section shall begin from the date of the last of such payments, but shall not continue more than 400 weeks from the date of the injury.

In all other cases of total dependency, the insurer shall pay the dependents of the employee wholly dependent upon his earnings for support at the time of injury a weekly payment equal to two-thirds of his average weekly wages, but not more than \$10 nor less than \$4 a week for a period of 500 weeks from the date of the injury; but in no case shall the amount be more than \$4,000. If the employee leaves dependents only partially dependent upon his earnings for support at the time of his injury, the insurer 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 under this paragraph to dependents shall begin from the date of the last of such payments, but shall not continue more than 500 weeks from the date of the injury.

SEC. 32 (as amended 1926, ch. 190). *Dependents.*—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 department shall find the wife was living apart for justifiable cause or because he had deserted her. The findings of the department 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) Children under the age of 18 years (or over said age if physically or mentally incapacitated from earning) upon the parent with whom they are living at the time of the death of such parent, there being no surviving dependent parent: *Provided*, That in case of the death of an employee who has at the time of his death living children by a former wife or husband, under the age of 18 years (or over said age, if physically or mentally incapacitated from earning), said 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.

(d) Children under the age of 16 years (or over 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.

(e) A parent upon an unmarried child under the age of 18 years: *Provided*, That such child was living with the parent at the time of the injury resulting in death.

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.

Sec. 33 (as amended 1922, ch. 368). *Burial expenses.*—In all cases the insurer shall pay the reasonable expense of burial, not exceeding \$150. If the employee leaves dependents, such sum shall be a part of the compensation payable, and shall to that extent shorten the period of payment.

Sec. 34. *Total disability.*—While the incapacity for work resulting from the injury is total, the insurer shall pay the injured employee a weekly compensation equal to two-thirds of his average weekly wages, but not more than \$16 nor less than \$7 a week; and the period covered by such compensation shall not be greater than 500 weeks nor the amount more than \$4,000.

Sec. 35. *Partial disability.*—While the incapacity for work resulting from the injury is partial, the insurer shall pay the injured employee a weekly compensation equal to two-thirds 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 \$16 a week; and the amount of such compensation shall not be more than \$4,000.

Sec. 36. *Schedule.*—In case of the following specified injuries the amounts hereinafter named shall be paid in addition to all other compensation:

(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, two-thirds of the average weekly wages of the injured person, but not more than \$10 nor less than \$4 a week for a period of 100 weeks.

(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, two-thirds of the average weekly wages of the injured person for each hand or foot so severed, but not more than \$10 nor less than \$4 a week for a period of 50 weeks.

(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, two-thirds of the average weekly wages of the injured person, but not more than \$10 nor less than \$4 a week, for a period of 25 weeks, for each hand or foot so injured.

(d) For the loss by severance of at least one phalange of a finger, thumb, or toe, two-thirds of the average weekly wages of the injured person, but not more than \$10 nor less than \$4 a week, for a period of 15 weeks, for each hand or foot so injured.

(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 if the injury is such that the hand, foot, thumb, finger, toe, or phalange is not lost but so injured as to be permanently incapable of use.

Sec. 37. *Second injuries.*—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 or 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 the loss or permanent incapacity of a hand or foot or the reduction to one-tenth of normal vision in an eye, by reason of a personal injury for which compensation is required by this chapter, he, or his dependent, if death results from the injury, shall be paid the compensation provided for by sections 31, 32, 34, or 35 in the following manner:

One-half of such compensation shall be paid by the State treasurer from the fund established by section 65 and the other half by the insurer, but the additional compensation required by section 36 shall be paid by the insurer.

SECS. 38-44, 45 (as amended 1921, ch. 310), 46-48, 49 (as amended 1923, ch. 125), 50, 51. *Payments; notices; claim.*—[No savings or insurance of the injured employee independent of this chapter may be considered in determining compensation payments thereunder. In case of death, compensation is to be paid to a legal representative, or, if none, to his dependents, or, if none, to the

person to whom payment of expenses for last sickness and burial are due. Legal representatives are to make payments to the persons entitled thereto. If no legal representative is necessary except for the purposes of this chapter, the insurer must furnish or pay for the legal services rendered in connection with the appointment, and the necessary expenses and compensation of such representative, such payments to be in addition to the amounts paid in compensation. A guardian or next friend may appear in behalf of a minor or person mentally incompetent. No proceedings for compensation may be maintained in the absence of notice to the insurer or insured as soon as practicable, and claim made within six months after the injury or death, unless there is physical or mental incapacity when the limitation dates from its removal. Notice must be in writing signed by the claimant or a person in his behalf, served personally or by registered mail on the employer or officer or agent. Inaccuracies do not invalidate unless there was intention to mislead, and also that the insurer was in fact misled. Want of notice does not bar proceedings if it appears that the insurer, insured, or agent had knowledge, or was not prejudiced by such want of notice.

Injured employees must, if requested, submit to examination by a physician furnished and paid for by the insurer or employer. The employer may have his own physician present, but if not, then the insurer must file with the department a copy of its physician's report. Refusal to submit to examination suspends and may forfeit compensation for the period.

No agreement of waiver is valid, and payments are not assignable or subject to attachment or in any way liable for debts.

If weekly payments have continued not less than six months, commutation in whole or in part to a lump sum may be provided for in unusual cases where the parties agree and the department deems it to be for the best interest of the employee or his dependents. The department may at any time provide for lump-sum payments in case of a minor who has received permanently disabling injuries, either partial or total.

Claims must be in writing, state the facts of the case, and be signed by the claimant or some person in his behalf. The same rules as to invalidity and failure to make claim apply as in the case of notice. In no case shall failure to make a claim bar proceedings if the insurer has executed an agreement or made payment of compensation as provided in this chapter. If questions involving compensation are appealed to the supreme judicial court, and the award is sustained, interest to the date of payment shall be paid on all sums due as compensation. If the injured workman was of such age and experience that, under natural conditions, his wage would be expected to increase, such fact may be considered in determining the weekly wages.]

SECS. 52 (as amended 1925, ch. 267), 53, 54 (repealed), 55 (as amended 1923, ch. 139), 56-65. *Insurance companies.*—[Authorized insurance companies, insuring compensation under this chapter, must file with the commissioner of insurance the classifications of risks and premiums, as well as subsequent changes which shall not be effective until approved; such approval may be withdrawn. Mutual companies may classify risks with the approval of the commissioner of insurance, but all the funds of the company, both actual and contingent, must be available for the payment of any claim against the company.

Policies of insurance may not be issued until a copy has been filed with the commissioner of insurance at least 30 days prior thereto, unless sooner approved by the commissioner in writing; but policies issued in violation of the provisions of this act are binding upon the company issuing it.

Two or more insurance companies may unite in issuing joint and several policies, subject to the approval of the commissioner of insurance, under provisions of these sections relating to security by deposits with the State treasurer or the furnishing of a bond by foreign insurance companies. Companies insuring liability under this chapter must, at the request of the department, furnish it in writing any information required in connection with the administration of the chapter, including statistics and names of all employers insured by them. Reasonable rules and regulations for the prevention of injuries must be made by the insurer, who has access to the premises of insured persons for purposes of inspection during regular working hours; any grievance of employers or employees in respect of such rules may be referred to the department of labor.

For every case of personal injury resulting in death without dependents, the insurance company must pay into the treasury of the State the sum of \$100, to constitute a special fund to provide the benefits contemplated by section 37.]

SECS. 66-68. *Actions at law.*—[In actions against an employer for injury or death, the common-law defenses are not available, but this rule does not apply in cases of domestic servants and farm laborers nor to actions for injuries received by employees of an insured person.* The provisions of chapters 153 and 229 (relating to actions at law for injuries and death) do not apply in the case of employees of an insured employer nor to public employees subject to sections 69 to 75 below.]

SECS. 69 (as amended 1924, ch. 434), 70-75. *Public employees.*—[The State and any subdivision having the power of taxation, which has accepted the provisions of the compensation law, must pay compensation in accordance with the terms of this chapter. If the employee receives full maintenance in addition to his wages, such maintenance shall be added to the wage on the basis of \$7 per week. Procedure in cases of public employees is the same as for employees of private employers. No liability for injury or death attaches in an action unless the employee has made an election to reject the act, which may be waived as in the case of a private employee. If a public employee entitled to compensation is also entitled to a pension by reason of the same injury, he must elect whether he will receive such compensation or such pension and may not take both. If the pension is allowed by a special act, claim for compensation is forfeited, and any payments made either of benefits or for medical or hospital services may be recovered back in an action at law. All employees paid by the Commonwealth, but serving on boards or commissions, are deemed employees of the State and within the provisions of this chapter. Boards, commissions, and departments of the Commonwealth employing laborers and municipalities of the State must appoint agents to represent them respectively in furnishing the benefits due; this provision does not apply to counties, cities, towns, and districts which have provided insurance for the payment of compensation provided by this chapter.]

MICHIGAN

FIRST EXTRA SESSION—1912

ACT No. 10.—*Compensation of workmen for injuries*

PART I

SECTIONS 1-4. *Defenses; election.*—[The common-law defenses are abrogated in actions by employees for personal injury, except household domestic servants and farm laborers. But these provisions do not affect employers who accept the compensation provisions of this act, nor are such employers subject to any other liability than for the compensation provided except as to employees rejecting the act.]

Sec. 5 (as amended 1913, No. 50). *Who are employers.*—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.

Sec. 6 (as amended 1919, No. 64). *How election made.*—[Employers elect by written statement filed with the industrial accident board, setting forth the method of insurance adopted, subject to the approval of the board. Election is for terms of one year, continuing unless at least 30 days prior to the expiration thereof notice of withdrawal is given. Notice of election must be conspicuously posted. Such election is to be held to cover all lines of the employer's business and all his employees, and unless self-insurance is permitted, the employer must insure his liability as in the act provided.]

Sec. 7 (as amended 1919, No. 64; 1921, No. 173). *Who are employees.*—The term "employees" as used in this act shall be construed to mean:

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, elected at the polls: *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, when such contractor is subject to this act: *Provided, however*, That policemen or firemen or employees of the police or fire departments, or their dependents, in municipalities or villages of this State having charter provisions prescribing like benefits, may waive the provisions of this act and accept in lieu thereof such like benefits as are prescribed in such charter, but shall not be entitled to like benefits from both: *And provided further*, That nothing contained in this act shall be construed as limiting, changing or repealing any of the provisions of any charter of any municipality or village of this State relating to any benefits, compensation, pensions or retirement, independent of this act, provided for employees as hereinbefore defined.

2. Every person in the service of another under any contract of hire, express or implied, oral or written, including aliens (including working members of partnerships, receiving wages irrespective of profits from such), 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. *Employees subject to the act.*—[Employees as defined in subdivision 1 of the above section are under the act; also as defined in subdivision 2 if the employer is under the act, whether the employee has actual notice thereof or not, unless he gives notice in writing of his rejection of the act. Such rejection may be waived on five days' notice.]

SEC. 9 (added 1917, No. 249). *Investigation of act.*—[The governor may appoint a commission to investigate and report on the workings of this act if in his opinion its provisions are unfair to either employees or employers.]

SEC. 10 (added 1921, No. 173). *Contractors and subcontractors.*—(a) Where any employer subject to the provisions of this act (in this section referred to as the principal) contracts with any other person (in this section referred to as the contractor) who is not subject to this act and who does not become subject to this act prior to the date of the accidental injury or death for which claim is made 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 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, 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 workman under the employer by whom he is immediately employed: *Provided*, That the term "contractor" shall be deemed to include subcontractors in all cases where the principal gives permission that the work or any part thereof be performed under subcontract;

(b) Where the principal is liable to pay compensation under this section he shall be entitled to be indemnified by the contractor or subcontractor as the case may be, but the employee shall not be entitled to recover at common law against the contractor or any other person for any damages arising from such injury if he takes compensation from such principal. The principal, in case he pays compensation to the employee of such contractor, may recover the amount so paid in an action against such contractor.

PART II

SECTION 1. *Who may receive compensation.*—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 1, section 8, 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.

SEC. 2. *Willful misconduct.*—If the employee is injured by reason of his intentional and willful misconduct, he shall not receive compensation under the provisions of this act.

SEC. 3 (as amended 1919, No. 64). *Waiting time.*—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.

SEC. 4 (as amended 1919, No. 64). *Medical, etc., aid.*—During the first 90 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.

SEC. 5 (as amended 1919, No. 64). *Death.*—If death results from the injury, the employer shall pay, or cause to be paid, subject, however, to the provisions of section 12 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 60 per cent of his average weekly wages, but not more than \$14 nor less than \$7 a week for a period of 300 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 300 weeks from the date of the injury.

SEC. 6 (as amended 1919, No. 64). *Dependents.*—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 16 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 16 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. *Determination of dependency.*—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 1919, No. 64; 1921, No. 173). *Burial expenses.*—If death results from the injury, the employer shall pay or cause to be paid as hereinafter provided in addition to the indemnity paid to dependents the reasonable expense of his last sickness and burying, which shall not exceed \$200, in addition to any sum the employer may be required to pay under the provisions of section 4 of part 2 of this act.

SEC. 9 (as amended 1919, No. 64; 1921, No. 173). *Total disability.*—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 60 per cent of his average weekly wages, but not more than \$14 nor less than \$7 a week; and in no case shall the period covered by such compensation be greater than 500 weeks from the date of the injury, nor shall the total amount of all compensation exceed \$7,000.

SEC. 10 (as amended 1919, No. 64). *Partial disability; schedule.*—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 60 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 \$14 a week; and in no case shall the period covered by such compensation be greater than 500 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:

For the loss of a thumb, 60 per cent of the average weekly wages during 60 weeks.

For the loss of a first finger, commonly called index finger, 60 per cent of average weekly wages during 35 weeks.

For the loss of a second finger, 60 per cent of average weekly wages during 30 weeks.

For the loss of a third finger, 60 per cent of average weekly wages during 20 weeks.

For the loss of a fourth finger, commonly called the little finger, 60 per cent of average weekly wages during 15 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, 60 per cent of average weekly wages during 30 weeks.

For the loss of one of the toes other than a great toe, 60 per cent of average weekly wages during 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 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, 60 per cent of average weekly wages during 150 weeks.

For the loss of an arm, 60 per cent of average weekly wages during 200 weeks.

For the loss of a foot, 60 per cent of average weekly wages during 125 weeks.

For the loss of a leg, 60 per cent of average weekly wages during 175 weeks.

For the loss of an eye, 60 per cent of average weekly wages during 100 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 9.

The amounts specified in this clause are all subject to the same limitations as to maximum and minimum as above stated.

SEC. 11 (as amended 1917, No. 41). *Computation of wages.*—(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 1919, No. 64). *Death while receiving compensation.*—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 4 hereof, equal to the full amount which such dependents would have been entitled to receive under the provisions of section 5 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 5.

SEC. 13 (as amended 1921, No. 173). *Insurance, etc., of employees.*—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, except as provided in subsection 1 of section 7, part 1.

Sec. 14. *Incompetence.*—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.

Sec. 15 (as amended 1919, No. 64). *Notice and claim.*—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.

Secs. 16-18. *Form of notice; service.*—[Notices must be in writing, signed by a claimant or a person in his behalf. Inaccuracies without intention to mislead and in fact misleading do not invalidate. Want of such written notice is not a bar to proceedings if it is shown that the employer had knowledge of the injury. Service may be personal or by registered mail.]

Sec. 19. *Medical examination.*—[After an employee has given notice, he must, on request of his employer, the insurance carrier, or the commissioner of insurance, submit to a medical examination at which a physician employed by him may also be present. Refusing or obstructing examination suspends benefits, which may be forfeited for the period of suspension. Both physicians may be required to testify under oath.]

Sec. 20 (as amended 1921, No. 173). *Waiver.*—No agreement by an employee to waive his rights to compensation under this act shall be valid except that employees or their dependents as defined in subsection 1 of section 7, part 1, may, after injury only, elect as provided in subsection 1 of section 7, part 1.

Sec. 21. *Assignments, etc.*—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.

Sec. 22. *Lump sum payments.*—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 5 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.

SEC. 23 (as amended 1913, No. 50). *Payments by public boards and commissions.*—[Compensation paid by public boards and commissions is to be treated as a part of the necessary operating expenses thereof, and the sums required therefor obtained as other moneys for their use authorized by law.]

PART III

[The administration of the act was originally committed to an industrial accident board, but by act No. 43, acts of 1921, creating a department of labor and industry, the duties of such board were transferred to the department thereby created. The department is to be administered by a commission of three members appointed by the governor with the advice and consent of the senate to hold office until the appointment and qualification of their successors. Salaries are \$4,000 each. The powers and duties of the industrial board, thus transferred, and procedure under the act are summarized below.]

SECTIONS 3 (as amended 1921, No. 60), *4. Rules; forms and records.*—[The board may make suitable rules, administer oaths, subpoena witnesses, and require the production of books and records. Witnesses refusing to testify may be punished for contempt on application to a circuit court. Process and procedure are to be as summary as reasonably may be. Forms and blanks are to be supplied by the board and records kept of its proceedings. The board also requires notice of elections and rejections of the act.]

SECS. 5, 6, and 7 (as amended 1919, No. 64; 1921, No. 60), **8** (as amended 1919, No. 64), **9, 10, and 11** (as amended 1921, No. 60), **12, 13, 14** (as amended 1921, No. 60). *Procedure.*—[In case the parties agree as to the compensation to be paid in case of injury, the agreement is to be filed with the board; and if approved by it, is final and binding. If the parties fail to agree, they may notify the commission of the fact, which shall thereupon set the case for a hearing to be conducted by a member or deputy member of the board designated for that purpose and known as a committee of arbitration. Such investigations as are deemed necessary may be made with hearings to be held in the locality where the injury occurred. The decision of the committee filed with the industrial accident board stands as a decision of the board unless a claim for review is submitted within 10 days. Additional time for review may be allowed for cause shown. The board, or a member, may appoint a physician to examine the injured employee, the fee allowed to be \$5, though additional amounts are allowable in extraordinary cases. Costs are to be fixed by the board and paid by the State. The fees of attorneys and physicians are subject to the approval of the board, which may hold a hearing in case of disputes as to their amount. If a claim for review is filed, it shall be held promptly, the evidence to be examined, together with such additional evidence as the board may allow. The findings of fact made by the board acting within its powers are conclusive in the absence of fraud, but questions of law may be reviewed by the supreme court on application made within 30 days. If a certified copy of a decision of the board approving the agreements of settlement, or of a decision of the committee of arbitration not appealed from, is presented to the circuit court of the county, it shall without notice render judgment in accordance therewith against the employer and the insurance carrier carrying his risks; this judgment, unless set aside, has the same effect as a judgment of the court. Any weekly payment under the act may be reviewed on the request of a party in interest and modified according to the facts found; but if the review is made by a member or deputy member, either party may appeal from the decision to the full board within 10 days from the filing of the decision with the board.]

SEC. 15. *Injuries by third parties.*—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.

SEC. 16. *Settlement of disputes.*—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.

SEC. 17 (as amended 1919, No. 64). *Records, reports, agreements.*—[Employers are required to keep records of all injuries received by their employees in the course of their employment, a report to be made to the industrial board on the eighth day after the occurrence of the accident. If the disability has terminated at the time of such report it is to give complete data as to the employee, his injury, date of return to work, medical, etc., expenses, and such other information as the board may require. If such injury develops later into a compensable accident, report of the fact is to be made when it is discovered.]

Where compensation is payable a report is to be made on the eighth day, presenting details as to the injury, the employee, his dependents, wages, and other items, complete detail being prescribed. An agreement is likewise to be prepared and signed by the employer and presented to the employee, relative to the compensation to be paid. Such signed agreement is to be forwarded to the board on or before the fourteenth day after the accident, the first payment to be made at the end of one week after the compensation period begins to run and continue weekly during the term for which compensation is payable.

In case of fatal injuries a report in like detail is to be forwarded and an agreement to pay compensation prepared, signed, and forwarded with the signature of the dependents entitled to benefits. An employer's refusal or neglect to carry out these requirements after he has notice or knowledge of an accident is punishable by fine, and neither he nor his insurer may raise the defense of the statute of limitations contained in section 15 of Part II of the act.]

SEC. 18 (as amended 1919, No. 64). *Assistant secretary.*—The board may appoint an assistant secretary at a salary of not more than \$2,000 a year to be paid as other State employees are paid.

SEC. 19 (as amended 1921, No. 173). *Injuries outside State.*—The industrial accident board 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.

SEC. 20 (as amended 1921, No. 60). *Deputies.*—[The board may, with the approval of the State administrative board, appoint and fix the salaries of a sufficient number of deputies to enable it to administer the act efficiently, such deputies to have power to conduct investigations, hold hearings, etc.]

PART IV

SECTIONS 1 (as amended 1919, No. 64), 2-4. *Security of payments.*—[Employers accepting the act may specify, subject to the approval of the board, which method for the payment of compensation they wish to adopt. Four alternatives are offered: First, self-insurance; second, insurance in any authorized employer's liability company; third, insurance in an employer's insurance association organized under laws of the State; and fourth, insurance in a State fund administered by the commissioner of insurance.]

Policies must provide for a complete coverage, for the direct payment of benefits to persons entitled thereto, for the furnishing of the medical and surgical, etc., aid prescribed by the law, and for expenses of last sickness and burial. The company must agree to file with the industrial accident board, 10 days in advance, notice of the termination or cancellation of any contract or policy. Any provision of a policy in conflict with the law is declared null and void. The provisions above set forth are to be printed upon or attached to the insurance contract, and any inconsistent act or provision is of no effect. Existing contracts for sickness, accident, or death benefits are not affected, but the liability fixed by this act may not be reduced while in such scheme. Payment in whole or in part of compensation by either the employer or the insurer is a bar to that extent of any recovery against the other.

All contracts of insurance for compensation are deemed to be made subject to the provisions of this act. Any employer who is liable for compensation payments may, with the approval of the board, deposit the present value of the total unpaid amount, interest being computed at 3 per cent per annum, with a designated trust company, or he may purchase an annuity within the limits provided by law in a designated insurance company, such action to relieve him of further liability under the act.]

PART V

ADMINISTRATION BY COMMISSIONER OF INSURANCE

SECTION 1 (as amended 1915, No. 153). *Collection of premiums.*—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 3,000 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.

SEC. 2 (as amended 1915, No. 153). *Administration of fund.*—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 4 of act No. 77 of the public acts of 1869 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 \$25,000, 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.

SEC. 3. *Premium rates.*—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 1915, No. 153). *Classification.*—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.

SEC. 5 (as amended 1915, No. 153). *Default in payment of assessments.*—All premiums or assessments shall be due and payable within 45 days from the date on which the insurance became effective, and formal demand for the payment of such premium shall be made within 30 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 15 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.

SECS. 6 (as amended 1915, No. 153), 7, 8 (as amended 1915, No. 153), 9 (as amended 1917, No. 206), 10 (as amended 1915, No. 153), 11 (as amended 1915, No. 153), 12 (as amended 1919, No. 110), 13 (added 1917, No. 206), 14 (added 1921, No. 180). *General provisions as to fund.*—[Employers who have complied with the rules adopted by the commissioner of insurance as to insurance in the State fund are to be furnished with a certificate valid for one year following such fact. Disputes between the commissioner of insurance and an employer as to rules or decisions in respect of the collection, administration, and disbursement of the funds, or disputes affecting employees are to be settled as other disputes under the act where insurance is otherwise affected.

The books and pay rolls of employers insured in the State fund are to be open to inspection, and penalties are provided for refusal to submit or for knowingly submitting false statements for the purpose of securing a lower premium charge. Receipts are to be issued for all money received from employers or paid to employees for compensation. Necessary deputies, clerks, etc., may be employed and annual reports made as to the administration fund, its financial statement, outstanding obligations and general statistics of business transacted. Payments to employees are to be made only on certificate of the commissioner of insurance. Provision is made for the contingency of repeal or dissolution of the fund. Meetings are to be called annually of the employers contributing to the accident fund, at which an advisory board of 15 members is to be selected, such board to advise with the commissioner as to the administration of the fund.

By an act of 1921, the duties and powers of the commissioner of insurance in respect of the administration of the accident fund created by Part V was transferred to and vested in the State administrative board, and reference to the commissioner of insurance is to be understood as reference to such board.]

PART VI

SECTIONS 1-6. *Miscellaneous provisions.*—[These provide that the filing of a claim or accepting payments under the act relieve the employer of all other claims or demands at law on account of the injury; for a suspension of limitations if the act is repealed or declared unconstitutional; that prior causes are not affected; and that Part V, relating to the State fund, is a severable portion of the act, any declared unconstitutionality of which would not affect the remainder of the act. A provision as to interstate commerce is as follows:]

SEC. 4. *Interstate commerce.*—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.

ACTS OF 1913

Act No. 388.—*Insurance of State employees*

[This act provides for the payment into the State accident fund by the various departments and institutions of the State of the premiums fixed by the commissioner of insurance for benefits to their employees, other than medical and hospital services, which each State institution is to pay for out of its current expense fund.]

MINNESOTA

ACTS OF 1921

CHAPTER 82.—*Compensation of workmen for injuries*

PART I

Compensation by action at law

SECTIONS 1-7. *Employers' liability.*—[These sections embody a liability statute, based on negligence, recovery of damages to be by a suit at law. If an employer other than an employer of farm labor rejects part 2 of this act, he is liable as herein provided with the common-law defenses abrogated. If the employer accepts and the employee rejects and brings suit, the defenses remain.]

PART II

Elective compensation

SECTION 8 (as amended 1923, ch. 300). *Excluded employments; farm labor.*—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: *Provided*, That part 2 of this act shall apply to farm labor if the employer shall have elected to accept the provisions of such part 2 by posting a written or printed statement of his election and filing a duplicate thereof with the industrial commission as provided by section 11 of this act, before the accident occurs to an employee, for which damages or compensation may be claimed, unless the employee shall signify his election, as provided by section 11 of this act, not to accept or be bound by the provisions of this act, in which case said part 2 shall not apply: *And provided further*, That either party may terminate his acceptance or election not to accept the provisions of part 2 of this act as provided by section 12 hereof.

SEC. 9. *Compensation payable when.*—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 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. It is hereby made the duty of all such employers to commence payment of compensation at the time and in the manner prescribed by part 2 of this act without the necessity of any agreement or order of the commission, payments to be made at the intervals when the wage was payable as nearly as may be. No agreement by any employee or dependent to take as compensation an amount less than that prescribed by law shall be valid.

SEC. 10. *Method exclusive.*—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 the 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.

SECS. 11 (as amended 1923, ch. 300), 12, 13. *Election; minors.*—[The provisions of this act as to compensation are presumed to have been accepted unless otherwise expressly stated in the contract of employment, a copy of such contract to be filed with the industrial commission, or unless written or printed notice has been given by either party to the other of rejection of the act. A rejecting employer must conspicuously post a notice to that effect in his establishment, and the employees rejecting are required to notify the employer in writing. Forms of notice are prescribed by the commission. Acceptance or rejection may be terminated on 30 days' written notice to the opposite party, a duplicate to be filed with the industrial commission, and the time does not begin to run until such filing. Minors legally employed have the same power to make election, severance, etc., under the act as adults, subject to the power of the commission, in its discretion to require the appointment of a guardian to make settlements and receive compensation benefits.]

Sec. 14 (as amended 1923, ch. 408; 1925, chs. 161, 219). *Temporary disability.*—Following is the schedule of compensation: (a) For injury producing temporary total disability, 66⅔ per cent of the daily wage at the time of injury subject to a maximum compensation of \$20 per week and a minimum of \$8 per week: *Provided*, That if at the time of injury the employee receives wages of \$8 or less 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 not, however, beyond 300 weeks, payment to be made at the intervals when the wage was payable, as nearly as may be.

(b) In all cases of temporary partial disability the compensation shall be 66⅔ per cent of the difference between the daily wage of the workman at the time of 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 300 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).

(c) For the permanent partial disability from the loss of a member, the compensation during the healing period to be determined by the commission, but not exceeding 15 weeks, shall be 66⅔ per cent of the difference between the daily wage of the workman at the time of injury and the wages he shall be able to earn, if any, in his partially disabled condition, unless on application to the industrial commission, made in the same manner as provided in section 19 for additional medical service, the period is extended by the commission for not to exceed an additional 10 weeks; and thereafter, and in addition thereto, compensation shall be that named in the following schedule:

(1) For the loss of a thumb, 66⅔ per cent of the daily wage at the time of injury during 60 weeks.

(2) For the loss of a first finger, commonly called index finger, 66⅔ per cent of the daily wage at the time of injury during 35 weeks.

(3) For the loss of a second finger, 66⅔ per cent of the daily wage at the time of the injury during 30 weeks.

(4) For the loss of a third finger, 66⅔ per cent of the daily wage at the time of the injury during 20 weeks.

(5) For the loss of a fourth finger, commonly called the little finger, 66⅔ per cent of the daily wage at the time of injury during 15 weeks.

(6) 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.

(7) The loss of one and one-half 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.

(8) For the loss of a great toe, 66⅔ per cent of the daily wage at the time of injury during 30 weeks.

(9) For the loss of one of the toes other than a great toe, 66⅔ per cent of the daily wage at the time of injury during 10 weeks.

(10) The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of such toe, and compensation shall be paid at the prescribed rate during one-half the time specified above for such toe.

(11) The loss of one and one-half or more phalanges shall be considered as the loss of the entire toe.

(12) For the loss of a hand, not including the wrist movement, 66% per cent of the daily wage at the time of injury during 150 weeks.

(13) For the loss of a hand, including the wrist movement, 66% per cent of the daily wage at the time of injury during 175 weeks.

(14) For the loss of an arm, 66% per cent of the daily wage at the time of injury during 200 weeks.

(15) Amputation of the arm below the elbow shall be considered as the loss of a hand including wrist movement, if enough of the forearm remains to permit the use of an effective artificial member, otherwise it shall be considered as the loss of an arm.

(16) For the loss of a foot, not including the ankle movement, 66% per cent of the daily wage at the time of injury during 125 weeks.

(17) For the loss of a foot, including ankle movement, 66% per cent of the daily wage at the time of injury during 150 weeks.

(18) For the loss of a leg, if enough of the leg remains to permit the use of an effective artificial member, 66% per cent of the daily wage at the time of injury during 175 weeks.

(19) For the loss of a leg so close to the hip that no effective artificial member can be used, 66% per cent of the daily wage at the time of injury during 200 weeks.

(20) Amputation of the leg below the knee shall be considered as loss of foot, including ankle movement, if enough of the lower leg remains to permit the use of an effective artificial member; otherwise it shall be considered as loss of leg.

(21) For the loss of an eye, 66% per cent of the daily wage at the time of injury during 100 weeks.

(22) For complete permanent loss of hearing in one ear, 66% per cent of the daily wage at the time of injury during 52 weeks.

(23) For the complete permanent loss of hearing in both ears, 66% per cent of the daily wage at the time of injury during 156 weeks.

(24) For the loss of an eye and a leg, 66% per cent of the daily wage at the time of injury during 350 weeks.

(25) For the loss of an eye and arm, 66% per cent of the daily wage at the time of injury during 350 weeks.

(26) For the loss of an eye and hand, 66% per cent of the daily wage at the time of injury during 325 weeks.

(27) For the loss of an eye and a foot, 66% per cent of the daily wage at the time of injury during 300 weeks.

(28) For the loss of two arms other than at the shoulder, 66% per cent of the daily wage at the time of injury during 400 weeks.

(29) For the loss of two hands, 66% per cent of the daily wage at the time of injury during 400 weeks.

(30) For the loss of two legs, other than so close to the hips that no effective artificial members can be used, 66% per cent of the daily wage at the time of injury during 400 weeks.

(31) For the loss of two feet, 66% per cent of the daily wage at the time of injury during 400 weeks.

(32) For the loss of one arm and the other hand, 66% per cent of the daily wage at the time of injury during 400 weeks.

(33) For the loss of one hand and one foot, 66% per cent of the daily wage at the time of injury during 400 weeks.

(34) For the loss of one leg and the other foot, 66% per cent of the daily wage at the time of injury during 400 weeks.

(35) For the loss of one leg and one hand, 66% per cent of the daily wage at the time of injury during 400 weeks.

(36) For the loss of one arm and one foot, 66% per cent of the daily wage at the time of injury during 400 weeks.

(37) For the loss of one arm and one leg, 66% per cent of the daily wage at the time of injury during 400 weeks.

(38) For serious disfigurement not resulting from the loss of a member or other injury specifically compensated, materially affecting the employability of the injured person in the employment in which he was injured or other employment for which the employee is then qualified, 66% per cent of the daily wage at the time of injury for such period as the industrial commission may determine, not to exceed 75 weeks.

(39) Where an employee sustains concurrent injuries resulting in concurrent disabilities he shall receive compensation only for the injury which entitles

him to the largest amount of compensation, but this section shall not affect liability for serious disfigurement materially affecting the employability of the injured person or liability for the concurrent loss of more than one member, for which members compensation are provided in the specific schedule and in subsection (e) below.

(40) In all cases of permanent partial disability 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; but the compensation in and by said schedule provided shall be in lieu of all other compensation in such cases except as otherwise provided by this section.

In the event a workman has been awarded, or is entitled to receive a compensation for loss of use of a member under any workmen's compensation law, and thereafter sustains a loss of such member under circumstances entitling him to compensation therefor under this act, the amount of compensation awarded, or that he is entitled to receive for such loss of use, shall be deducted from the compensation due under the schedule of this act for the loss of such member: *Provided, however,* That the amount of compensation due for loss of the member caused by the subsequent accident shall in no case be less than 25 per cent of the compensation payable under the schedules of this act for the loss of such member.

(41) 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.

(42) All the compensations provided in clause (c) of this section for loss of members or loss of the use of members are subject to the same limitations as to maximum and minimum as are stated in clause (a).

(43) *Rehabilitation.*—In addition to the compensation provided in the foregoing schedule for loss or loss of the use of a member, the compensation during the period of retraining for a new occupation, as certified by the division of reeducation, operating under chapter 365, Laws of Minnesota, 1919, shall be 66⅔ per cent of the daily wage at the time of the injury, not exceeding 25 weeks: *Provided,* The injury is such as to entitle the workmen to compensation for at least 75 weeks in the schedule of indemnities for permanent impairments: *And provided,* The industrial commission on application thereto shall find that such retraining is necessary and make an order for such compensation.

(44) *Injuries not scheduled.*—In all other cases of permanent partial disability not above enumerated the compensation shall be 66⅔ 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, subject to a maximum of \$20 per week. Compensation shall continue during disability, not, however, beyond 300 weeks.

(d) *Permanent total disability.*—For permanent total disability as defined in subsection (e) below 66⅔ per cent of the daily wage at the time of the injury, subject to a maximum compensation of \$20 per week and a minimum compensation of \$8 per week: *Provided,* That if at the time of the injury the employee was receiving wages of \$8 or less per week, then he shall receive the full amount of his wages per week. This compensation shall be paid during the permanent total disability of the injured person, but the total amount payable under this subsection shall not exceed \$10,000 in any case; 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 during the period of his confinement in such institution, unless he has wholly dependent on him for support a person or persons named in subsections (1), (2), and (3) of section 15 (whose dependency shall be determined as if the employee were deceased). In which case the compensation provided for in said section 15 shall during the period of such employee's confinement, as aforesaid, be paid for the benefit of said persons so dependent, during dependency.

(e) The total and permanent loss of the sight of both eyes or the loss of both arms at the shoulder, or the loss of both legs so close to the hips that no effective artificial members can be used, 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.

(7) *Death following disability.*—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 the death. Accrued compensation due to the deceased prior to death, but not paid, shall be payable to such dependent persons, or legal heirs, as the industrial commission may order, without probate administration.

SEC. 15 (as amended 1923, chs. 300, 408; 1925, ch. 161). *Dependents.*—(1) For the purpose 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 16 years.

(2) Children between 16 and 18 years of age, or those over 18, if physically or mentally incapacitated from earning, shall prima facie be considered dependent.

(3) Wife, child, husband, mother, father, grandmother, grandfather, grandchild, 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.

(4) 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.

(5) In death cases, compensation payable to dependents shall be computed on the following basis, and shall be paid to the persons entitled thereto, or to a guardian or such other person as the industrial commission may direct, for the use and benefit of the person entitled thereto.

(6) If the deceased employee leave a widow and no dependent child, there shall be paid to the widow 40 per cent of the daily wage at the time of the injury of the deceased.

(7) If the deceased employee leave a widow or widower and one dependent child, there shall be paid to the widow or widower for the benefit of herself or himself and such child, 50 per cent of the daily wage at the time of injury of the deceased.

(8) If the deceased employee leave a widow or widower and two dependent children, there shall be paid to the widow or widower for the benefit of herself or himself and such children, 60 per cent of the daily wage at the time of injury of the deceased.

(9) If the deceased employee leave a widow or widower and three or more dependent children, there shall be paid to the widow or widower for the benefit of herself or himself and such children, 66½ per cent of the daily wage at the time of injury of the deceased.

(10) In all cases where compensation is payable to the widow or widower for the benefit of herself or himself and dependent child or children, the industrial commission 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.

(11) In the case of remarriage of a widow without dependent children, she shall receive a lump sum settlement equal to one-half of the amount of the compensation remaining unpaid, without deduction for interest, but not to exceed two full years' compensation. In case of remarriage of a widow who has dependent children, the unpaid balance of compensation which would otherwise become her due shall be payable to the mother, guardian, or such other person as the industrial commission may order, for the use and benefit of such children during dependency: *Provided*, That if the dependency of the children ceases before the equivalent of two years of the mother's compensation has been paid to the children, the remainder of the two years' compensation shall be payable in a lump sum to the mother, without deduction for interest. The payments as provided herein shall be paid within 60 days after written notice to the employer of such remarriage, or that dependency of children has ceased.

(12) If the deceased employee leave a dependent orphan, there shall be paid 45 per cent of the daily wage at the time of the injury of the deceased, with 10 per cent additional for each additional orphan, with a maximum of 66% per cent of such wages.

(13) If the deceased employee leave a dependent husband and no dependent child, there shall be paid to the husband 30 per cent of the daily wage at the time of injury of the deceased.

(14) If the deceased employee leaves no widow or child or husband entitled to any payment hereunder, but leaves both parents wholly dependent on deceased, there shall be paid to such parents jointly 45 per cent of the weekly wage at the time of the injury of the deceased: *Provided*, That in case of the death of either of the wholly dependent parents the survivor shall receive 35 per cent of the weekly wage thereafter. If the deceased employee leaves one parent wholly dependent on said deceased, there shall be paid to such parent 35 per cent of the weekly wage at the time of the injury of deceased: *Provided*, That the compensation payable under this paragraph shall not exceed the actual distributions made by the deceased to the support of such parent or parents for a reasonable time immediately prior to the injury which caused the death of the said decedent.

(15) If the deceased should leave no widow or child or husband or parent entitled to any payment hereunder, but should leave a grandparent, grandchild, 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, 30 per cent of the daily wage at the time of injury of the deceased; or if more than one, 35 per cent of the daily wage at the time of injury of the deceased, divided between or among them share and share alike.

(16) 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.

(17) 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.

(18) 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 expenses provided for in section 19 the expense of burial, not exceeding in amount \$150, 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 burial, the same shall be determined and approved by the industrial commission before payment, after such reasonable notice to interested parties as the industrial commission shall require. If the deceased leave no dependents, no compensation shall be payable except as provided by this subsection or section 16 hereof.

(19) The compensation payable in case of death to persons wholly dependent shall be subject to a maximum compensation of \$20 per week and a minimum of \$8 per week: *Provided*, That if at the time of injury the employee receives wages of \$8 or less 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 \$20 per week and a minimum of \$8 per week: *Provided*, That if the income loss of the said partial dependents by such death is \$8 or less per week, then the dependents shall receive the full amount of their income loss. This compensation shall be paid during dependency, but shall not exceed \$7,500 in case of a dependent wife, child, children, or orphan, and shall not exceed 300 weeks in case of any other dependent, payments to be made at the intervals when the wage was payable as nearly as may be.

(20) Actual dependents shall be entitled to take compensation in the order named in subsection (3) above, during dependency, until 66% per cent of the daily wage of the deceased at the time of injury shall have been exhausted: *Provided*, That such compensation shall not exceed \$7,500 in case of a dependent wife, child, children, or orphan, or continue beyond 300 weeks in case

of any other dependent; but the total compensation to be paid to all actual dependents of a deceased employee shall not exceed in the aggregate \$20 per week.

Sec. 16 (as amended 1923, ch. 300). *Second injury.*—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, known as the special compensation fund, and created for such purposes 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 \$200, which is to be placed into this special compensation fund and to be used to pay the benefits provided by this section. All moneys heretofore arising from the provisions of this section shall be transferred to this special compensation fund. All penalties collected for violation of any of the provisions of this act shall be credited to this special compensation fund. The State treasurer shall be the custodian of this special fund and the industrial commission shall direct the distribution thereof, the same to be paid as other payments of compensation are paid. In case deposit is or has been made under the provisions of this section, and dependency later is shown, the State treasurer is hereby authorized to refund such deposit.

Sec. 17. *Joint employers.*—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.

Sec. 18. *Waiting time.*—In cases of temporary total or temporary partial disability no compensation shall be allowed for the first week after the disability commenced except as provided by section 19, nor in any case unless the employer has actual knowledge of the injury or is notified thereof within the period specified in section 20: *Provided, however,* That if such disability continues for four weeks or longer, such compensation shall be computed from the commencement of such disability.

Sec. 19 (as amended 1923, ch. 300). *Medical, etc., aid.*—The employer shall furnish 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 90 days to cure and relieve from the effects of the injury: *Provided,* That 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: *Provided further,* That upon request by the employee made during or after said period of 90 days the industrial commission may require the above treatment, articles, and supplies for such further time as the industrial commission may determine, and a copy of such order shall be forthwith mailed to the parties in interest. Any party in interest within 10 days from the date of mailing may demand a hearing and review of such order.

The commission may at any time upon the request of an employee or employer order a change of physicians and designate a physician suggested by the injured employee or by the commission itself, and in such case the expense thereof shall be borne by the employer upon the same terms and conditions as hereinbefore provided in this section for medical and surgical treatment and attendance.

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. The industrial commission may on the basis above stated determine the reasonable value of all such service and supplies and the liability of the employer shall be limited to the amount so determined.

Secs. 20, 21, 22 (as amended 1923, ch. 300). *Notice and claim.*—[Unless an employer has actual knowledge of the occurrence of the injury, or a claimant or some one in his behalf gives notice to the employer within 14 days after its occurrence, no compensation is due until such notice is given or knowledge obtained. If this takes place within 30 days, no want, failure, or inaccuracy of notice is a bar to compensation unless the employer shows that he was prejudiced thereby, and then only to the extent of such prejudice. If notice is given or knowledge is obtained within 90 days, and the failure is shown to be due to a mistake, inadvertence, ignorance of fact or law, inability, or of fraud, misrepresentation, or deceit of the employer or his agent, compensation will be allowed unless the employer proves prejudice by reason of the failure to receive such notice, in which case the compensation will be reduced proportionately. After 90 days compensation is barred. The notice may be served personally or by registered mail and substantially in a form prescribed. Actions or proceedings to recover compensation must be begun within two years after the employer has reported the injury to the industrial commission but not later than six years from the date of the accident. The same rule applies in case of death, but a dependent or anyone in his behalf may give notice of such death to the industrial commission, whereupon the commission must notify the employer of the time and place of the death. If the deceased was a foreigner leaving no known dependent within the United States, the industrial commission must give written notice of the death to the consul or other representative of said foreign country forthwith. In case of physical or mental incapacity, other than minority, the period of limitation for the performance of any act required by this section is extended for two years from the date when the incapacity ceases.]

Sec. 23 (as amended 1923, ch. 300). *Medical examination.*—[The injured employee must submit to examination by the employer's physician, if requested, at reasonable times, and may have his own physician present at his own cost. In case of dispute the industrial commission or a referee on hearing may, on its or his own motion, or on the request of one of the parties, designate a physician to make examination and report. Copies of the report are to be mailed to both parties, either of whom may within five days demand a cross-examination of the physician. Refusal to comply with any reasonable request for examination authorizes a suspension of the employee's right to compensation. In case of obscure or disputed cause of death, an autopsy may be had at the cost of the party demanding the same.]

Physicians making or present at the examinations above provided may be required to testify as to any knowledge acquired by them in the course of such treatment or examination.]

Sec. 24. Alien dependents.—[Payments to alien dependents residing outside the United States are to be made to the duly accredited consular officer of the country of which the beneficiaries are citizens, or to his designated representative living within the State. Such officer or representative must, if required by the commission, furnish a good and sufficient bond, and is required to furnish to the commission a sworn statement as to the dependents, giving name, age, residence, extent of dependency, and relationship to the deceased.]

Secs. 25, 26. Lump-sum payments.—[Periodical payments may be commuted to one or more lump-sum payments only as the commission may order and prescribe. Such commutations must represent the present value of future installments calculated on a 6 per cent basis.]

At any time after the amount of an award or commutation has been finally determined by the commission, the present value of all future installments, calculated on a 6 per cent basis, may be paid to an approved savings bank or trust company to be held in trust for the beneficiary, who shall then have no further recourse against the employer. Payments from such fund will be made by the trustee the same as required of the employer unless the commissioner otherwise orders.]

Sec. 27. Preferences.—[Compensation rights and awards have the same preference against the assets of the employer as unpaid wages for labor, but

may not become a lien on the property of third persons by reason of such preference. Claims are not assignable, and are exempt from seizure or sale for the payment of any debt or liability except as otherwise provided herein.]

SECS. 28, 20 (both as amended 1923, ch. 282). *Insurance*.—[Every employer except the State and its municipalities must insure his or its liability with some authorized insurance carrier unless exempted by the industrial commission. This does not prevent separate provision for the medical and hospital benefits required by section 19; and the employer may, if conducting distinct operations at different locations, either insure or self-insure each separate establishment, operation, or portion of his operations which may be determined by the commission to be a distinct and separate risk. Employers deciding to become self-insurers must furnish satisfactory proof of their financial ability of which further statement may be required from time to time and any permit revoked on 10 days' notice in writing. Such employers may also be required to furnish such security as the commission may consider sufficient. If the security is in the form of a bond or other personal security, the commission may, on at least 10 days' notice with opportunity to be heard, require the payment of the amount of the award at any time either before or after the entering of such award. Failure to comply with the provisions of this act subjects to a penalty, together with a liability for five times the lawful premium for the period of noncompliance commencing 10 days after notice.

Insurance carriers are subject to the conditions following: Stock or mutual companies must provide for compensation according to the full benefits of part 2 of this act; policies must contain a provision that notice and jurisdiction of the employer are binding on the insurance carrier, and that the workmen have equitable liens on the policy for any amount which may become owing to the employer on account of such policy, and in case the employer becomes legally incapacitated or unable to receive and pay over such sums, payments shall be directly to the beneficiary; nor does the insolvency of an employer relieve the company from payments accrued during the period the policy is in force.

Employees' agreements to pay any portion of the cost of their insurance under this act are void, but additional benefits may be provided at additional cost if the plan is approved in writing by the industrial commission.

If an employer insures as herein provided, and posts a notice or notices of the same conspicuously, giving the name of the company, filing like notice with the industrial commission, then any proceedings brought by an injured employee or his dependents must be brought directly against the insurer, and the employer is released from any further liability, but not in case of the insolvency or bankruptcy of the insurance company.]

SEC. 30. *Evading liability*.—(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 the employer 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 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 employer's tools or appliances and under the employer's directions; 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) 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.

(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 31, or under the conditions set forth in section 66 (j).

SEC. 31 (as amended 1923, ch. 279). *Liability of third parties*.—[Where injury or death occurs under circumstances creating a legal liability for damages on the part of a third party, if such party is subject to the compensation provi-

sions of this act, proceedings may be either at law to recover damages from such party or against the employer for compensation, but not against both. If the action is for damages the amount and manner of recovery and the persons to whom payable must conform with the provisions of part 2 of this act. If compensation is claimed from the employer the latter is subrogated to the rights given against the third party, recovery to include compensation payable by the employer, together with the costs and disbursements of the action.

If the foregoing provisions do not apply or the third party is not subject to the provisions of part 2 of this act, suit may be brought against such party or parties to recover damages notwithstanding payment by the employer or his liability to pay compensation; but in case of recovery against such third party the employer may deduct from the compensation payable by him the amount actually received by the employee or dependents after deducting cost and expenses of the action. If the action against such third party is not diligently prosecuted, or if for other reason the court deems it necessary or advisable in order to protect the interests of the employer, the court may give the employer right to intervene. If the employee or his dependents have agreed to receive compensation or have instituted proceedings to recover the same, or has accepted payments thereon, the employer is subrogated to all rights against the third party; but if the action is not prosecuted with diligence, or the court deems it advisable for the protection of the employee or his dependents, the latter may intervene in such action. Any recovery in excess of the employer's obligations in part 2 of this act, plus costs and expenses, is payable to the injured employee or his dependents.]

SEC. 32. Frivolous controversies.—[If the court finds proceedings have been instituted or any defenses interposed by any employer or insurer which do not present a real controversy but are merely frivolous or for delay, or where there is unreasonable neglect or refusal to pay, or intentional underpayment, the commission or the supreme court on appeal may add not more than 25 per cent to the compensation payable or to become payable as aforesaid. The commission may examine books and records of the employer or insurance carrier to inform itself as to matters named in this section, and an insurance carrier refusing or failing to allow the examination required may be deprived of its license to write insurance in the State.]

SECS. 33 (as amended 1925, ch. 161), 34. Report of accidents.—[Employers subject to the provisions of part 2 of this act must make reports of accidents to employees causing death or serious injury within 48 hours thereafter, and of all other facts within seven days after the employer or his foreman has knowledge of their occurrence, if they have caused disability for more than the remainder of the day, shift, or turn on which the injury was sustained. Accidents requiring to be reported within 48 hours may be reported by telephone, telegraph, or personal notice, a written report to be made within seven days, or at such time as the industrial commission shall designate. Supplementary reports may be required as the commission may deem necessary for securing the information required by law. If an accident has been reported and subsequently terminates fatally, a supplementary report must be filed within 48 hours after receipt of the knowledge of such death. Physicians and surgeons examining, treating, or having special knowledge of compensable injuries must, within 10 days after receipt of any request therefor, report in writing to the industrial commission all facts within their knowledge relative to the nature and extent of the injury and disability. Subsequent reports may be requested from such physicians or surgeons. Penalties lie for the failure of employers, physicians, or surgeons to comply with the foregoing provisions. Such reports are only for official use, and are not open to the public. Employers, insurers, or insured employees must, if requested, file with the commission all medical reports bearing on the case, or verified copies of the same.]

On receipt of notice of an injury the commission must forthwith mail to the injured employee a written or printed notice stating briefly the employee's general rights and duties under the act, summarizing also, in its discretion, such information as to the employer's duty to furnish medical and hospital treatment and to pay compensation as it may deem best; it shall also invite the employee to ask the advice of the commission in case any doubt or dispute arises concerning his rights under the act. A properly addressed envelope is to be furnished.]

SEC. 35 (as amended 1925, ch. 161). Discontinuance of payments.—[Before compensation payments are discontinued the employer must, if the claimant refuses to sign or objects to signing the final receipt, or claims further

benefits, notify the industrial commission in writing of his proposal to discontinue payments, giving the date and reason therefor, stating the fact of objection; medical reports bearing on the case, or copies thereof, must be filed with such notice. Until such notice is given liability for payment continues, unless otherwise ordered by the commission, but their receipt operates as a suspension of payment until the right thereto can be determined. When the commission has received such notice, it must notify the employee of the fact and make the necessary investigations and inquiries to determine whether the right has terminated in accordance with law, and if the contrary appears the case will be set for a hearing, to be held within 25 days of the receipt of notice by the commission, 8 days' notice of such hearing to be given to the interested parties. After hearing an order or award must be properly entered, and if it appears that the right to compensation has terminated the employer is relieved from further liability, subject to the right of review provided by this act. Current, interim, and final reports for payment are also to be filed and checked in order that the commission may supervise the operations and secure full compliance with the provisions of law. Insurance carriers may act for and on behalf of employers insured by them, the employer being responsible for any omission, delay, failure, refusal, or neglect of the injured to perform any such act.]

SECS. 36-45, 46 (as amended 1923, ch. 300), 47-54, 55 (as amended 1923, ch. 300), 56, 57, 58 (as amended 1923, ch. 300), 59 (as amended 1921, ch. 423), 60 (as amended 1921, ch. 423; 1923, ch. 300), 61-63 (as amended 1921, ch. 423), 64 (as amended 1921, ch. 423; 1925, ch. 161). *Procedure.*—[The industrial commission may on the demand of either party designate one or more of its employees to advise such party or parties as to their rights under the act and as far as possible in adjusting differences between an employer and employee as regards compensation of claims. Parties may appear in person, and are not required to be represented by an attorney at law. The commission is to report to each session of the legislature on the operations of the act.

All proceedings are to be by petition in writing, and orders, decisions, and awards made by any commissioner or referee must be immediately filed with the commission, which shall serve the parties in interest with a copy thereof. Service may be by mail, but evidence will be received as to actual receipt due to unusual or unreasonable delay in transmission. In case of disputed or delayed payments or compensation a verified petition setting forth the facts may be submitted, following which the commission will hear the claim or assign it to a commissioner or referee for hearing, notice to be given to each party. Answer may be filed at any time within 10 days, which must also be served upon the petitioner or his attorney. Five days are allowed for a verified reply. When such reply has been filed or the time lapsed for its filing, the time and place for hearing will be fixed; or if no answer is served or filed as provided by the act the commission may forthwith make an award based on the petition if the facts appear to support the same, but proof may be required of any fact alleged. If the facts are not sufficient to support an award, the petitioner shall be notified thereof.

The commission, by a member or referee, may administer oaths, issue subpoenas, require the production of books, papers, and records, etc. Enforcement may be had on application to a judge of the district court to compel obedience by attachment proceedings and for contempt, as in a case of disobedience of a similar order or subpoena issued by the court. After the hearing of all competent evidence the commission, commissioner, or referee must make in writing a statement of the conclusions, with findings of fact and of law, awarding or disallowing the compensation, according to the evidence. Questions of fact may be referred to a commissioner or referee to hear evidence and report. The commission, commissioner, or referee on its or his own motion may investigate the facts, and may appoint one or more impartial physicians or surgeons to examine the injuries of the claimant and report thereon, the fee for such service to be paid from the funds of the department of labor and industries and taxed as costs as the commission may direct.

Proceeding is not bound by common-law or statutory rules of evidence or technical or formal rules of pleading or proceeding, except as provided

by this act, but all findings of fact shall be based only on competent evidence. Depositions may be taken, as in civil cases, except as otherwise ordered, and hospital records may be admitted as evidence, but are not conclusive proof.

An award of a commissioner or referee may be appealed from to the industrial commission within 20 days after notice on the ground that the action taken was not in conformity with the terms of the act or that an error of law has been committed, or that the findings of fact and award or other order were unwarranted by the evidence, or procured by fraud, coercion or other improper conduct. Within 30 days after such notice the time for appeal or filing an answer may be extended. Details of service and proceeding are prescribed, the appealing party being required to deposit \$10 to be applied on the cost of the transcript of the proceedings appealed from, other liability attaching if the costs exceed this amount. On this appeal the commission may examine the testimony, disregarding the findings of fact presented, may hear other evidence, and may substitute its own findings of fact according to its judgment in the matter if an appeal is based on alleged error of law. Hearing must be had on at least five days' notice and a decision made as soon as may be.

If it appears that the award or disallowance was unwarranted, or that there was fraud, coercion, or other improper conduct, the commission may grant a hearing before itself, or assign the case to a commissioner or referee for proceedings de novo.

If there has been a default in the payment of compensation due, the beneficiary may file a copy of the award with the clerk of the district court, and a hearing procured before the judge, who shall pass only upon the facts of the award and the regularity of the proceedings upon which it was based and shall order judgment accordingly. Such judgment shall have the same force and effect as other judgments by the same court, but may not be entered on an award where an appeal is pending. A charge of 25 cents by the clerk covers all services performed by him. At any time after an award has been made but before the same has been reduced to judgment or writ of certiorari issued by the supreme court, a rehearing may be granted by the commission for cause.

Any party in interest may, within 30 days after notice of award or disallowance, have the same reviewed on certiorari by the supreme court on the ground that the findings were not in conformity with the terms of the act or that other error of law was committed, or that they were unwarranted by the evidence. Bonds for costs and other fees are prescribed, proceedings to be had within 30 days, the form of proceeding being prescribed, the hearing and disposition of the case to be in accordance with the laws and rules of the court in civil appeals. The court has and takes original jurisdiction and may reverse, affirm, or modify the order or award and enter such judgment as it may deem just and proper, or remand the cause for a new hearing before the industrial commission. Writs perfected under the provisions of this act stay proceedings for enforcement of the collection of payments until final disposition of the case. The commission is represented in all such reviews by the attorney general unless otherwise directed by the commission.

No cost shall be awarded except as specially provided by this act, but in the discretion of the party conducting the hearing the prevailing party may be awarded reimbursement for actual necessary costs. A reasonable attorney's fee incidental to the review or appeal may also be allowed. In the proceedings before the supreme court, costs and disbursements are taxed the same as in civil appeals, and the usual attorney's fee incidental to the review may be included as a part of the judgment order of the supreme court.]

Sec. 65 (as amended 1923, 300; 1925, ch. 175). *Computation of wages.*—“Daily wage,” as used in this act, shall mean the daily wage of the employee in the employment in which he was engaged at the time of the injury; and if at the time of the injury the employee is working on part time for the day, his daily wage shall be arrived at by dividing the amount received or to be received by him for such part-time service for the day by the number of hours of such part-time service and multiplying the result by the number of hours of the normal working-day for the employment involved: *Provided*, That in the case of persons performing services for municipal corporations in case of emergency, then the normal working-day shall be considered and computed as eight hours.

The weekly wage shall be arrived at by multiplying the daily wage by the number of days and fractional days normally worked in the business of

the employer for the employment involved: *Provided*, That the weekly wage shall not be less than five and one-half times the daily wage. Occasional overtime shall not be considered in computing the weekly wage; but if such overtime is regular or frequent throughout the year for the employment involved, then it shall be taken into consideration.

Where board or other allowances of any character except gratuities are made to an employee in addition to wages as a part of the wage contract, they shall be deemed a part of his earnings and computed at the value thereof to the employee.

SEC. 66 (as amended 1923, chs. 91, 300). *Definitions*.—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 parts 1 and 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 step-children who were members of the family of the deceased at the time of his injury and dependent upon him for support.

(c) The terms "husband" and "widower" are used interchangeably and have the same meaning in this act.

(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 State, county, village, borough, town, city, school district, and other public employers.

(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 the State, or any county, city, town, village, borough, or school district therein, under any appointment or contract of hire, expressed or implied, oral or written, but shall not include any official of the State or of any county, city, town, village, borough, 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: *Provided, however*, That sheriffs, deputy sheriffs, constables, marshals, policemen, and firemen shall be deemed employees within the meaning of this section: *Provided further*, That where in any city operating under a home-rule charter a mode and manner of compensation is provided by said charter, which is different from that provided by this act, and the amount of compensation provided by said charter would, if taken thereunder, exceed the amount the employee is entitled to under this act for the same period, he shall, in addition to his compensation under this act, receive under said charter an amount equal to the excess in compensation provided by said charter over what he is entitled to by this act; if the amount of compensation provided by said charter would, if taken thereunder, be equal to or less than the amount of compensation the employee is entitled to under this act for the same period, he shall take only under this act: *Provided further*, That any peace officer other than a sheriff, deputy sheriff, marshal, or policeman shall be considered an employee while engaged in the enforcement of peace or in and about the pursuit and capture of any person charged with or suspected of crime.

(2) Every person not excluded by section 8, in service of another under any contract of hire, expressed 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) "Member" as an anatomy term in this act, shall include eye and ear, as well as leg, foot, toe, hand, finger, thumb, and arm.

(j) 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 services require their presence as a part of such service, at the time of the injury, and during the hours of service as such workmen: *Provided*, That where the employer regularly furnishes transportation to his employees to or from the place of employment, such employees shall be held to be subject to this act while being so transported, but 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.

(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) "Industrial commission" and "commission" as used in this act, means the Industrial Commission of Minnesota; and "commissioner" means a member of that commission.

(m) The term "farm laborers" shall not include the employees of commercial threshermen or of commercial balers. Commercial threshermen and commercial balers, are hereby defined to be persons going about from place to place threshing grain, shredding or shelling corn, or baling hay or straw, respectively, as a business: *Provided*, That farmers owning threshing, shredding, shelling, or baling machines not engaged in such business generally and doing their own threshing, shredding, shelling, or baling or casually doing such work for other farmers in the same community, and farmers exchanging work among themselves shall not be classed as commercial threshermen or commercial balers.

SEC. 67. *Occupational disease*.—(1) The disablement of an employee resulting from an occupational disease described in subsection (9) of this section, except where specifically otherwise provided, shall be treated as the happening of an accident within the meaning of part 2 of this act, and the procedure and practice provided in such part 2 shall apply to all proceedings under this section, except where specifically otherwise provided herein. Whenever used in this section, "disability" means the state of being disabled from earning full wages at the work at which the employee was last employed, and "disablement" means the act of becoming so disabled.

(2) If an employee is disabled or dies in his disability, or death is caused by one of the diseases mentioned in subsection (9) of this section, and the disease is due to the nature of the corresponding employment, as described in such subsection, in which such employee was engaged and was contracted therein, he or his dependents shall be entitled to compensation for his death or for the duration of his disability according to the provisions of part 2 of this act, except as otherwise provided in this section: *Provided, however*, That if it shall be determined that such employee is able to earn wages at another occupation which shall be neither unhealthful nor injurious, and such wages do not equal his full wages prior to the date of his disablement, the compensation payable shall be a percentage of full compensation proportionate to the reduction in his earning capacity.

(3) Neither the employee nor his dependents shall be entitled to compensation for disability or death resulting from disease unless the disease is due to the nature of his employment and contracted therein within the 12 months previous to the date of disablement whether under one or more employers.

(4) If an employee at the time of his employment willfully and falsely represents in writing that he has not previously suffered from the disease which is the cause of disability or death, no compensation shall be payable.

(5) The total compensation due shall be recoverable from the employer who last employed the employee in the employment to the nature of which the disease was due and in which it was contracted. If, however, such disease was contracted while such employee was in the employment of a prior employer, the employer who is made liable for the total compensation as provided by this subsection may appeal to the commission for an apportionment of such compensation among the several employers who since the contraction of such disease shall have employed such employee in the employment to the nature of which the disease was due. Such apportionment shall be proportioned to the time such employee was employed in the service of such employers and shall be determined only after a hearing, notice of the time and place of which shall have been given to every employer alleged to be liable for any portion of such compensation. If the commission find that any portion of such compensation is payable by an employer prior to the employer who is made liable to the total compensation as provided by this subsection it shall make an award accordingly in favor of the last employer, and such award may be enforced in the same manner as an award for compensation.

(6) The employer to whom notice of death or disability is to be given or against whom claim is to be made by the employer shall be the employer who last employed the employee during the said 12 months in the employment to the nature of which the disease was due and in which it was contracted, and such notice and claim shall be deemed seasonable as against prior employers.

(7) The employee or his dependents, if so requested, shall furnish the last employer or the commission with such information as to the names and addresses of all his other employers during the said 12 months, as he or they may possess, and if such information is not furnished or is not sufficient to enable such employer to take proceedings against a prior employer under subsection (5) of this section, unless it be established that the disease actually was contracted while the employee was in his employment such last employer shall not be liable to pay compensation, or if such information is not furnished or is not sufficient to enable such last employer to take proceedings against other employers under subsection (5) such last employer shall be liable only for such part of the total compensation as under the particular circumstances the commission may deem just; but a false statement in the information furnished as aforesaid shall not impair the employee's rights unless the last employer is prejudiced thereby.

(8) If the employee at or immediately before the date of disablement was employed in any process mentioned in the second column of the schedule of diseases in subsection (9) of this section, and his disease is the disease in the first column of such schedule set opposite the description of the process, the disease presumptively shall be deemed to have been due to the nature of that employment.

(9) For the purpose of this act only the diseases enumerated in column one, following, shall be deemed to be occupational diseases:

COLUMN 1

DESCRIPTION OF DISEASE	DESCRIPTION OF PROCESS
1. Anthrax.	1. Handling of wool, hair, bristles, hides, or skins.
2. Lead poisoning or its sequela.	2. Any process involving the use of lead or its preparations or compounds.
3. Mercury poisoning or its sequela.	3. Any process involving the use of mercury or its preparations or compounds.
4. Phosphorous poisoning or its sequela.	4. Any process involving the use of phosphorus or its preparations or compounds.
5. Arsenic poisoning or its sequela.	5. Any process involving the use of arsenic or its preparations or compounds.
6. Poisoning by wood alcohol.	6. Any process involving the use of wood alcohol or any preparation containing wood alcohol.

COLUMN 1—Continued

DESCRIPTION OF DISEASE—continued	DESCRIPTION OF PROCESS—continued
7. Poisoning by nitro and amido derivatives of benzene (dinitrobenzol, anilin, and others) or its sequelæ.	7. Any process involving the use of a nitro or amido derivative of benzene or its preparations or compounds.
8. Poisoning by carbon bisulphide or its sequelæ.	8. Any process involving the use of carbon bisulphide or its preparations or compounds.
9. Poisoning by nitrous fumes or its sequelæ.	9. Any process in which nitrous fumes are evolved.
10. Poisoning by nickel carbonyl or its sequelæ.	10. Any process in which nickel carbonyl gas is evolved.
11. Dope poisoning (poisoning by tetrachlor-methane or any substance used as or in conjunction with a solvent for acetate of cellulose []) or its sequelæ.	11. Any process involving the use of any substance as or in conjunction with a solvent for acetate of cellulose.
12. Poisoning by gonfoma kamassi (African boxwood) or its sequelæ.	12. Any process in the manufacture of articles from gonfoma kamassi (African boxwood).
13. Chrome ulceration or its sequelæ.	13. Any process involving the use of chromic acid or bichromate of ammonium potassium, or sodium or their preparations.
14. Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye, due to tar, pitch, bitumen, mineral oil or paraffin, or any compound, product, or residue of any of these substances.	14. Handling or use of tar, pitch, bitumen, mineral oil, or paraffin, or any compound, product, or residue of any of these substances.
15. Glanders.	15. Care or handling of any equine animal or the carcass of any such animal.
16. Compressed air illness or its sequelæ.	16. Any process carried on in compressed air.
17. Aukylostomiasis.	17. Mining.
18. Miner's nystagmus.	18. Mining.
19. Subcutaneous cellulitis of the hand (beat hand).	19. Mining.
20. Subcutaneous cellulitis over the patella (miner's beat knee).	20. Mining.
21. Acute bursitis over the elbow (miner's beat elbow).	21. Mining.
22. Inflammation of the synovial lining of the wrist joint and tendon sheaths.	22. Mining.
23. Cataract in glass workers.	23. Processes in the manufacture of glass, involving exposure, glare to molten glass.

(10) Nothing in this section shall affect the rights of an employee to recover compensation in respect to a disease to which this section does not apply if the disease is an accidental personal injury within the meaning of the other provisions of part 2 of this act.

(11) The provisions of this section shall not apply to disability or death resulting from a disease contracted prior to the date on which this act takes effect.

Sec. 68. *Accrued claims.*—All rights and liabilities arising on account of accidents or injuries occurring prior to the taking effect of this act shall be governed by the then existing law.

SECS. 69-71. *Construction of act, etc.*—[Provision is made for the validity of unaffected portions if any part is found to be invalid. The earlier compensation act and any other statute inconsistent with the present act is repealed and the statute is declared to become operative on June 1, 1921.]

Public employees

[The following provisions relating to compensation of public employees for injuries are found in sections 4331-4337 (Gen. Stat. 1923):

Special provision is made for the payment of benefits for injuries to employees of the commissioner of highways, a condensed proceeding being embodied in the sections noted. Awards made are chargeable to the trunk highway fund apportioned to the department in which the injured employee was engaged at the time of the accident on account of which compensation was paid.

A separate section declares that compensation awards against any county, city, town, village, or school district are a preferred claim against such entity, and shall be paid out of its general funds. The act is to be liberally construed in order to effect prompt payment of such claims.]

Administration

[The following sections of the General Statutes of 1923 contain provisions as to the administration of the compensation law.]

SECTIONS 4032-4047. [These sections provide for a continuation of the department of labor and industries under the control and management of the State industrial commission. The commission consists of three members appointed by the governor, by and with the advice and consent of the senate, for terms of six years, one term expiring each two years. Not more than two commissioners may belong to the same political party and such persons are to be appointed as will fairly represent the interests of all concerned in the administration of the act. Salaries are \$4,500 each, and commissioners must devote their entire time to the duties of their offices. The governor may remove for inefficiency, neglect of duty, or malfeasance in office, after hearing. A majority constitutes a quorum, and the department must be open for business continuously, except Sundays and holidays, during the business hours. A seal is provided for, and a departmental secretary at a salary not to exceed \$3,500, with such other officers and employees as may be necessary for the exercise of its powers, all to be appointed by the commission with complete and absolute power of removal. The division of workmen's compensation is one of those named as constituting the department of labor and industries, the administration of the compensation law being conferred and imposed on the industrial commission.]

MISSOURI

ACTS OF 1925

*Workmen's compensation*¹

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SECTION 1. Title.—This act shall be known as the workmen's compensation act.

SEC. 2. Presumption of election.—Every employer and every employee, except as in this act otherwise provided, shall be conclusively presumed to have elected to accept 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 shall 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 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.

SEC. 3. Remedy exclusive.—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 of 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, his wife, her husband, parents, personal representatives, dependents, heirs, or next kin, at common law or otherwise, on account of such accidental injury or death, except such rights and remedies as are not provided for by this act. No compensation shall be allowed under this act for the injury or death due to the employee's intentional, self-inflicted injury, but the burden of proof of intentional, self-inflicted injury shall be on the employer or the person contesting the claim for allowance. Where the injury is caused by the failure of the employer to comply with any statute in this State, or any lawful order of the commission, the compensation and death benefit provided for under this act shall be increased 15 per cent. Where the injury is caused by the willful failure of the employee to use safety devices where provided by the employer, or from the employee's failure to obey any reasonable rule adopted by the employer for the safety of employees, which rule has been kept posted in a conspicuous place on the employer's premises, the compensation and death benefit provided for herein shall be reduced 15 per cent: *Provided*, That it is shown that the employee had actual knowledge of said rule so adopted by the employer: *And provided further*, That the employer had, prior to the injury, made a diligent effort to cause his employees to use said safety device or devices and to obey or follow said rule so adopted for the safety of said employees.

SEC. 4. Hazardous employment.—(a) A major employer shall mean an employer who has more than 10 employees regularly employed.

(b) A minor employer shall mean an employer who has 10 or less employees regularly employed.

(c) If any employee of a minor employer files with the commission a written complaint that such employer is engaged in an occupation hazardous to employees, the commission shall issue an order to show cause returnable within 10 days thereafter requiring such employer to appear and show cause why he

¹ The operation of this act was suspended by a petition for a referendum vote, which was taken Nov. 2, 1926. The vote sustained the law and it became effective Nov. 16, 1926, except as to its compensation features, which will become effective Jan. 7, 1927.

should not be required to accept or reject the provisions of this act, or such order may be issued by the commission upon its own motion. Upon hearing the commission shall determine whether or not such employer is engaged in an occupation hazardous to employees and if the commission determines that such employer is engaged in an occupation hazardous to employees, such employer shall be conclusively presumed to have accepted the provisions of this act unless he rejects the same within 10 days thereafter. The commission may review its decision with reference to the hazardous nature of such employment, or such decision may be reviewed by the full commission in the same manner that awards of the commission may be reviewed under sections 42 and 43 of this act, and appeals may be had in the manner provided in section 44.

(d) If any minor employer, who has been determined to be engaged in an occupation hazardous to employees, or any major employer has elected to reject 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 servant, 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.

(c) Any employer who has accepted the provisions of this act may exempt himself from the provisions of the same with respect to any individual employee whose employment is not hazardous by filing with the commission the written consent of such employee to such exemption. Such consent shall describe the nature of the employment and be signed by the employee and must be approved by the commission: *Provided*, That the commission shall not approve of such exemption unless it deems such employment nonhazardous: *And provided further*, That such employee may at any time thereafter before injury revoke such consent by filing a written revocation thereof with the commission. The commission shall thereupon notify the employer of such revocation.

SEC. 5. *Exemptions*.—Sections 2, 3, and 4 of this act shall not apply to any of the following employments:

First: Employments by the State, county, municipal corporation, township, school or road, drainage, swamp, and levy districts, or school board, board of education, regents, curators, managers, or control commission, board or any other political subdivision, corporation, or quasi corporation thereof.

Second: Employments of farm labor and domestic servants including family chauffeurs.

Third: Employments which are but casual or not incidental to the operation of the usual business of the employer.

Fourth: Employment 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.

Fifth: Employments by minor employers not determined to be engaged in an occupation hazardous to employees. Any employer in this section exempted from the operation of sections 2, 3, and 4 of this act may bring himself within the provisions of this act by filing with the commission notice of his election to accept the same, and by keeping posted in a conspicuous place on his premises a notice thereof to be furnished by the commission, and any employee entering the services of such employer and any employee remaining in such service 30 days after the posting of such notice 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 this act.

SEC. 6. *Who are employers*.—The word "employer" as used in this act shall be construed to mean:

(a) Every person, partnership, association, corporation, trustee, receiver, the legal representatives of a deceased employer, and every other person, including any person or corporation operating a railroad and any public service corporation, using the service of another for pay.

(b) The State, county, municipal corporation, township, school, or road, drainage, swamp, and levy districts, or school boards, board of education, regents, curators, managers or control commission, board or any other political subdivision, corporation, or quasi corporation, or cities under special charter,

or under the commission form of government, which elects to accept this act by law or ordinance.

(c) Any reference to the employer shall also include his insurer.

Sec. 7. *Definitions.*—(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, or under any appointment or election, but shall not include persons whose average annual earnings exceed \$3,600. Any reference to any employee who has been injured shall, when the employee is dead, also include his dependents, and other persons to whom compensation may be payable. The word "employee" shall also include all minors who work for an employer, whether or not such minors are employed in violation of law, and all such minors are hereby made of full age for all purposes under, in connection with, or arising out of this act.

(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, nor shall they be construed to include any contagious or infectious disease contracted during the course of the employment, nor shall they include death due to natural causes 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 300 weeks after the accident: *Provided*, That nothing in this act contained shall be construed to deprive employees of their rights under the laws of this State pertaining to occupational diseases.

(c) Without otherwise affecting either the meaning or interpretation of the abridged clause, "personal injuries arising out of and in the course of such employment," it is hereby declared not to cover workmen except while engaged in or about the premises where their duties are being performed or where their services require their presence as a part of such services.

(d) An employee who is employed by the same employer for more than five and one-half consecutive work days shall for the purpose of this act be considered a regular and not a casual employee.

(e) The term "total disability" as used in this act shall mean inability to return to any employment and not merely inability to return to the employment in which the employee was engaged at the time of the accident.

Sec. 8. *Relief funds.*—Nothing 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 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.

Sec. 9. *Joint employers.*—If the injury or death occurs while the employee is in the joint service of two or more employers, their liability shall be joint and several, and the employee may hold any or all of such employers. As between themselves such employers shall have contribution from each other in the proportion of their several liability for the wages of such employee, but nothing in this act shall prevent such employers from making a different distribution of their proportionate contributions as between themselves.

Sec. 10. *Liability of principals.*—(a) Any person who has work done under contract on or about his premises which is an operation of the usual business which he here carries on shall be deemed an employer and shall be liable under this act to such contractor, his subcontractors, and their employees, when in-

jured 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.

(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 attorney's fees and expenses of the suit. Such recovery may be had on motion in the original proceedings. No such employer shall be liable as in this section provided if the employee was insured by his immediate or any intermediate employer.

Sec. 11. *Alternative remedies.*—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.

Sec. 12. *Federal laws; injuries outside State.*—(a) This act shall apply to all cases within its provisions, except those exclusively covered by any Federal law.

(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 case shall otherwise provide.

Sec. 13. *Medical, etc., aid.*—(a) In addition to all other compensation, the employee shall receive and the employer shall provide such medical, surgical, and hospital treatment, including nursing, ambulance, and medicines, as may reasonably be required for the first 60 days after the injury or disability to cure and relieve from the effects of the injury, not exceeding in amount the sum of \$250, and thereafter such additional similar treatment within one year from the date of the injury as the commission by special order may determine to be necessary. 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.

(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.

(e) The testimony of any physician who treated the employee shall be admissible in evidence in any proceedings for compensation under this act.

(f) Every hospital or other person furnishing the employee with medical aid shall permit its record 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. *Waiting time.*—(a) Except as provided in section 13, no compensation shall be payable for the first three days or less of disability unless the disability shall last longer than four weeks.

(b) Compensation shall be payable as the wages were paid prior to the injury, but in any event at least once every two weeks. Each installment shall bear interest at the rate of 6 per cent per annum from date when due until paid. Compensation shall be payable on the basis of 66⅔ per cent of the average earnings of the employee computed in accordance with the rules given in section 22 of this act, but in no case shall the compensation exceed \$20 a week.

(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 13.

SEC. 15. *Temporary total disability.*—For temporary total disability the employer shall pay compensation for not more than 400 weeks during the continuance of such disability, but not less than \$6 nor more than \$20 a week with full wages if the average earnings amount to less than \$6 a week.

SEC. 16. *Temporary partial disability.*—For temporary partial disability compensation shall be paid during such disability, but not for more than 100 weeks, and shall be 66⅔ per cent of the difference between the average earnings 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, \$20 per week.

SEC. 17. *Permanent partial disability; schedule.*—(a) For permanent partial disability, in lieu of all other compensation, except that provided under section 13 of this act, the employer shall pay to the employee 66⅔ per cent of his average earnings as computed in accordance with section 22, but not less than \$6 nor more than \$20 per week, for the periods hereinafter provided:

	Weeks
1. Loss of major arm at shoulder.....	232
2. Loss of minor arm at shoulder.....	212
3. Loss of major arm between shoulder and elbow.....	222
4. Loss of minor arm between shoulder and elbow.....	200
5. Loss of major arm at elbow joint.....	210
6. Loss of minor arm at elbow joint.....	190
7. Loss of major arm between elbow and wrist.....	200
8. Loss of minor arm between elbow and wrist.....	180
9. Loss of major hand at the wrist joint.....	175
10. Loss of minor hand at the wrist joint.....	160
11. Loss of thumb of major hand at proximal joint.....	60
12. Loss of thumb of minor hand at proximal joint.....	55
13. Loss of thumb of major hand at distal joint.....	45
14. Loss of thumb of minor hand at distal joint.....	34
15. Loss of index finger at proximal joint, major hand.....	45
16. Loss of index finger at proximal joint, minor hand.....	40
17. Loss of index finger at second joint, major hand.....	35
18. Loss of index finger at second joint, minor hand.....	30
19. Loss of index finger at distal joint, major hand.....	30
20. Loss of index finger at distal joint, minor hand.....	26
21. Loss of either the middle or ring finger at the proximal joint, major hand.....	35
22. Loss of either the middle or ring finger at the proximal joint, minor hand.....	30
23. Loss of either the middle or ring finger at second joint, major hand.....	30
24. Loss of either the middle or ring finger at second joint, minor hand.....	26

	Weeks
25. Loss of either the middle or ring finger at the distal joint, major hand.....	26
26. Loss of either the middle or ring finger at the distal joint, minor hand.....	24
27. Loss of little finger at proximal joint, major hand.....	22
28. Loss of little finger at proximal joint, minor hand.....	16
29. Loss of little finger at second joint, major hand.....	20
30. Loss of little finger at second joint, minor hand.....	16
31. Loss of little finger at distal joint, major hand.....	16
32. Loss of little finger at distal joint, minor hand.....	18
33. Loss of one leg at the hip joint or so near thereto as to preclude the use of artificial limb.....	207
34. Loss of one leg at or above the knee, where the stump remains sufficient to permit the use of artificial limb.....	160
35. Loss of one leg at or above ankle and below knee joint.....	155
36. Loss of one foot, in tarsus.....	150
37. Loss of one foot, in metatarsus.....	110
38. Loss of great toe of one foot at proximal joint.....	40
39. Loss of great toe of one foot at distal joint.....	22
40. Loss of any other toe at proximal joint.....	14
41. Loss of any other toe at second joint.....	10
42. Loss of any other toe at distal joint.....	8
43. Complete loss of one eye.....	118
44. Complete loss of the sight of one eye.....	108
45. Complete deafness of both ears.....	168
46. Complete deafness of one ear, the other being normal.....	44

For permanent injuries other than those above specified, the said compensation shall be paid for such periods as are proportionate to the relation which the other injury bears to the injuries above specified, but no such period shall exceed 40 weeks. Such other injuries shall include permanent injuries causing a loss of earning power. 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 compensation shall be paid for the same period as for the loss thereof by separation. 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. If an employee be seriously mutilated or permanently disfigured about the face or head, the commission may allow such additional sum for the 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 \$1,000.

(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 commission: 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.

Sec. 18. *Permanent total disability.*—(a) For permanent total disability compensation shall be paid on the basis of 66% per cent of the average annual earnings during 300 weeks, and thereafter on the basis of 25 per cent of the average annual earnings, for life, but not less than \$6 nor more than \$20 a week.

(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. *Second injury.*—(a) All cases of permanent disability where there has been a previous disability, shall be compensated on the basis of the average annual earnings at the time of the last injury. If the condition resulting from the last injury is a permanent partial disability, there shall be deducted from the resulting condition the previous disability as it exists at the time of the

last injury, and compensation shall be paid for the difference. If the resulting condition be a permanent total disability, the compensation therefor shall be two-thirds of that for permanent total disability in other cases.

(b) If more than one injury in the same employment 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 employment causes concurrent and consecutive permanent disability, compensation payments for each subsequent disability shall not begin until the end of the compensation period of the prior disability.

SEC. 20. *Death of workman receiving benefits.*—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 pay 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 persons entitled thereto, but such death shall be deemed to be the termination of the disability. 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 compensation, payments of the unpaid unaccrued balance for such injury shall cease and all liability therefor shall terminate unless there be surviving dependents at the time of such death.

SEC. 21. *Compensation for death.*—If the injury causes death, either with or without disability, the compensation therefor shall be as provided in this section.

(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 \$150, and, if not covered by the provisions of section 13, the reasonable expense of his last sickness not exceeding \$250. 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 benefits 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 single total death benefit, the amount of which shall be determined in the following manner, to wit: There shall first be determined as a basis for computation 66% per cent of the employee's average weekly earnings during the year immediately preceding the injury as provided in section 22 and such amount shall then be multiplied by 300 and the amount so determined shall be the amount of such death benefit. The death benefit provided for shall be payable in installments in the same manner that compensation is required to be paid under this act, but in no case less than at the rate of \$6 per week nor more than \$20 per week. There shall, however, be deducted from such death benefit any compensation which may have been paid to the employee during his lifetime for the injury resulting in his death. If there be a total dependent or total dependents as the case may be, no death benefit shall be payable to partial dependents, or any other persons 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.

(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 totally

dependent for support upon a deceased employee in the following order and any death benefit shall be payable in the following order, to wit:

1. A wife upon a husband legally liable for her support, and a husband mentally or physically incapacitated from wage earning upon a wife: *Provided*, That on the death or remarriage of a widow, the death benefit shall cease unless there be other dependents entitled to any unpaid remainder of such death benefit under this act.

2. A natural, posthumous, or adopted child or children, whether legitimate or illegitimate, under the age of 18 years, or over that age if physically or mentally incapacitated from wage earning, upon the parent 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, and upon the death of an employee by accident arising out of and in the course of his employment, shall so far as possible immediately furnish the commission with said names and addresses.

SEC. 22. *Basis for computing compensation.*—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 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) In computing the annual earnings there shall be included the reasonable value of board, rent, housing, lodging, and fuel received from the employer as a part of the remuneration of the employee and which can be estimated in money, and the value of gratuities customarily received by consent of the employer, in the usual course of business from persons other than the employer, but there shall not be included the wages of helpers or any sums which the employer paid to the employee to cover any special expenses entailed on him by the nature of the employment.

(h) In computing the compensation to be paid to any employec, 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.

(j) In computing the compensation to be paid to any minor, the increased earning power of such minor until he attains the age of 21 years shall be taken into consideration, and in all cases in which it is found by the commission that the employer knowingly employed a minor in violation of the child labor law of this State, 50 per cent additional compensation shall be allowed.

Sec. 23. *Preference; assignments, etc.*—[Compensation claims and awards are not assignable and are exempt from attachment, garnishment, or execution, nor are they subject to set-off or counterclaims or in any way liable for debt. They have the same preference and priority against the employer as claims for wages, but are subject to a lien for reasonable attorney's fees allowed by the commission.]

Sec. 24. *Other benefits.*—[No savings, insurance, or other benefit shall be considered in determining the amount of compensation due an injured workman under this act.]

Secs. 25-33. *Insurance.*—[Employers under the act must insure their liability thereunder with an authorized insurance carrier unless the commission is satisfied of an employer's ability to carry his own risk in whole or in part. If the employer fails to comply with these requirements, action may be brought against him as though he had rejected the act, or compensation may be claimed with the payments commuted and immediately payable. Self insurers in default of any installment of compensation may be required to furnish security for such payment, which failing, all unpaid compensation shall be commuted and immediately payable. Employers in the mining business are required to insure only to the extent of the maximum liability for 10 deaths in any one accident, the employer being permitted to carry his own risk for any excess liability. No part of the cost of the insurance may be collected from or paid by any employee.]

If an employer is not insured his liability is primary and direct; if insured, the insurer is primarily liable to the injured employee or his dependents. Evidence of insurance may be required, and failure to produce the same is prima facie evidence of failure to insure, rebuttable by an entry of appearance by the insurer. An insured employer is not liable except in case of default by the insurer. Service and jurisdiction of the employer covers also the insurer.

Policies must conform to the provisions of the act and be approved by the superintendent of the insurance department, and contain an agreement to accept the provisions of the act, which are to be enforceable notwithstanding any default of the employer. Premium rates must be fair, reasonable, and adequate, with due allowance for merit rating. Classifications of risks and premium rates together with a system of schedule or merit rating must be filed with the insurance commissioner and are effective on his approval; or he may approve and issue a system of schedule rating for all insurance carriers. Hearings may be had as to fairness, reasonableness, and adequacy, and no insurance may be written at rates less than those approved, and application of rates and merit ratings to the various risks must be clearly set forth in the insurance contracts. Participating policies may be written, and the provisions of this section as to rates and classifications do not apply to reciprocal, inter-insurance, or mutual companies, except that the classification must be approved and the rates be not less than those approved by the superintendent of insurance as adequate. Reserves must be maintained, and the superintendent of the insurance department may require reports to be made, and may inspect books and records for the purpose of determining the solvency of the insurer or the fairness, reasonableness, and adequacy of its rates. The right to insure may be suspended or revoked for violations of the act or for unreasonable failure or delay to pay compensation as finally awarded. Substitute schemes may be entered into between the employers and their employees subject to the approval of the superintendent of the insurance department. At least equivalent benefits must be provided, with added benefits if contributions are required from the employees. Such schemes may be terminated if found not fairly administered or in danger of insolvency.]

Sec. 34. Reports.—[Employers must report within 10 days after knowledge thereof of an accident resulting in personal injury to an employee, and within one month give full and complete reports of the injury or death for which the employer will be liable to furnish medical aid or compensation, such duties devolving upon all employers whether under the act or not. Employers, insurers, employees, and their dependents are required to fill out all blanks received from the commission, and a good and sufficient reason shall be given for failure to answer any question. Information is confidential save by order of the commission but may be used at hearings and for statistical purposes.]

Sec. 35. Compromise settlements.—[Nothing in this act is to be construed as preventing voluntary agreements which are valid only when approved by the commission and found in accordance with the rights given by the act. No such agreement is valid unless made after seven days after the injury or death, nor may any agreement to waive an employee's right be made.]

Sec. 36. Duty of commission as to accidents; notices.—[When the commission receives notice of an accident it must forward to the employer and to the employee or his dependents a form of agreement of settlement in accordance with the provisions of the act; the same to be properly executed by both parties and returned to the commission. If the employer disputes the claim and refuses to execute the agreement, the commission is to assist the claimant in filing his claim and securing its early determination. The commission also has the duty of seeing that payments under executed agreements are promptly made, and of hearing disputes with reference thereto. The parties may file an agreed statement of facts with the commission, together with their agreements, and if these are approved, the commission makes an award of compensation accordingly.]

Sec. 37. Discrimination.—[Employers discharging or discriminating against employees for exercising their rights under this act are guilty of a misdemeanor punishable by fine or imprisonment or both.]

SECS. 38-47. Procedure.—[Claimants must give notice within 30 days after the accident, stating the time, place, and nature of the injury, unless the commission finds that there is good cause for failure to give such notice or that the employer is not prejudiced by failure to receive it. No defect or inaccuracy will invalidate unless actually misleading or prejudicial. Claims must be filed within six months subject to the provisions as to legal disability from minority or insanity.]

If the parties fail to agree, or having agreed a subsequent disagreement arises, either party may apply to the commission for a hearing. The parties shall be informed of the date set for hearing at which time the parties and their representatives and witnesses may be heard in a summary proceeding. Evidence will be reported by a stenographer and a copy of the award mailed to the parties in dispute and the employer's insurer. The commission may on its own motion or on application of either party review and modify awards on the ground of a change in conditions, but such review shall not affect prior payments. If application is made for a review of an award within 10 days from its date, the full commission, if the first hearing was not held before it, will review the evidence or, if deemed advisable, hear the parties and their witnesses and make an award which will be final unless either party within 30 days appeals to the circuit court of the county. No additional evidence will be heard on such appeal, and in the absence of fraud the findings of fact made by the commission within its powers will be final. The court may consider questions of law and modify, reverse, remand, or set aside an award only if the commission acted without or in excess of its powers, if the award was procured by fraud, if the facts found do not support it, or if there was not sufficient competent evidence in the record to warrant the making of such award. Appeal may be taken from the circuit court as in civil cases, such proceedings having precedence over all other cases except election contests. Costs are assessed as in civil cases.

Any party in interest may file in the circuit court of the county a certified copy or a memorandum of agreement approved by the commission, or an award or order of the commission not appealed from, on which the court shall render judgment in accordance therewith, with the same effect as a judgment rendered in a suit at law. Such judgment will be modified in accordance with any modification made by the commission on grounds of change in condition.

Temporary or partial awards may be made subject to modification to meet the needs of the case, being kept open until a final award can be made. If such award is not complied with the amount thereof may be doubled in the final award if it is in accordance with such temporary or partial award.

Notice may be served by registered mail or in like manner as summons in civil actions.]

SECS. 48, 49. Commutation.—[Compensation may be commuted in whole or in part to lump sums based on the present worth calculated with interest at 4 per cent with annual rests. Either party may apply for such commutation with due notice to the other, and if it appears that it is to the best interest of the beneficiary or that it will avoid undue expense or hardship to either party, that the beneficiary 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, it may be allowed. Commutation is said to be a departure from the normal method of payment and is to be allowed only when clearly warranted by unusual circumstances.]

Unpaid amounts may be discharged on notice to beneficiary by a payment of the commutable value of such payments to some responsible person or by depositing the same with the commission to be disbursed to the beneficiary as the commission shall determine.]

SEC. 50. Medical examinations.—[An injured employee must submit from time to time during his disability to reasonable medical examination at the request of his employer, his insurer, or the commission. He may have his own physician present. Any refusal or obstruction forfeits compensation for the period of its continuance unless in the opinion of the commission the circumstances justified such refusal or obstruction. A physician may be appointed at the instance of the commission to examine the injured employee and report costs to be fixed and allowed as other costs under the act. Certified copies of the proceedings in an inquest are admissible as evidence in proceedings for compensation, and the coroner must give notice of the inquest to the employer and the dependents of the employee, who shall have the right to cross-examine the witnesses. Post mortem examinations may be authorized in extraordinary cases.]

SECS. 51-55. Miscellaneous provisions.—[Proceedings are to be informal and summary, in accordance with regulations adopted by the commission. The commission or any commissioner may subpoena witnesses, administer oaths, require the production of books and papers, and secure depositions. Parties are entitled to proceedings to compel the attendance of witnesses and the production of evidence. Fees and mileage are allowed as in civil cases, costs to be approved by the commission and paid out of the State treasury from the compensation administration fund. Persons failing to obey subpoenas or to answer when examined or produce books and papers are guilty of a misdemeanor and may be fined or imprisoned, or both. Death does not abate proceedings, which may be revived on notice to the parties and proceed in favor of the successor to the rights or against the personal representative of the party liable, as in civil actions.]

Any person making or conspiring to make false or fraudulent claims under the act or payments of compensation to persons not entitled, or by fraud or deceit to procure for another benefits to which they are not entitled, or to pay less than is due under the act, is guilty of a misdemeanor.]

SECS. 56-66. Workmen's compensation commission.—[A commission consisting of three members appointed by the governor, by and with the advice and consent of the senate, is to serve for terms of six years each, one term expiring each two years. One member shall be learned in the law, and one each shall be representative of employers and employees. Not more than two may be from the same political party. Salaries of \$4,500 are provided. Full-time service is required, and service on any committee of any political party during the term of office is forbidden. The commission has a seal, may appoint a secretary at a salary of \$2,600 per annum, and employ such persons as may be necessary for the proper administration of the act, with salaries fixed by it and approved by the governor within prescribed limits. A medical examiner at not more than \$4,000 per annum may be appointed. The attorney general of the State is to be the legal adviser of the commission.]

The commission is to prepare and furnish free of charge necessary blank forms, is to maintain offices at the capitol and in St. Louis and Kansas City, the main office to be at the capitol, and to make necessary rules and regulations.

Original proceedings are to be held in the county and city where the accident occurred, unless the parties otherwise agree, or in the county where the contract of employment was made if the accident occurred outside the State. Hearings on review may be at such places as the commission may determine, having regard for the convenience of the parties. Certain fees are prescribed as for copies of papers and records, the rate being fixed by the statute. Public officers must furnish the commission free of charge a certified copy of any document on file in their office, and must file documents received from the commission without fee. Annual reports of the operations of the law and transactions and proceedings of the commission are to be made to the governor.]

Secs. 67-71. Administration fund.—[Every person, partnership, or other organization writing insurance under this act in the State must pay a tax of 2 per cent on the deposits or premiums received on account of business in the State in lieu of all other taxes on such deposits or premiums. The superintendent of insurance may suspend delinquent companies, and companies withdrawing from the State must pay taxes due. Employers carrying their own risk must likewise pay a tax on the same basis as taxes are assessed against insurance carriers. The funds thus raised are for the expenses of administering this act, and any appropriations made to the fund out of the general revenue fund are to be reimbursed as the commission may from time to time determine.]

Secs. 72-78. Violations; construction, etc.—[Any person assuming to act as agent of an insurance carrier whose right to do business has been suspended, or who willfully makes false or fraudulent statements or refuses to comply with the provisions of the act, is guilty of a misdemeanor. A general provision covers any person, corporation, or agent of same, who violates any provisions of the act.

Properly mailing a notice is sufficient compliance with the requirement to give notice, and the act is to be liberally construed with a view to the public welfare, a substantial compliance being sufficient to give effect to the rules, orders, etc., of the commission which are not to be declared void for any technical omission. The provisions of the act are severable, and if part is found unconstitutional the validity of the remaining portions will not be affected thereby. Inconsistent acts are repealed.]

MONTANA

REVISED CODES—POLITICAL CODE—1921

CHAPTER 213.—*Workmen's compensation*

SECTIONS 2816-2818. *Arrangement of act.*—[The act is arranged in five parts, and presents three plans of compensation, besides safety provisions. The term "compensation provisions" includes all three plans of compensation.]

SECS. 2819-2835. *Industrial accident board.*—[A board consisting of three members is created, one to be appointed by the governor, the other two being the commissioner of agriculture, labor, and industry and the State auditor. The appointed member serves for four years and until his successor is appointed and qualified, at a salary of \$5,000, and is to be chairman of the board. He may be removed only for cause and after hearing had by the other two members, who must concur if the removal is effected. The ex officio members receive no additional compensation for service on the board. A majority of the board constitutes a quorum, it has a seal, and is to keep its principal office in the capital of the State. The board may appoint a secretary and such assistants and other employees as it may deem necessary, receiving such salaries and serving for such terms as the board may direct. All expenses are to be paid from the industrial administrative fund. The board is to prepare blank forms needed for the administration of the act, publish and distribute reports and bulletins, and collect prescribed fees for certain services. The attorney general of the State is its legal advisor.]

SEC. 2836. *Defenses.*—[The common-law defenses are abrogated in actions for damages for personal injuries to employees sustained in the course of employment.]

SEC. 2837 (as amended 1925, ch. 121). *Farm, etc., labor.*—The provisions of section 2836 shall not apply to actions to recover damages for personal injuries sustained by household and domestic servants or those employed in farming, dairying, agricultural, viticultural, and horticultural, stock or poultry raising, or engaged in the operation and maintenance of steam railroads conducting interstate commerce, or persons whose employment is of a casual nature.

SEC. 2838. *Employers accepting the act.*—Any employer who elects to pay compensation as provided in this act shall not be subject to the provisions of section 2836, 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 2836 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.

SEC. 2839. *Remedy exclusive, when.*—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.

Sec. 2840. Public employments.—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 No. 3 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 expense of such corporation, and the governing body of such public corporation shall make appropriation of and pay such sums into the 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, appropriations, ordinances, 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 contractor shall deduct for the benefit of the industrial accident fund the amount of all premium assessments necessary to be paid by such contract or under the provisions of this act. Whenever any public corporation neglects or refuses to file with the industrial-accident board monthly pay-roll report of its employees, the board is hereby authorized and empowered to levy an arbitrary assessment upon such public corporation in an amount of \$25 for each such assessment, which assessments shall be collected in the manner provided in this act for the collection of assessments.

Sec. 2841. Hazardous employments; election.—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 30 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 No. 1, or compensation plan No. 2, or compensation plan No. 3, 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.

Sec. 2842. Election by employees.—Every employee in the industries, works, occupations, or employments 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.

Sec. 2843. Presumption in case of nonelection.—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 No. 1, or compensation plan No. 2, or compensation plan No. 3 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 30 nor more than 60 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.

Sec. 2844. Employer to act.—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 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.

SEC. 2845. *Revocations.*—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.

SEC. 2846. *No compensation when.*—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. 2847. *Scope of law.*—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 the four following sections, and the works and occupations enumerated in said sections are hereby declared to be hazardous, and any employer having any workman 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.

SEC. 2848. *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, water works, 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 coiling 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.

SEC. 2849 (as amended 1925, ch. 117). *Operation (including repair work).*—Of logging, cable, electric, street, steam, or other railroads; dredges; interurban electric railroads using third-rail systems; electric light and 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; freight elevators and passenger elevators; laundries; waterworks; paper mills; pulp mills; garbage and fertilizer works.

SEC. 2850. *Factories using power driven 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 floor 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, brickettes; 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.

SEC. 2851. *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.

SEC. 2852. *Other employments*.—If there be or arise any hazardous occupation or work other than hereinbefore enumerated, it shall come under this act and its terms, conditions, and provisions as fully and completely as if hereinbefore enumerated.

SEC. 2853. *Definitions*.—Unless the context otherwise required, words and phrases employed in this act shall have the meaning hereinafter defined.

SEC. 2854. "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.

SEC. 2855. "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.

SEC. 2856. "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.

SEC. 2857. "Mine" means any mine where coal, clay, ore, mineral, gypsum, or rock is dug or mined underground.

SEC. 2858. "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.

SEC. 2859. "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.

SEC. 2860. "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.

SEC. 2861. "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.

SEC. 2862 (as amended 1925, ch. 121).—"Employer" means 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 and including an independent contractor, who has any person in service in hazardous employment under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased employer or the receiver or trustee thereof.

SEC. 2863 (as amended 1925, ch. 121).—"Employee" and "workman" are used synonymously and mean every person in this State, including a contractor other than an "independent contractor" who is in the service of an employer as defined by the preceding section, under any appointment or contract of hire, expressed or implied, oral or written, including aliens and also including minors, whether lawfully or unlawfully employed, and all who are connected with or engaged in hazardous occupations of the elected and appointed paid

public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for such corporations for pay, but excluding any person whose employment is both casual and not in the course of the trade, business, profession, or occupation of his employer and also excluding any employee engaged in household, domestic service, farm dairy, agricultural, viticultural, or horticultural labor, in stock or poultry raising, except as hereinafter provided.

Sec. 2864. "Injury" means and shall include death resulting from injury.

Sec. 2865 (as amended 1925, ch. 121). "Beneficiary" means and shall include a surviving wife or husband and a surviving child or children under the age of 18 years and an invalid child or invalid children over the age of 18 years, or if no surviving wife or husband, then a surviving child or children under the age of 18 years and an invalid child or invalid children over the age of 18 years: *Provided, however*, That no invalid child over the age of 18 years shall be considered a beneficiary unless dependent upon the decedent for support at the time of injury.

Sec. 2866 (as amended 1925, ch. 121). "Major dependent" means if there be no beneficiary as defined in the preceding section, the father and mother, or the survivor of them, if actually dependent upon the decedent at the time of his injury, then to the extent of such dependency, not to exceed, however, the maximum compensation provided for in this act.

Sec. 2867 (as amended 1925, ch. 121). "Minor dependent" means if there be no beneficiary or major dependent as defined in the preceding sections, the brothers and sisters under the age of 18 years: *Provided, however*, That no invalid brother or invalid sister over the age of 18 years shall be a "minor dependent" unless actually dependent upon the decedent at the time of his injury. Minor dependents shall be awarded compensations to the extent of such dependency, not to exceed, however, the maximum compensation provided for in this act.

Sec. 2868. "Invalid" means one who is physically or mentally incapacitated.

Sec. 2869. "Child" shall include a posthumous child, a stepchild, a child legally adopted prior to the injury, an illegitimate child legitimized prior to the injury.

Sec. 2870. "Injury" or "injured" refers only to an injury resulting from some fortuitous event, as distinguished from the contraction of disease.

Sec. 2871. Wherever the singular is used the plural shall be included, and wherever the plural is used the singular shall be included.

Sec. 2872. Wherever the masculine gender is used, the feminine and neuter shall be included.

Sec. 2873. The term "physician" shall include "surgeon" and in either case shall mean one authorized by law to practice his profession in this State.

Sec. 2874. "Week" means six working-days, but includes Sunday.

Sec. 2875. "Wages" means 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.

Sec. 2876. "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.

Sec. 2877. "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.

Sec. 2878. "Board" means the Industrial Accident Board of the State of Montana.

Sec. 2879. "Commissioner" means one of the members of the industrial accident board.

Sec. 2880. "Appointed member of the board" means that member of the industrial accident board appointed by the governor.

Sec. 2881. "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.

Sec. 2882. "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.

SEC. 2883. "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.

SEC. 2884. "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 31 of such current year.

SEC. 2885. "Year" unless otherwise specified means calendar year. "Fiscal year" means the period of time between the 1st day of July and the 30th day of the succeeding June.

SEC. 2886. "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.

SEC. 2887. "Insurer" means any insurance company authorized to transact business in this State insuring any employer under this act.

SEC. 2888. "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

SEC. 2889. "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.

SEC. 2890. 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.

SEC. 2891 (as amended 1925, ch. 121). *Minor dependents*.—In computing compensation to children and to brothers and sisters only those under 18 years of age or invalid children over the age of 18 years shall be included, and in case of invalid children only during the period in which they are under that disability, all within the maximum limitations elsewhere in this act provided, after which payment on account of such person or persons shall cease. Compensation to children, or brothers or sisters, except invalids, shall cease when such persons reach the age of 18 years, and in all cases shall cease when such person marries.

SEC. 2892. *Death or remarriage*.—If any beneficiaries or major or minor dependents of a deceased employee die, or if the widow or widower remarries, the right of such beneficiary or major or minor dependent, or such widow or widower, to compensation under this act shall cease.

SEC. 2893. *Aliens*.—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.

SEC. 2894. *Same*.—Except as otherwise provided by treaty, no compensation in excess of 50 per cent 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 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.

SEC. 2895. *Compromise settlements*.—Nothing in the preceding section 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 50 per cent of the compensation provided in this act, upon the approval of the board of such compromise settlement.

SEC. 2896. *Evidence*.—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.

Sec. 2897. *Payments to consul, etc.*—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.

Sec. 2898 (as amended 1925, ch. 121). *Payments to parents or guardians.*—Where payment is due to a child under 18 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, of further liability. In other cases payment shall be made to the person entitled thereto or to his duly authorized representative.

Secs. 2899, 2900 (as amended 1921, ch. 121). *Claims.*—[Claims are forever barred unless presented within six months from the date of the accident, but no limitation shall run against minors under 18 or persons mentally incompetent until a guardian is appointed or the minor arrives at the age of 18 years.]

Sec. 2901. *Contractors.*—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."

Sec. 2902. *Presumption.*—Where any employer procures work to be done as specified in the preceding section, 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.

Sec. 2903. *Contractor is employer, when.*—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.

Sec. 2904. *Payment in property.*—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. 2905. *Death during disability.*—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.

If the employee shall die from some cause other than the injury, there shall be no liability for compensation after his death.

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.

Sec. 2906. *Medical examination.*—[An employee having right to compensation under the act must submit to medical examinations from time to time on request of the employer, his insurer, or the board, or a member, examiner, or referee, and may have his own physician present. Refusal or failure to comply suspends benefits for such period.]

Secs. 2907-2910. *Hospital contracts.*—[The provisions of section 2917 may be waived and contracts made between employers and employees providing for hospital benefits and accommodations for employees. Such contracts must provide for sickness contracted during employment as well as accidents, except venereal diseases and sickness due to intoxication. Assessments on employees

may not exceed \$1 per month unless the actual cost is shown to exceed that sum; but no profit shall result to the employer, directly or indirectly.

Such hospitals will be under the supervision of the board as to services and treatment rendered. Neither the employer, his insurer, nor the board will be liable for malpractice or any act in connection with the treatment or care of employees under such hospital contracts; but the merits of any action for malpractice will be investigated by the board and a report made to the clerk of the court in which the action is pending. The question of whether or not due care was given is made a question of law for the court.]

Sec. 2911. *Who to pay benefits.*—Every employer who shall become bound by and subject to the provisions of compensation plan No. 1, and every employer and insurer who shall become bound by and subject to the provisions of compensation plan No. 2, and the industrial accident fund where the employer of the injured employee has become bound by and subject to the provisions of compensation plan No. 3, 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.

Sec. 2912 (as amended 1925, ch. 121). *Temporary total disability.*—For an injury producing temporary total disability, 50 per cent of the weekly wages received at the time of the injury, subject to a maximum compensation of \$15 per week and a minimum compensation of \$7 per week. Such compensation shall be paid during the period of disability but for a period not exceeding 300 weeks from date of injury.

Sec. 2913 (as amended 1925, ch. 121). *Permanent total disability.*—[For an injury producing total disability, permanent in character], 50 per cent of the weekly wages received at the time of injury, subject to a maximum compensation of \$15 per week and a minimum compensation of \$7 per week. Such compensation shall be paid during the period of disability, not exceeding 500 weeks from date of injury.

Sec. 2914. *Partial disability.*—For an injury producing partial disability, one-half the difference between the wages received at the time of the injury and the wages that 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 75 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, 150 weeks in cases of permanent partial disability and 50 weeks in cases of temporary partial disability.

Sec. 2915 (as amended 1925, ch. 121). *Death.*—Where the injury causes death, 50 per cent 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, 40 per cent of such compensation, or if none, then 50 per cent of the wages received at the time of the injury to his major dependents, if any, residing in the United States at the date of the happening of the injury, or if none, then 30 per cent of the wages received at the time of the injury to his minor dependents, if any, if residing within the United States at the date of happening of the injury, subject to a maximum compensation of \$15 per week and a minimum compensation of \$7 per week for a period not exceeding 400 weeks: *Provided*, That if at the time of the injury the employee received wages of less than \$8 per week, the full amount of such wages per week, for a period not exceeding 400 weeks: *And provided further*, That compensation payable to major or minor dependents shall not exceed the amount of dependency.

Sec. 2916 (as amended 1925, ch. 121). *Burial expenses.*—There shall be paid in addition to other compensation, if death due to injury occurs while the employee is drawing or entitled to draw compensation payment, the reasonable burial expenses of the employee, not exceeding \$150.

Sec. 2917 (as amended 1925, ch. 121). *Medical, etc., aid.*—During the first six months after the happening of the injury, the employer or insurer or the board, as the case may be, shall furnish reasonable medical, surgical, and hospital service and medicines when needed, not exceeding in amount the sum of \$500, unless the employee shall refuse to allow them to be furnished, and unless such employ[er] is under a hospital contract, as provided in section 2907 of this act.

SEC. 2018. *Waiting time.*—No compensation shall be allowed or paid during the first two weeks of any injury, except as may be required by the provisions of the preceding section; but if disability continues six weeks, compensation shall be paid from date of injury.

SEC. 2019 (as amended 1925, ch. 121). *Order of payments.*—Compensation, other than medical, surgical, hospital, and burial benefits provided, shall run consecutively and not concurrently and payment shall not be made for two classes of disability over the same period: *Provided*, That no compensation shall be paid to a major or minor dependent 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 dependent where there be more than one shall be divided equitably among them and likewise as to minor dependents, and the question of dependency and amount thereof shall be a question of fact for determination by the board.

SEC. 2020 (as amended 1925, ch. 121). *Schedule.*—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 2017, unless the employee is a contributor to a hospital fund as otherwise in this act provided, shall be 50 per cent of the wages received at the time of the injury, subject to a maximum compensation of \$15 per week and a minimum compensation of \$7 per week: *Provided*, That if at the time of the injury the employee received wages of less than \$7 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—	Weeks
One arm at or near shoulder.....	200
One arm at the elbow.....	180
One arm between wrist and elbow.....	160
One hand.....	150
One thumb and the metacarpal bone thereof.....	60
One thumb at the proximal joint.....	30
One thumb at the second distal joint.....	20
One first finger and the metacarpal bone thereof.....	30
One first finger at the proximal joint.....	20
One first finger at the second joint.....	15
One first finger at the distal joint.....	10
One second finger and the metacarpal bone thereof.....	30
One second finger at the proximal joint.....	15
One second finger at the second joint.....	10
One second finger at the distal joint.....	5
One third finger and the metacarpal bone thereof.....	20
One third finger at the proximal joint.....	12
One third finger at the second joint.....	8
One third finger at the distal joint.....	4
One fourth finger and the metacarpal bone thereof.....	12
One fourth finger at the proximal joint.....	9
One fourth finger at the second joint.....	6
One fourth finger at the distal joint.....	3
One leg at or near the hip joint as to preclude the use of an artificial limb.....	200
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 the great toe, with the metatarsal bone thereof.....	12
One toe, other than the great toe, at the proximal joint.....	6
One toe, other than the great toe, at the second or distal joint.....	3
One eye, by enucleation.....	120
Total blindness of one eye.....	100
Total loss of hearing, one ear.....	20
Total loss of hearing, both ears.....	120

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.

Sec. 2921. *Hernia*.—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 \$50 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 result from such strangulation will not be compensated.

Sec. 2922. *Paralysis*.—For the purpose of section 2920 the complete paralysis of an arm, hand, foot, or leg shall be considered the loss of such member. For the purpose of said section 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.

Sec. 2923. *Subsequent injuries*.—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.

SECS. 2924-2929. *Adjustments; lump sums; status of payments*.—[Where a change takes place in the condition of a person receiving compensation during the term of its payment, subsequent payments may be modified in accordance therewith. Payments are to be made monthly except as otherwise provided herein. Such payments may be converted in whole or in part into a lump-sum payment not exceeding the present worth capitalized at the rate of 5 per cent per annum. This can be done only on the written application of a beneficiary, and rests in the discretion of the board.]

Payments are not assignable nor subject to attachment or garnishment, nor otherwise liable for debts. In case of bankruptcy, liquidation, or failure of the employer or insurer, to meet the obligations imposed by the act, liabilities hereunder constitute a first lien upon any deposit made by the employer or the insurer, and if this is not sufficient, a lien attaches to all other property of the employer or insurer within the State, to be prorated with other lienable claims, but with preference over the claim of any creditor or creditors of such employer or insurer except the claims of other lienors. No agreement of waiver by an employee is valid.]

Sec. 2930. *Misrepresentation of pay roll*.—[Employers misrepresenting their pay rolls upon which premiums for the State fund are to be levied are liable to ten times the amount of the difference between the amount paid and the amount which should have been paid, to be recovered in a civil suit in the name of the State.]

Sec. 2931. *Railroads*.—[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.]

SECS. 2932-2962. *Procedure*.—[Self-insurers and insurance companies are required to file monthly duplicate receipts of all payments made on account of injuries, including medical, surgical, and hospital services and burial expenses.]

Claims for compensation may not be maintained unless notice of injury has been submitted in writing within 60 days after the occurrence of the accident; but actual knowledge on the part of the employer or his agent is equivalent to such service.

Employers must report all accidents to their employees resulting in loss of life or injury to person. These are to be in such form as the board requires, the information to be confidential except on order of the board or as used in the course of a hearing or proceeding. The American Experience Table of Mortalities is used in calculating reserves.

No employer may deduct any part of the insurance premium from the wages of his employees.

Hearings and investigations under this act are governed by its provisions, and neither the board nor any member thereof is to be bound by technical rules of evidence. Depositions may be taken, and the board has full power to do the

things designated and all that is necessary or convenient in the exercise of the authority and jurisdiction conferred upon it. It may issue warrants, serve processes throughout the State, administer oaths, require the production of books and papers, and compel the attendance of witnesses and production of evidence through process of the district court of the county at the instance of the board. Witnesses are to be paid fees and mileage as in civil cases, the same to be paid by the party requiring their presence, unless otherwise ordered by the board. Costs and disbursements may be apportioned between the parties on the same or adverse sides in the discretion of the board.

The books, records, and pay rolls of an employer are open to inspection by the board for the purpose of information necessary for the board under this act. The board is authorized to determine disputes and controversies, which shall be instituted before it and not elsewhere, except as otherwise provided in the act. Its orders, awards, etc., are prima facie lawful and shall be presumed so to be until and unless modified or set aside by the board or upon review. After a final hearing by the board it has 30 days to file findings on all facts and render its award. Where disability has not resulted from an accident at the time of the hearing, the board may award a nominal indemnity instead of dismissing the application, if it appears that disability is likely to result at a future time. It has continuing jurisdiction over all orders, decisions, and awards and may on notice, after hearing, rescind, alter, or amend on good cause appearing therefor. A full and complete record of proceedings and testimony is to be kept, and at any time within 20 days after an order or decision, rehearing may be sought on ground of excess of powers, fraud, insufficient evidence, evidence not previously discoverable with reasonable diligence, or that the findings do not support the award or that it was unreasonable. No order or decision is subject to collateral attack, but may be modified only as provided in the act. The application for rehearing shall set forth in full detail the grounds therefor, but shall not operate as a stay except as the board or court may direct. If a rehearing is denied, application may be made within 30 days for an appeal to the district court; the same privilege is allowed for appeal from the decision rendered on rehearing. Proceedings are to be in accordance with the provisions of the act, the court passing on findings and conclusions of facts and law, and may set aside the decision of the board or modify it as law and justice require, making the necessary order or judgment as shall be legal and proper in the premises. Further appeal lies to the supreme court by the board, the appellant, or any adversary party.]

SECS. 2963-2969. *Sundry provisions.*—[Money is appropriated to establish an industrial administration fund; sufficient sums are to be taken from the industrial accident fund to pay the compensation provided in the act. A liberal construction of the act is prescribed, and if any portion is found unconstitutional or void it shall not affect the validity of the remaining portions of the act if sufficient for carrying out the main purpose and intention of the law. The money in the industrial accident fund is held in trust for the purposes of the creation of the fund.

Annual reports of the board are required, the act becoming effective July 1, 1915.]

Compensation plan No. 1

SECTIONS 2970-2977. *Self-insurance.*—[Employers in the industries, trades, works, occupations, or employments specified as hazardous by the act may become self-insurers on furnishing satisfactory proof to the board of solvency and financial ability to meet the obligations created by the act. Proof of such solvency must be filed according to the rules and orders of the board. Permission to act as a self-insurer is valid for one year, and must be renewed on application at least 30 days before the expiration of such fiscal year. The board may require additional proof of solvency and financial ability and may on notice and hearing revoke any order or approval previously made. If financial responsibility appears to be inadequate the board must require the applicant to give security for payments that may reasonably be anticipated during the period. This may be a percentage of the employer's pay roll, or in the form of a bond or undertaking with sufficient sureties conditioned on the payment of liabilities that may accrue, or the employer may deposit approved bonds or securities. If a self-insurer fails to pay the compensation due the board must, on demand of the beneficiary, apply any deposits made with it to the payment of such obligations.

Within 30 days after the happening of an accident or death, the nature of which renders the amounts of future payments certain or reasonably certain, the employer may deposit a guaranty of the payment of such liability in such form as the board may direct unless sufficient securities are already on deposit. Any existing liability may be relieved by depositing with the board the estimated present value of the total unpaid compensation computed at 5 per cent, or by provision of the annuity subject to the approval of the board.]

Compensation plan No. 2

SECTIONS 2978-2989. Insurance.—[Employers in industries, etc., specified as hazardous by the act may insure their liability thereunder in any insurance company authorized to transact such business in the State. Employers electing this plan (No. 2) must furnish the necessary data as to their business, whereupon the board will determine the amount of insurance reasonably necessary. The employer shall then file the policy or policies of insurance provided for in this act. The board will make all reasonable and necessary investigations for the purpose of fixing the amount of such insurance. Policies must provide that the notice, knowledge, and jurisdiction of the employer govern the insurer, and that the insurer will promptly pay to persons entitled all installments of compensation or other payments under the act as they become due without reference to any default of an employer after injury, or default in the giving of any notice required by the policy, this act, or otherwise. Insurers must maintain deposits with the treasurer of the industrial accident board—not less than \$5,000 nor more than \$20,000—before any policy may be issued by it, and if it fails to discharge liabilities fixed or determined by the board the board may liquidate the liability from the proceeds of the securities invested.

Policies are deemed to be made subject to the provisions of this act, and renewals must be made at least 30 days prior to the expiration of an expiring policy. Within 30 days after an injury or death giving rise to certain or reasonably certain awards the insurer must deposit with the treasurer of the board such sum as will guarantee the payment of such liability, unless prior deposits are declared adequate. The insurer may relieve himself from liability by depositing the present value of the benefits or by purchasing an annuity, as in the case of self-insurers.

No policy may be canceled during its term except on 30 days' notice, unless sooner replaced by other insurance. Insurance companies must make and file with the board such reports of accidents as it may require. Policies must provide for the direct and primary liability of the insurer to the employee or the beneficiaries, and are at all times subject to approval, change, or review by the board. Deposits made under this plan are to be held in trust for the purposes for which made and may be adjusted or substituted from time to time with the permission of the board. Earnings are the property of the depositor.]

Compensation plan No. 3

SECTION 2990. Classified premium rates.—Every employer, subject to the provisions of compensation plan No. 3, 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 1.—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 1 per cent.

Class 2.—Cloth, textile, and wool manufacturing, not otherwise specified; wharf employees, other than stevedores and longshoremen; eight-tenths of 1 per cent.

Class 3.—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; 1½ per cent.

Class 4.—Manufacturing cheese, condensed milk; operating creameries, manufacturing spices and condiments; paper hanging; kalsomining; whitewashing; making willow baskets; setting tiles; mantles 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; 1½ per cent.

Class 5.—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 or bricks or blocks; 1½ per cent.

Class 6.—Operating of laundries with power, dyeing, bleaching, and cleaning works; manufacturing of furniture, showcases, office and store furniture and fixtures; cabinet making; manufacture of wire mattresses, bed springs, wooden coffins, caskets, rough wooden boxes for coffins; building hot houses, working in foodstuffs, fruits, edible oils, or vegetables, not otherwise classified; operating flour mills, chop mills, feed mills; 1½ per cent.

Class 7.—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 diggings in pits, brickettes; brooms with sawmills, earthenware, fire clay, porcelain ware, pottery, tile, terra cotta; brush making with sawmills; 1½ per cent.

Class 8.—Manufacturing of ammonia; operating water works, 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 water works, gas works, and coke ovens, including laying of mains and connections, without blasting; 1½ per cent.

Class 9.—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 compositions, not otherwise specified; operating stock yards; 2 per cent.

Class 10.—Operating paper mills, pulp mills, longshoring, stevedoring, manufacturing fertilizer; 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; 2½ per cent.

Class 11.—Millwrighting, not otherwise specified; manufacturing building material, not otherwise specified; working in building material, not otherwise specified; 2¾ per cent.

Class 12.—Operation of smelters; manufacturing of metallic coffins; manufacturing of iron or steel; boat or ship rigging; planing mills, independent; cement manufacturing; operating blast furnaces; 2½ per cent.

Class 13.—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; 2½ per cent.

Class 14.—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; bridge work factories; operation of and work in mines, other than coal; 2½ per cent.

Class 15.—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 stone yards 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: 2¾ per cent.

Class 16.—Operating dredges; construction of telephone and telegraph systems; construction of dams and reservoirs, electric light and power plants, water works, and water systems; installing furnaces; constructing blast furnaces; sewer building; maximum depth of excavation at any point 7 feet; operation and maintenance of steam railways, including logging railways; operating coal mines; 3 per cent.

Class 17.—Operating dry docks, including floating dry docks; ornamental metal work within buildings; 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; 3¼ per cent.

Class 18.—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; 3½ per cent.

Class 19.—Pile driving; clearing land with blasting; galvanized iron or tin work; marble work; fiber proofing of buildings, by means of wire netting and concreting; cellar excavation, with or without blasting; 3¾ per cent.

Class 20.—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; 4 per cent.

Class 21.—Moving safes, boilers, machinery; construction of tanks, water towers, windmills, not metal frame; plumbers making house connections with blasting; roof work; slate work; stone work; stone setting; brick work construction, not otherwise specified; construction of canals, with rock work or blasting; bridge building, wooden; construction of floating docks; constructing chimneys of metal or concrete; 4½ per cent.

Class 22.—Excavations, not otherwise specified; laying of mains and connections, with blasting; sewer building, where maximum depth of excavation at any point exceeds 7 feet; blasting, not otherwise specified; manufacturing fire works; 5 per cent.

Class 23.—Erecting fire escapes, fireproof doors and shutters outside of buildings; building concrete structures, not otherwise specified; concrete or cement work not otherwise specified; 6 per cent.

Class 24.—Constructing iron or steel frame structures or parts; constructing and repairing steel frames and structures; subaqueous work; caisson works; 6½ per cent.

Class 25.—House moving, house wrecking; construction or repair of steeples; construction of brick chimneys; 6¾ per cent.

Class 26.—Manufacturing powder, dynamite and other explosives, not otherwise specified; 10 per cent.

Class 27.—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 No. 3. In such event such employer and employees shall be known as class 27, the rate of assessment in which shall be one-half of 1 per cent.

Sec. 2990-A. Agriculture, etc.—Any employer engaged in farming, dairying, agriculture, viticulture, horticulture, stock or poultry raising, may elect to comply with the provisions of plan 2 or 3 of this act and pay into the industrial accident fund the premiums provided in the act, in which event he shall not be liable to respond in damages at common law or by statute for injury or death of any employee during the period covered by such premiums and shall enjoy the benefits and privileges of this act. The employee of such employer

shall be deemed to have elected to come under the provisions of this act unless such employee shall execute and file with the board on proper form to be furnished for that purpose, a specific election not to be so bound, in which event he shall not enjoy the benefits or privileges of this act until such election is withdrawn. Such employer shall be classified under the provisions of section 2092 of this act as to rate of assessments, which assessment shall be paid in the manner and at the times specified under plan 2 or 3 of the workmen's compensation act. [Added 1925, ch. 121.]

Sec. 2091. Separable occupations.—If a single establishment or work comprises several occupations listed in the preceding section 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: *Provided*, That in no case shall any assessment levied under the provisions of this act be for a less amount than \$2.50

Sec. 2092. Revision of rates.—The classification of hazardous occupations in section 2090 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 2090 as in its judgment or experience may be necessary or expedient: *Provided*, That no change in the classification or rates prescribed in section 2090 shall be made effective prior to the end of the first fiscal year, and thereafter any changes so made shall not become effective until 30 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 2090, the board shall have the right to make an immediate classification thereof and establish a rate therefor.

Sec. 2093. Fund to be in common.—It is the intent and purpose of compensation plan No. 3 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 No. 3: *Provided*, That accounts shall be kept with each industry, trade, occupation or employment in accordance with the foregoing classifications, 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.

Sec. 2094. Initial payments.—There shall be collected from all classes as initial payment into the industrial accident fund, on or before the 15th 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 1, 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.

Sec. 2095. Collection of premiums.—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 30 days 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 1 in the year following, in the manner above provided.

Sec. 2096. Default.—Any employer who is in default in the observance of any order of the board, issued pursuant to the provisions of section 2090 to 2095, inclusive, shall, in addition to any other penalty provided by this act, be charged an advance of 25 per cent 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.

Sec. 2097. Equalization.—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 30 days after the end of such year in proportion to its duration in accordance with the schedules provided in this act.

Sec. 2998. Deficiencies.—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 1st day of February of the following year by the employers of that class in proportion to their respective payments for the previous year.

Sec. 2999. Segregation of funds.—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 \$4,000 for any one case.

Sec. 3000. Investment of reserves.—The treasurer of the board shall invest the 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: *Provided, however,* That when there is sufficient money in the industrial accident fund to meet such compensation payments, any surplus remaining may be placed in the industrial reserve fund and invested by the board in the securities specified in this section.

Sec. 3001. Accounts.—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.

Sec. 3002. Defaulted payments.—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.

Sec. 3003. Injury during default.—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 to the industrial accident fund the amount of such default, together with the penalty prescribed by section 2996.

Sec. 3004. Options.—The person entitled to sue under the provisions of the preceding section 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.

Sec. 3005. Assigned cases.—Any cause of action assigned to the State under the preceding section may be prosecuted or compromised by the board in its discretion.

Sec. 3006. Claims.—Where a workman is entitled to compensation under compensation plan No. 3, 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.

Sec. 3007. Physician's allowance.—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, \$1.50 for each case.

Sec. 3008. Death claims.—Where death results from the injury, the parties entitled to compensation under compensation plan No. 3, or someone 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.

Sec. 3009. Computing pay rolls.—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.

SEC. 3010. Disbursements.—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 workman 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 6 per cent 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.

SEC. 3011. Earnings.—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 \$5,000, 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.

NEBRASKA

COMPILED STATUTES, 1922

Compensation of workmen for injuries

PART I

SECTIONS 3024-3031. *Employers' liability.*—[These sections embody provisions of law declaring liability for an employer's negligence where the employec himself was not willfully negligent. In actions to recover damages the common-law defenses are not available to employers subject to the provisions of this article who elect not to accept the provisions of Part II; but if the employer becomes subject thereto and the employee does not, the defenses remain. These provisions apply to actions brought under the statute providing for injuries causing death and to the State law declaring the liability of railroad companies for injuries to their employees. Section 3029, declaring the scope of the act, reads as follows:

"(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 [3035] of this chapter."

It is further provided that if willful negligence of the employee is charged, the burden of proof is on the employer; and that claims for legal services and disbursements therefor are not a lien against the amounts paid as damages or compensation unless approved by the judge of the local district court.]

PART II

ELECTIVE COMPENSATION

SECTION 3032. *Compensation payable, when.*—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.

Sec. 3033. *Negligence not a factor.*—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.

Sec. 3034. *Remedy exclusive.*—[Acceptance of the provisions of Part II of this article binds all parties and their representatives, effecting a surrender of every other remedy.]

Secs. 3035, 3036. *Election.*—[In all occupations named in section 3029 above, and all contracts of employment made after the taking effect of the act, the election of Part II is presumed in the absence of express statement in written or printed form made by either party to the other to the contrary. Employers must post and maintain notices in conspicuous places of an election not to be bound by the act, a copy to be filed with the compensation commissioner. Employees must also notify their employers in writing, filing a duplicate with proof of service with the compensation commissioner. Such rejection may be waived by similar procedure.]

Sec. 3037. *Who are employers.*—The following shall constitute employers subject to the provisions of this act:

- (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 [3029], 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 article may be claimed, shall not, in the manner provided in section 103 of this chapter [3035], have elected not to become subject to the provisions of Part II of this article.

Sec. 3038. *Employees.*—The terms "employee" and "workman" are used interchangeably and have the same meaning throughout this article. The said terms include the plural and all ages and both sexes, and shall be construed to mean:

- (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 [3029] of this chapter, 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 and 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."
- (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.

PART III

SECTION 3039. *Avoiding responsibility as employer.*—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 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.

SEC. 3040. *Basis of compensation.*—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.

SEC. 3041. *Injuries by third parties.*—[Where third-party liability exists, the employer is subrogated to the rights of the employee or his dependents against such third party, but any excess recovery, less costs, shall be paid to the employee or his dependents and treated as an advance payment by the employer on account of any future installments of compensation.]

SEC. 3042. *Waiting time.*—[No compensation other than medical and hospital services is allowed for the first seven days, but compensation begins on the eighth day after the injury; if disability continues for six weeks or longer, compensation dates from the date of the injury.]

SEC. 3043. *Medical and hospital services.*—[The employer must furnish medical and hospital services, subject to the approval of the compensation commissioner, not to exceed the regular charge of services in similar cases. The employer may refuse such services, and in cases involving dismemberment or major surgical operations the employee may designate the physician or surgeon; but if he refuses or neglects to avail himself of the treatment offered by the employer, except as herein otherwise provided, the employer is not liable for an aggravation of the injury due to such refusal and neglect.]

SEC. 3044. *Total and partial disability; schedule.*—The following schedule of compensation is hereby established for injuries resulting in disability:

(1) For the first 300 weeks of total disability the compensation shall be 66⅔ per cent of the wages received at the time of injury, but such compensation shall not be more than \$15 per week nor less than \$6 per week: *Provided*, That if at the time of injury the employee receives wages of less than \$6 per week, then he shall receive the full amount of such wages per week as compensation. After the first 300 weeks of total disability, for the remainder of the life of the employee, he shall receive 45 per cent of the wages received at the time of the injury, but the compensation shall not be more than \$12 per week nor less than \$4.50 per week: *Provided*, That if at the time of the injury the employee receives wages of less than \$4.50 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 300 weeks mentioned in this subdivision of this section shall be reduced by the number of weeks during which compensation was paid for partial disability.

(2) For disability partial in character (except the particular cases mentioned in subdivision 3 of this section) the compensation shall be 66⅔ per cent of the difference between the wages received at the time of the injury and the earning power of the employee thereafter, but such compensation shall not be more than \$15 per week. This compensation shall be paid during the period of such partial disability; not, however, beyond 300 weeks after the date of the accident causing disability. Should total disability be followed by partial disability, the period of 300 weeks mentioned in this subdivision shall be reduced by the number of weeks during which compensation was paid for such total disability.

(3) For disability resulting from permanent injury of the following classes the compensation shall be in addition to amount paid for temporary disability: *Provided, however*, The compensation for temporary disability shall cease as soon as the extent of the permanent disability is ascertained, viz:

For the loss of a thumb, 66⅔ per cent of the daily wages during 60 weeks.

For the loss of a first finger, commonly called index finger, 66⅔ per cent of daily wages during 35 weeks.

For the loss of a second finger, 66⅔ per cent of daily wages during 30 weeks.

For the loss of a third finger, 66⅔ per cent of daily wages during 20 weeks.

For the loss of a fourth finger, commonly called the little finger, 66⅔ per cent of daily wages during 15 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, 66⅔ per cent of daily wages during 30 weeks.

For the loss of one of the toes other than the great toe, 66⅔ per cent of daily wages during 10 weeks.

The loss of the first phalange of any toe shall be considered 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.

The loss of more than one phalange shall be considered as the loss of the entire toe.

For the loss of a hand, 66⅔ per cent of daily wages during 175 weeks.

For the loss of an arm, 66⅔ per cent of daily wages during 225 weeks.

For the loss of a foot, 66⅔ per cent of daily wages during 150 weeks.

For the loss of a leg, 66⅔ per cent of daily wages during 215 weeks.

For the loss of an eye, 66⅔ per cent of daily wages during 125 weeks.

For the loss of an ear, 66⅔ per cent of daily wages during 25 weeks.

For the loss of hearing in one ear, 66⅔ per cent of daily wages during 50 weeks.

For the loss of hearing in both ears, 66⅔ per cent of daily wages during 100 weeks.

For the loss of the nose, 66⅔ per cent of daily wages during 50 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 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.

In all cases involving a permanent partial loss of the use or function of any of the members mentioned in subdivision 3 of section 3062 [3044], the compensation shall bear such relation to the amounts named in said subdivision 3 of section 3062 as the disabilities bear to those produced by the injuries named therein. Should the employer and the employee be unable to agree upon the amount of compensation to be paid in cases not covered by the schedule, the amount of compensation shall be settled according to the provisions of section 3030 [3062].

Compensation under this subdivision shall not be more than \$15 per week nor less than \$6 per week: *Provided,* That if at the time of injury the employee receives wages of less than \$6 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.

Sec. 3045. Death benefits.—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 66⅔ per cent of the wages received at the time of the injury, but the compensation shall not be more than \$15 per week or less than \$6 per week: *Provided,* If at the time of injury the employee receives wages of less than \$6 per week, then the compensation shall be the full amount of such wages per week. This compensation shall be paid during dependency, not exceeding 350 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 from 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 de-

pendent 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 \$150, 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.

(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, if 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.

Sec. 3046. Death of employee receiving compensation.—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:

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.

Sec. 3047. Dependents.—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 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 18 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 18. 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.

Sec. 3048. *Payments*.—Except as hereinafter provided, all amounts of compensation payable under the provisions of this article shall be payable periodically in accordance with the methods of payment of the wages of the employee at the time of the injury or death: *Provided*, Fifty per cent shall be added for waiting time for all delinquent payments after 30 days' notice has been given of disability. Whenever the employer refuses payment, or when the employer neglects to pay compensation for 30 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.

Sec. 3049. *Wages*.—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.

Sec. 3050. Willful negligence.—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.

Sec. 3051. Second injuries.—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.

Sec. 3052. Joint employers.—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.

Sec. 3053. Employee's insurance, etc.—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.

Sec. 3054. Waivers.—No agreement by an employee to waive his rights to compensation under this article shall be valid.

Sec. 3055. Incompetents.—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.

Sec. 3056. Notice of injury.—[Notice of injury must be given to an employer as soon as practicable after the happening thereof, and claims within six months from the injury or death, or in case of physical or mental incapacity, within six months from the removal of the same. Notices must be in writing and signed by the claimant or legal representative or some one in his behalf. Service may be personal or by registered mail. Inaccuracy does not invalidate unless it is shown that there was an intention to mislead actually effective. Want of notice is not a bar to proceedings if it is shown that the employer had notice or knowledge of the injury.]

PART IV

SECTIONS 3057, 3058. Medical examination.—[Employees giving notice of injury must submit themselves to examination by a physician furnished and paid by the employer or insurance company, the employee having the right to have present a physician of his own selection. Refusal to submit deprives of the right to compensation during its continuance, the amount to be deducted from the total otherwise payable. In case of death an autopsy may be demanded at the cost of the party making the request.]

SECS. 3059-3061. Settlement.—[The parties in interest may settle all compensation matters between themselves in accordance with the provisions of this article, subject to the approval of the commissioner. Disputed claims must be submitted to the commissioner for an award, and in case of dissatisfaction with the award the matter may be submitted to the district court of the county, which shall have authority to hear and determine the cause as in equity and enter final judgment thereon, subject, however, to reversal, dismissal, or modification on appeal, or otherwise modified according to the provisions of this act. Appeals from the commissioner's award must be taken within seven days. Claims for compensation are forever barred unless within one year an agreement has been made or a petition filed for adjustment of the dispute. If payments of compensation have been made or there is legal disability, the period begins to run from the date of the last payment or from the removal of the legal disability.]

Sec. 3062. Procedure.—[In cases of dispute either party may file with the commissioner a verified petition stating the facts and information necessary

for a determination of the dispute. The adverse party is to be served with a copy of the petition and a summons. Verified answers are provided for, following which the commissioner makes his recommendations and awards. If these are rejected by either party, similar petition may be submitted to the district court, of which notice shall be given and opportunity for answer allowed. At the expiration of the time allowed the court shall render judgment according to the form of law. An appeal may be taken within 30 days to the supreme court, provision being made for an early determination of the questions involved.]

SECS. 3063-3067. *Lump-sum settlements.*—[Periodical payments may be commuted to one or more lump-sum payments by agreement, except in cases of death or permanent disability, which may be commuted only on the order or decision of the district court. The present worth capitalized at 5 per cent per annum, with annual rests, is the basis for such commutation. Settlements by agreement approved by the commissioner are final, as are awards made by the court, except periodical payments running six months or more; no agreement or finding is final unless in conformity with this article. Lump-sum settlements are not open to review, but continuing payments may be modified by agreement of the parties or on application based on change of physical condition or dependency. In such case the same procedure is to be followed as in cases of disputed claims for compensation.]

At any time after a settlement has been arrived at a sum equal to the present value of future installments, where the amount is certain, may, by leave of the court, be paid by the employer or insurer to a trustee for the benefit of the beneficiary, thus releasing the employer or insurer as the case may be. In case of death or where no executor or administrator is qualified, payments may be made to the person who would be appointed administrator of the estate.]

SEC. 3068. *Reports of accidents.*—[Accidents and settlements must be reported in form and manner as prescribed by the commissioner. If a deceased employee is a citizen or subject of a foreign country, the compensation commissioner is required to notify the proper consular officer representing such country. Such notice must contain such information as the commissioner may possess as to the place of birth, parentage, and names and addresses of the dependents of the employee.]

SECS. 3069-3071. *Insurance.*—[Private employers must insure and keep insured their liability under this article in some authorized organization or company or furnish proof of financial ability to make direct payments of compensation under the act. In the latter case, security or bonds to secure the payment may be required. Noncomplying employers will be regarded as having elected not to come under the terms of Part II of this article with corresponding liability in an action for damages.]

Insurance policies must contain an agreement for prompt payment of the benefits conferred by the act directly to the person entitled to the same without regard to any default of the insurer after the injury or default as to the notice. Forms of policies must be approved, and all policies will be deemed to be made subject to the provisions of the act. Notice and jurisdiction of the employer govern the insurer, and all awards or decrees against the employer are binding as against the insurer.

Existing insurance contracts are not affected, nor the organization of mutual companies or schemes for benefits in addition to the compensation provided by this article; but the compensation provided herein shall not be reduced or affected.]

PART V

MISCELLANEOUS PROVISIONS

SECTION 3072. *Claims released.*—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 release to such employer of all claims or demands at law, if any, arising from such injury.

SEC. 3073. *Assignments, etc.*—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 [3031] of this chapter.

Sec. 3074. Preferences.—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.

Sec. 3075. Definitions.—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 350 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 "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.

(g) The designation "compensation commissioner" or "commissioner," as used herein, is intended to mean the State official designated by the Statutes to administer this article.

SECS. 3076-3080. Administration.—[The commissioner of labor of the State is made compensation commissioner with the duty of executing the provisions of the compensation law, succeeding to the powers previously vested in the compensation commissioner. He may issue rules and regulations, subpoena witnesses, examine under oath parties in interest, including the officials of insurance companies and any medical practitioner. A compensation division is created in the bureau of labor, and the commissioner may appoint such assistants as may be necessary to carry out the provisions of the act. The giving of testimony and submission to examination may be enforced by proceedings in the district court.

The commissioner may regulate proceedings, the nature of notices and the service thereof; he is not bound by technical or formal rules or proceeding in hearings, must maintain a full and true record of all proceedings, and furnish necessary blanks and supplies for the administration of the act. Annual reports of operations under the act are provided for.]

SECS. 3081-3084. Miscellaneous provisions.—[Saving provisions are enacted in case of the declaration of unconstitutionality of any part of the act, the provisions being severable, except that Parts I and II are inseparable, so that if one is declared void the other falls with it. Existing rights of action are preserved, and extension of time is provided for in case the article be repealed or held invalid.]

NEVADA

ACTS OF 1913

CHAPTER 111.—*Compensation of workmen for injuries*

SECTION 1 (as amended 1915, ch. 190; 1917, ch. 233; 1925, ch. 114). *Election by employers.*—[Acceptance of the terms of this act by an employer raises the conclusive presumption of his compliance therewith, and relieves him from other liability for recovery of damages unless by the terms of the act otherwise provided. As to public employments, the terms and conditions of the act are conclusive, compulsory, and obligatory upon both employers and employees, but subcontractors and their employees are deemed to be the employees of a contractor. Failure to accept the provisions of the act is deemed to be a rejection of its terms and provisions, in which case the employer may not plead the defenses of assumed risk, fellow service, or contributory negligence unless willful and with intent to cause injury, or the result of intoxication. Furthermore, it will be presumed that an injury to the employee was the first result and grew out of the negligence of the employer as the proximate cause of the injury, and the burden of proof to rebut the presumption of negligence rests upon the employer.]

A presumption of rejection is conclusive in the absence of a written notice of an election to accept given to the industrial commission, substantially in the form prescribed. Where such notice of election has been given, and the employee has not given a notice of rejection, every contract of hire is to be construed as an implied agreement on the part of the employer to pay compensation and the employee to accept it in case of any personal injury arising out of and in the course of the employment. Employers electing to accept the act must pay the premiums provided for and be governed by the provisions of the act as to all its conditions. Failure to pay such premiums operates as a rejection of the terms of the act, of which notice must be conspicuously posted by the rejecting employer.]

SEC. 2. *Willful intent.*—No compensation under this act shall be allowed 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 while intoxicated.

SEC. 2½ (added 1917, ch. 233). *Deductions from wages.*—[Employers may make no deduction from the wages of employees on account of the costs of the liability incurred by the employer by reason of his rejection of this act.]

SECS. 3, 4 (as amended 1915, ch. 190; 1917, ch. 233). *Election by employees.*—[The provisions of the act are exclusive as to rights and remedies for injuries to employees, binding their legal representatives, dependents, and next of kin, and election to accept is conclusively presumed on the part of an employee until written notice to the contrary has been served on the employer and also on the industrial commission. If the employee rejects, the rights and remedies do not apply and the employer may plead the common-law defenses unless the injury was due to the employer's failure to maintain statutory safety devices or to violations of statutes and rules for the safety of the employees, in which case the doctrine of assumed risk will not be available. The employer's acceptance or the employee's rejection continue until waived, which may be by writing in the same manner as such election or rejection was effected.]

SEC. 5. *Rejection by both parties.*—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.

SEC. 6. *Premiums to be paid.*—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 com-

mission 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.

Sec. 7 (as amended 1919, ch. 176). *Third party liability.*—[Where the injury arose under circumstances creating a legal liability for damages in some other person than the employer, the employee or his beneficiary may proceed against such third party for damages, but the amount of compensation under the act will be reduced by the amount of the recovery. If benefits were paid by the commission, it will be entitled to indemnity from such third party and is subrogated to the rights of the employee to recover therefor.]

Sec. 7½ (added 1919, ch. 176; amended 1921, ch. 218; 1925, ch. 114). *Employers.*—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.

Sec. 7½ (a). *Employees.*—The term "employee" as used in this act shall be construed to mean: Every person in the service of an employer as defined in section 7½ 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 10 working-days, without regard to the number of men employed and where the total labor cost of such work is less than \$100: *And provided further*, That volunteer firemen, while engaged in their duties as such, belonging to a regularly organized and recognized volunteer fire department, shall be deemed, for the purpose of this act employees of the city or town so recognizing them at the wage of \$150 per month, and shall be entitled to the benefits of this act upon such city or town complying therewith.

Sec. 7½ (b). *Workmen's associations.*—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.

Sec. 7½ (c). *Leasers.*—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. 7½ (d). *Employees to be reported when.*—Workmen described in the foregoing sections 7½ (b) and 7½ (c), whose employer has accepted the provisions of the Nevada industrial insurance act, shall be reported by such employer, separate and apart from those employed at a daily wage, and such report shall briefly describe the agreement under which the work is to be performed, the aggregate number of shifts worked during the preceding month, and the total amount earned by such employees, computed on the average daily wages of workmen engaged in like work in the same locality; otherwise the pay roll reports and premium payments on earnings of employees described in this section shall be governed by the requirements of this act regarding employees engaged at a regular wage: *Provided, however*, That any such workmen, partnership, or leasers, by filing with this commission as acceptance of the provisions of the act and by the payment of the premiums in

advance upon the estimated earnings of themselves, and any workmen they may employ, may discharge the obligation placed upon the employer, and during the period of their compliance with the provisions of this act, the person having the work executed, as provided in section 7½ (b), or the lessor as provided in section 7½ (c), shall be relieved of this obligation.

SECS. 8 (as amended 1915, ch. 190), 9, 10 (as amended 1915, ch. 190), 11-20. *Administration; procedure.*—[A commission known as the Nevada Industrial Commission is charged with the administration of the act. This commission of three members is appointed by an industrial commission board consisting of the governor, attorney general, and inspector of mines. Appointees serve for terms of four years, not more than two to be of the same political party. A chairman is designated by the governor. The appointing board may remove any commissioner for inefficiency, neglect of duty, or misconduct in office, after hearing. Compensation for services is \$10 per day for the time actually employed, not to exceed \$150 per month, though the chairman shall serve as executive officer and is entitled to additional compensation as fixed by the appointing board and approved by the governor. Sessions of this commission are to be continuous and all proceedings constitute a public record. Offices are to be maintained in the Capitol, and the commission may employ an actuary, inspectors, clerks, and other assistants and fix their compensation, all after approval by the governor. The commission is to adopt reasonable and proper rules as to proceedings, forms, notices, examinations, etc., and its members, secretary, inspectors, and examiners have power to administer oaths, issue subpoenas, certify official acts, require the attendance of witnesses and the production of books, papers, and testimony. Employers must furnish the information desired on the request of the commission and must fill out any blanks received from it or give good and sufficient reasons for failure. The giving of testimony may be enforced on application to the district judge of the county. Officer serving subpoenas on witnesses have the same fees and mileage as in civil cases in courts of record. Depositions may be taken within or without the State, and a transcribed copy of evidence properly certified may be received in evidence by the commission. The commission is to prepare and furnish blank forms for distribution to employers in connection with the administration of the act.]

SECS. 21 (as amended 1915, ch. 193; 1917, ch. 233; 1919, ch. 176; 1925, ch. 114), 22 (as amended 1915, ch. 190; 1919, ch. 176). *State insurance fund premiums.*—[Employers accepting the act must pay premiums based on their estimated total pay roll at rates fixed by the industrial commission. Monthly pay-roll returns must be made, showing total time worked, total payments, and classifications of employment as the commission may require, accompanied by the premium due thereon. No arrangements may be made for the payment of premiums in advance for a period of more than 60 days. Failure to make the payments required operates as a rejection of the act, and if an audit of the pay roll shows a balance due, the commission may require the payment of a sufficient sum to cover the deficit together with an amount estimated to constitute an adequate advance premium for the period covered. The State and its municipalities, and also contractors and subcontractors thereunder, must make quarterly reports showing employment and payments to employes for the quarter. The commission may, as experience and conditions demand, increase or decrease the rates provided giving 60 days notice on any change; it may also classify occupations with respect to their degree of hazard and fix premium rates accordingly for classes sufficiently large to provide an adequate fund for the compensation provided for in the act and create a surplus large enough to guarantee a satisfactory State insurance fund from year to year.

Premiums are to be adjusted so that the fund shall become neither more nor less than self-supporting, and if on annual examinations it appears that there is an excess of assets over liabilities (including necessary reserves and a catastrophe hazard protection of \$100,000) credit may be allowed or a cash dividend declared in those classes where contributions have been in excess of liabilities. If any establishment or work is found to be comparatively dangerous, its classification or risk and premium rates is to be advanced proportionately. A rebate may be allowed those employers whose experience shows a high standard of safety or accident prevention, differentiating it from other like establishments or plants. Such rebate may not exceed 10 per cent where an accident experience has been maintained for 12 months

at less than 60 per cent of the average or 15 per cent for two consecutive periods of 12 months.]

SEC. 23. (as amended 1917, ch. 233; 1919, ch. 176; 1925, ch. 61). *Medical, etc., aid.*—[Medical and hospital treatment is to be given promptly, including surgical supplies, crutches, apparatus, and artificial members as reasonably required at the time of the injury and within six months thereafter, which period may be extended for the additional term of one year. The benefits named are called "accident benefits," for which a separate fund is established. This fund is maintained by premiums on the pay roll of the employers, who are authorized to collect one-half thereof, not more than \$1 per month from each employee, deducting the same from the wages of the employees. The commission may adopt such rules and regulations as are necessary to carry out these provisions. Fees and charges for such accident benefits are subject to regulation by the commission, and are limited to such as prevail in the community for similar treatment of injured persons of like standard of living. The insurance fund is separate and distinct, and is not liable for accident benefits.]

It is the duty of the employers to furnish necessary first aid, including transportation to the nearest place of proper treatment, and to notify the commission forthwith, giving name, nature of accident, and where and by whom the injured employee is being treated. Employers contributing to the accident benefit fund are entitled to reimbursement therefrom on account of expenditures reasonably made in this connection.

Employers may alone or with other employers make arrangements for the supply of accident benefits required, collecting one-half the cost thereof from their employees, not more than \$1 per month from any one. Employers electing to make such arrangements must notify the commission thereof and render a detailed statement of the arrangements made. Annual reports are required showing amounts collected from employees and amounts contributed by employees, itemized expenditures, and balance, if any. If reasonable grounds appear for believing that treatment is inadequate or that life and health are in danger or impaired thereby, the commission may order a change in the physician or other requirements, and if the employer fails to properly comply with the order the injured employee may apply to the commission for treatment, which shall furnish assistance provided for in the act, the commission having a cause of action on account thereof against the employer or hospital association.]

SEC. 24. *Custody of fund.*—[Premiums are to be paid to the State treasurer as custodian of the fund for the benefit of employers and employees.]

SEC. 25a (as amended 1915, ch. 190; 1917, ch. 223; 1919, ch. 176; 1921, ch. 161; 1925, ch. 168). *Death benefits.*—Every employee in the employ of an employer within the provision 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:

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 \$150, in addition to the compensation payable under this act.

2. To the widow, if there is no child, 30 per cent of the average wage of the deceased. This compensation shall be paid until her death or remarriage, with two years' compensation in one sum upon remarriage.

3. To the widower, if there is no child, 30 per cent of the average wage of the deceased, if wholly dependent for support upon the deceased employee at the time of her death. This compensation shall be paid until his death or remarriage.

4. To the widow or widower, if there is a child or children, the compensation payable under clause 1 or clause 2, and in addition the additional amount of 15 per cent of such wage for each such child until the age of 18 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 15 per cent of such wages, and the same shall be payable until he shall reach the age of 18 years: *Provided*, That the total amount payable shall in no case exceed 66 $\frac{2}{3}$ 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 18 years, or if over 18 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 18 years, but no surviving wife (or dependent husband) then for the support of each child until the age of 18 years, 15 per cent of the wages of the deceased: *Provided*, That the aggregate shall in no case exceed 66 $\frac{2}{3}$ per cent of such wages.

6. If there be no surviving wife (or dependent husband) or child under the age of 18 years, there shall be paid to a parent, if wholly dependent for support upon the deceased employee at the time of his death, 25 per cent of the average monthly wage of the deceased during dependency, with an added allowance of 10 per cent if two dependent parents survive: to the brothers or sisters, under the age of 18 years, if one is wholly dependent upon the deceased employee for support at the time of injury causing death, 20 per cent of the average monthly wage for the support of such brother or sister, until of the age of 18 years. If more than one brother or sister is wholly dependent, 30 per cent 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, 10 per cent divided among such dependents share and share alike.

7. In all other cases, questions of total or partial dependency shall be determined in accordance with the facts as the facts may be at the time of the injury. If the deceased employee leaves dependents only partially dependent upon his earnings for support at the time of the injury causing his death, the monthly compensation to be paid shall be equal to the same proportion of the monthly payments for the benefit of persons totally dependent as the amount contributed by the employee to such partial dependents bears to the average wage of deceased at the time of the injury resulting in his death. The duration of such compensation to partial dependents shall be fixed by the commission in accordance with the facts shown, but in no case exceed compensation for 100 months.

8. Compensation to the widow or widower shall be for the use and benefit of such widow or widower and of the dependent children, and the commission may, from time to time, apportion such compensation between them in such way as it deems best for the interests of all beneficiaries.

If a dependent to whom a death benefit is to be paid is an alien not residing in the United States, the compensation shall be only 60 per cent of the amount or amounts above specified.

9. Any excess of wages over \$120 a month shall not be taken into account in computing compensation for death benefits.

10. In such cases where compensation is awarded to the widow, dependent children, or persons wholly dependent, no lump-sum settlements shall be allowed.

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 \$150 shall be paid.

Sec. 25b (as amended 1925, ch. 168). *Total disability*.—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 60 per cent of the average monthly wage, but not more than \$72 nor less than \$30 per month, but not exceeding 100 months, during the period of such disability, total amount not to exceed \$7,200; if there be persons residing in the United States totally dependent for support upon the workman, compensation as provided herein with an additional allowance of \$10 per month for such dependents during the period of such disability.

2. In cases of total disability adjudged to be permanent, compensation of 60 per cent of the average monthly wage, but not less than \$30 per month nor more than \$60 per month during the life of the injured person: *Provided*, In cases of permanent total disability, if the character of the injury is such as to render the workman so physically helpless as to require the service of a constant attendant, an additional allowance of \$30 per month may be made so long as such requirements shall continue, but such increase shall not obtain or be operative while the workman is receiving hospital care under or pursuant to the provisions of section 23 of this act.

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.

SEC. 25c (as amended 1925, ch. 168). *Partial disability; schedule.*—1. For temporary partial disability, 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 \$40 per month for a period not to exceed 60 months during the period of said disability. For the purpose of this provision any excess of wages over \$120 per month shall not be taken into account in computing compensation for temporary 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 50 per cent of the average monthly wage, subject to a minimum of \$30 per month and a maximum of \$60 per month, shall be paid in addition to the compensation paid for temporary total disability for the period named in the following schedule:

- (a) For the loss of a thumb, 15 months.
- (b) For the loss of a first finger, commonly called the index finger, nine months.
- (c) For the loss of a second finger, seven months.
- (d) For the loss of a third finger, five months.
- (e) For the loss of the fourth finger, commonly called the little finger, four 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 months.
- (i) For the loss of one of the other toes other than the great toe, two and one-half months.
- (j) However, the loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of such toe, and compensation shall be one-half of the amount above specified.
- (k) The loss of more than one phalange shall be considered as the loss of the entire toe.
- (l) For the loss of a major hand, 50 months; the loss of a minor hand, 40 months.
- (m) For the loss of a major arm, 60 months; for the loss of a minor arm, 50 months.
- (n) For the loss of a foot, 40 months.
- (o) For the loss of a leg, 50 months.
- (p) For the loss of an eye by enucleation, 30 months.
- (q) The permanent and complete loss of sight in one eye without enucleation, 25 months.
- (r) For permanent and complete loss of hearing in one ear, 20 months.
- (s) For permanent and complete loss of hearing in both ears, 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, 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 12 months.

(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, 50 per cent of the average monthly wage not to exceed the sum of \$60 per month for the period of one month shall represent a 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 1915, ch. 190; 1917, ch. 233). *Dependents*.—(a) The following persons shall be conclusively presumed to be totally dependent for support upon a deceased employee:

1. A wife upon a husband whom she has not voluntarily abandoned at the time of the injury.
2. A husband, mentally or physically incapacitated from wage earning, upon a wife whom he has not voluntarily abandoned at the time of injury.
3. A natural, posthumous, or adopted child or children, whether legitimate or illegitimate, under the age of 18 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 step children may be regarded in this act as a natural child or children, if the existence and fact of dependency is shown.

(b) Questions as to who constitute dependents and the extent of their dependency shall be determined as of the date of the accident or injury to the employee, and their right to any death benefit shall become fixed as of such time, irrespective of any subsequent change in conditions, and the death benefits shall be directly recoverable by and payable to the dependent or dependents entitled thereto, or to their legal guardians or trustees.

SEC. 27 (as amended 1915, ch. 190; 1919, ch. 176; 1923, ch. 106). *Waiting time*.—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 for a period of seven or more days, such compensation shall then be computed from the date of the injury.

SECS. 28 (as amended 1915, ch. 190), 29. *Assignments, etc.; waivers*.—[Compensation claims and awards are not assignable prior to the delivery of the warrant for payment; they are exempt from attachment, garnishment, and execution; but payments to consuls, etc., representing nonresident aliens, are full discharge of the benefits payable. No employer or workman may waive the benefits of the act.]

SEC. 30. *Remarriage of widow*.—[The provisions of this section of the original act are presumably repealed, being in apparent conflict with section 25a 2, as amended in 1919.]

SEC. 31. Lump sums.—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.

SEC. 32 (as amended 1915, ch. 190). Medical examinations.—[Workmen entitled to receive compensation must, if requested by the commission, submit to medical examinations at reasonable times and places. The employer may have his own physician present. If he refuses to submit or obstructs such examination, right to benefits ceases until an examination has taken place and is forfeited for the period. Persistence in insanitary or injurious practices tending to imperil or retard recovery and refusal to accept reasonable essential treatment may result in a reduction or suspension of compensation in the discretion of the commission. False statements for the purpose of obtaining benefits forfeits all right to compensation under the act after conviction for such offense.]

SECS. 33 (as amended 1917, ch. 233), 34, 34½ (added 1917, ch. 233), 35, 36, 37 (repealed), 38. Notice and claim.—[Employers and attending physicians must report to the commission all injuries to employees resulting in loss of life or personal injury. These reports are to be in such form and detail as the commission prescribes. Information gained by physicians while in attendance on the injured man is not a privileged communication if required by the commission for the proper determination of the case.

Employees suffering injury must report forthwith to the employer, and the physician in attendance must likewise report to the employer and the commission. An employer when informed of an accident must send a physician chosen by him to make an examination of the injury, who shall also report to the employer and the commission. If the injury is not reported by the employee or his physician as above, or if the injured employee refuses to admit the employer's physician to make an examination, no compensation shall be paid for the injury; but the commission may in its discretion relieve the injured person or his dependents of such forfeiture if it appears that the circumstances were such as to excuse the failure to report where such relief of forfeiture will not result in an unwarrantable charge against the State insurance fund.

Workmen entitled to compensation must file application therefor, together with a certificate of the physician who shall assist the injured workman in making his application and furnishing proof, such service to be without charge. In case of death a similar application must be made by the parties entitled to benefits or some one in their behalf. No application will be valid or claim enforceable unless filed within one year from the date of the occurrence of the injury. If change of circumstances warrants a change in the amount of compensation, application therefor must be made in like manner, but no change will have any retroactive effect.

Notice of an injury must be made within 30 days after the accident causing it, or, if fatal, within 60 days after the death. Claims for compensation must be filed within 90 days after the happening of a nonfatal accident or within one year after a death. Notices are to be in writing, in ordinary language, and signed by the claimant or some one in his behalf. Service may be personal or by letter sent by registered mail. Failure to give notice and make claim are a bar unless excused for some sufficient reason or if the employer has actual knowledge, or if the failure was due to ignorance of fact or law, physical or mental inability, or to fraud, misrepresentation, or deceit.

Books, records, and pay rolls of employers are open to inspection by the commission or its employees in connection with the administration of the act. Misrepresentation of the pay roll makes the employer liable in ten times the amount of the difference of the premium and the amount that the employer should have paid.

The commission is authorized to prosecute, defend, and maintain actions in its own name for the enforcement of the provisions of the act.]

SEC. 39. Violations of statute.—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.

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 25 per cent.

SECS. 40 (as amended 1915, ch. 190; 1919, ch. 176) 40½ (added 1917, ch. 233). *State fund.*—[A State insurance fund is provided for to be maintained by premiums, contributions, etc., collected in accordance with the terms of the act. The State treasurer is custodian, but the State shall not be liable for the payment of any compensation, salaries, or expenses, save and except from the State insurance fund, but it is responsible for the safety and preservation of such fund. Surplus may be invested with approved securities, and 25 per cent of the fund may be deposited in banks, partly in open and partly in time accounts. Members of the commission give bond subject to the approval of the governor. The commission has a seal of which the courts will take judicial notice. Annual audits, or oftener if deemed necessary, are provided for.]

SEC. 41 (as amended 1915, ch. 190; 1925, ch. 114). *Employment outside State.*—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.

Any employer of labor in the State of Nevada and any employee thereof, whether hired in or out of the State and whose duties may be partially or wholly out of the State, may, by their joint election, elect to come under the provisions of this act in the manner following: Both the employer and the employee shall file with the commission a written statement that they accept the provisions of the Nevada industrial insurance act. When filed such statement shall operate to subject them to the provisions of said act, and of all acts amendatory thereof, until such time as the employer or employee shall thereafter file in the office of the commission a notice in writing that he withdraws his election. After such joint election is made, any employee who receives personal injury by accident arising out of and in the course of such employment shall be entitled to receive compensation according to the provisions of this act, even though he was hired outside of this State and received such injury outside of this State.

SEC. 42. *Title.*—This act shall be known as the "Nevada industrial insurance act."

SEC. 43 (as amended 1919, ch. 176). *Scope of act.*—(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.

(b) Any employer of labor in the State of Nevada, having in his 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.

SECS. 44-49, 50 (added 1919, ch. 176). *Construction, etc.*—[If any employer or workman is adjudicated to be outside of the lawful scope of the act, it shall not apply to him or them, but such adjudication will not impair the validity of the act in other respects. Provision is made for declarations of invalidity of the act or parts thereof; also for subsequent repeal and disposition of the fund. The act became effective July 1, 1913.]

NEW HAMPSHIRE

PUBLIC LAWS—1926

CHAPTER 178.—*Compensation of workmen for injuries*

SECTION 1. Scope of law.—This chapter 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 caused by fellow servants are great and difficult to avoid:

I. Railroads. The operation on steam or electric railroads of locomotives, engines, trains, or cars, or the construction, alteration, maintenance, or repair of railroad tracks or road beds over which such rolling stock is to be operated.

II. Machinery. 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.

III. Electricity. The construction, operation, alteration, or repair of wires or lines of wires, cables, switchboards, or apparatus charged with electric currents.

IV. Explosives. 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*, That injury is occasioned by the explosion of any such boiler or explosive.

V. Quarries, etc. Work in or about any quarry, mine, or foundry.

SEC. 2. Liability.—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 officers, agents, or employees; or by reason of any defect or insufficiency due to his or their negligence in the condition of his 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 recoverable under the provisions of chapter 302.

SEC. 3. Assumption of risk; contributory negligence.—The workman shall not be held to have assumed the risk of any injury due to any cause specified in the preceding section; but there shall be no liability thereunder 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 hereby provided for shall be recovered in an action on the case for negligence.

SEC. 4. Acceptance: bond.—The provisions of sections 2 and 3 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 chapter as contained in the succeeding sections, and who shall have satisfied the commissioner of his financial ability to comply with its provisions; or who shall have filed with the commissioner 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 chapter. Such employer shall thereafter be liable to all workmen engaged in any of the employments specified in section 1 for any injury arising out of and in the course of their employment in the manner provided in the following sections.

SEC. 5. Enforcement of bond.—Such bond shall be enforced by the commissioner for the benefit of all persons to whom such employer may become liable hereunder in the same manner as probate bonds are enforced.

SEC. 6. *New bond.*—The commissioner may from time to time order the filing of new bonds, when in his judgment such bonds are necessary; and after 30 days from the communication of such order to any employer such employer shall be subject to the provisions of the foregoing subdivision until such order has been complied with.

SEC. 7. *Petition to court.*—Any person aggrieved by any such decision of the commissioner may apply by petition to any justice of the superior court for a review thereof, 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.

SEC. 8. *Revoking acceptance.*—The employer may at any time revoke his acceptance by filing with the commissioner a declaration to that effect and by posting copies of such declaration in conspicuous places about the place where his workmen are employed.

SEC. 9. *Employer's fault.*—The employer shall not be liable for 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.

SEC. 10. *Employer's intentional fault.*—The employer shall, at the election of the workman or his personal representative, be liable under the provisions of sections 2 and 3 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.

SEC. 11. *Barring suit at law.*—The right of action for damages caused by any such injury, at common law or under any statute, shall not be affected by this chapter; but in case the injured workman, or in event of his death his executor or administrator, shall avail himself of this chapter, 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.

SEC. 12. *Barring statutory remedy.*—If 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 chapter against the employer therefor, he shall be barred from all benefit hereof in regard thereto.

SEC. 13. *Remedial care.*—During the first 14 days after an injury to an employee an employer who has accepted the compensation provisions of this chapter shall furnish to the employee or cause to be furnished free of charge reasonable medical and hospital services or other remedial care when needed, unless the injured employee shall decline or refuse to allow them to be furnished. Such aid shall not be considered under the provisions of section 22.

SEC. 14. *Not evidence.*—If the injured employee or his guardian or administrator shall elect to proceed as provided by section 12, the furnishing of medical or hospital services or other remedial care shall not be evidence of liability in such action.

SEC. 15. *Notice of claim.*—No proceedings for compensation, other than medical or hospital services or other remedial care as aforesaid, under the following subdivisions, 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 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 hereunder within six months after such payments have ceased.

SEC. 16. *Defects.*—No want, 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.

SEC. 17. *Contents.*—Notice of the accident shall apprise the employer of the claim for compensation hereunder, and shall state the name and address of the workman injured and the date and place of the accident.

SEC. 18. *Service.*—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.

SEC. 19. Compensation for death.—The amount of compensation shall be in case death results from injury:

I. Dependents. If the workman leaves any widow, children, or parents 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 workman when at work on full time during the preceding year during 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 \$3,000. Any weekly payments made under this subdivision shall be deducted from the sum so fixed.

II. Partial. 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 support of the dependents.

III. No dependents. If he leaves no such dependents, the reasonable expenses of his medical attendance and burial, not exceeding \$100.

20. *Payee.*—Whatever sum may be determined to be payable under this subdivision, 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.

21. *Disability.*—Where total or partial incapacity for work at any gainful employment for not less than one week results to the workman from the injury, a weekly payment shall be made, computed from the time of the injury and continuing during such incapacity, subject as herein provided, not exceeding 50 per cent of his average weekly earnings as computed under section 19, I.

22. *Evidence.*—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, and to any payment, allowance, or benefit which the workman may have received from the employer during the period of his incapacity.

23. *Partial incapacity.*—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 at least one-half of such difference.

24. *Limit of compensation.*—In no event shall any compensation paid under this subdivision exceed the damage suffered, nor shall any weekly payment in any event exceed \$15, or extend over more than 300 weeks from the date of the accident. Such payment shall continue for such period of 300 weeks, if total or partial disability continues during such period. No such payment shall be due or payable for any time prior to the giving of the notice required by section 15.

SECS. 25-30. Procedure.—[Questions as to compensation may be determined by agreement or by an action in equity. If no agreement is made the claimant may bring an action in any court having jurisdiction of an action for recovery of damages for negligence. This must be by a petition in equity, and the judgment shall be for a lump sum equal to the amount of payments then due and prospectively due under the act. Distribution may be made by the court, or by the probate court where an executor or administrator is appointed at the instance of any party in interest. Employers under the act may likewise apply by similar proceedings to the court for a determination of the amount of future payments or lump sum in lieu thereof to be paid on account of any injury. Other questions may also be referred to the courts or any justice thereof, who after reasonable notice and hearing may make the proper order and adjust costs.]

SEC. 31. Medical examination.—Any workman entitled to receive weekly payments hereunder shall, if requested by the employer, submit himself for examination by a duly qualified medical practitioner or surgeon provided and paid 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.

SEC. 32. Refusal.—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.

SEC. 33. Mental incompetency.—In case an injured workman shall be mentally incompetent at the time when any right or privilege accrues to him under this chapter, the guardian of the incompetent appointed pursuant to law may, on behalf of his ward, claim and exercise such right or privilege with the same force and effect as if the workman himself had been competent and had claimed or exercised such right or privilege, and no limitation of time provided herein shall run so long as said incompetent workman has no guardian.

SEC. 34. Preference.—Any person entitled to weekly payments under this chapter from any employer shall have the same preferential claim therefor against the assets of the employer as allowed by law for a claim by such person against such employer for unpaid wages or personal services.

SEC. 35. Rights in payments.—Weekly payments due under this chapter shall not be assignable or subject to levy, execution, attachment, or satisfaction of debts.

SEC. 36. Death of beneficiary.—Any right to receive weekly compensation hereunder shall be extinguished by the death of the person entitled thereto.

SEC. 37. Claim of attorney.—No claim of any attorney for any contingent interest in any recovery under this chapter, 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.

SEC. 38. Returns.—Every employer subject to the provisions of this chapter shall from time to time make to the commissioner of labor such periodical returns as to its operation as said commissioner may require, upon blanks to be furnished by him. Any employer failing to make such returns when so required shall, until such returns are made, be subject to the provisions of sections 2 and 3.

NEW JERSEY

ACTS OF 1911

CHAPTER 95 (as amended 1913, ch. 174).—*Employers' liability—Compensation of workmen for injuries.*

SECTION I.—*Employers' liability*

[This section embodies a liability statute, based on the employer's negligence, where the employee himself was not willfully negligent, and with the common-law defenses abolished. The burden of proving willful negligence on the part of the employee rests on the employer. Attorneys' fees are to be approved by the trial judge or justice.]

SECTION II.—*Elective compensation*

7. *Compensation payable, when.*—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 11, 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. *Remedy exclusive.*—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.

9 (as amended 1924, ch. 150). *Presumption as to contracts.*—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. If the injured employee at the time of the accident is a minor under 14 years of age, employed in violation of the labor law, or a minor between 14 and 16 years of age employed, permitted, or suffered to work without an age and schooling certificate or age and working certificate, or at an occupation prohibited at that age by the labor law, a compensation or death benefit shall be payable to the employee or his dependents which shall be double the amount payable under the schedules provided in paragraphs 11 and 12.

The possession of a duly issued age and schooling certificate or age and working certificate or certificate of date of birth shall be conclusive evidence for an employer that the minor has reached the age certified to therein, and no extra compensation shall be payable to any minor engaged in an employment allowed by law for the age and sex certified to in such certificate. If the certificate presented by the employee as one issued to him shall have been really issued to another child and the real age of the employee shall be such that his employment in any capacity or in the particular capacity he was employed by the employer was prohibited, and if the employer shall

show to the satisfaction of the workmen's compensation bureau that he accepted the certificate in good faith as having been issued to the employee and could not have, despite reasonable diligence, discovered the fraud, in such event no extra compensation shall be paid to the employee illegally employed.

The employer alone and not the insurance carrier shall be liable for the extra compensation or death benefit which is over and above the amount of the compensation or death benefit provided under paragraphs 10 and 11 of this section. Any provision in an insurance policy undertaking to relieve an employer from the liability for the extra compensation or extra death benefit shall be void.

Nothing in this act contained shall deprive an infant under the age of 16 of the right or rights now existing to recover damages in a common-law or other appropriate action or proceeding for injuries received by reason of the negligence of his or her master.

10. *Termination of contract.*—The contract for the operation of the provisions of section II of this act may be terminated by either party upon 60 days' notice in writing prior to any accident.

11 (as amended 1919, ch. 93; 1923, ch. 49). *Disability payments; schedule.*—Following is a schedule of compensation:

(a) For injury producing temporary disability, 66 $\frac{2}{3}$ per cent of the wages received at the time of the injury, subject to a maximum compensation of \$17 per week and a minimum of \$8 per week: *Provided*, That if at the time of the injury the employee receives wages of less than \$8 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, not, however, beyond 300 weeks.

(b) For disability total in character and permanent in quality, 66 $\frac{2}{3}$ per cent of the wages received at the time of injury, subject to a maximum compensation of \$17 per week and a minimum of \$8 per week: *Provided*, That if at the time of injury the employee receives wages of less than \$8 per week then he shall receive the full amount of such wages per week. This compensation shall be paid for a period of 400 weeks, at which time compensation payments shall cease unless the employee shall have submitted to such physical or educational rehabilitation as may have been ordered by the rehabilitation commission of the State, and can show that because of such disability it is impossible for him to obtain wages or earnings equal to those earned at the time of the accident, in which case further weekly payments shall be made during the period of such disability; the amount thereof to be the previous weekly compensation payment diminished by that portion thereof that the wage, or earnings, he is then able to earn, bears to the wage received at the time of the accident. In calculating compensation for this extension beyond 400 weeks the minimum provision of \$8 shall not apply. This extension of compensation payments beyond 400 weeks shall be subject to such periodic reconsiderations and extensions as the case may require, and shall apply only to disability total in character and permanent in quality, and shall not apply to any accident occurring prior to July 4, 1923.

(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:

(d) For the loss of the thumb, 66 $\frac{2}{3}$ per cent of daily wages during 60 weeks.

(e) For the loss of the first finger, commonly called index finger, 66 $\frac{2}{3}$ per cent of daily wages during 35 weeks.

(f) For the loss of a second finger, 66 $\frac{2}{3}$ per cent of daily wages during 30 weeks.

(g) For the loss of a third finger, 66 $\frac{2}{3}$ per cent of daily wages during 20 weeks.

(h) For the loss of a fourth finger, commonly called little finger, 66 $\frac{2}{3}$ per cent of daily wages during 15 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 the 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: *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.

(k) For the loss of a great toe, 66 $\frac{2}{3}$ per cent of daily wages during 30 weeks.

(l) For the loss of one of the toes other than a great toe, 66 $\frac{2}{3}$ per cent of daily wages during 10 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 period 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, 66 $\frac{2}{3}$ per cent of the daily wages during 150 weeks.

(p) For the loss of an arm, 66 $\frac{2}{3}$ per cent of daily wages during 200 weeks.

(q) For the loss of a foot, 66 $\frac{2}{3}$ per cent of daily wages during 125 weeks.

(r) For the loss of a leg, 66 $\frac{2}{3}$ per cent of daily wages during 175 weeks.

(s) For the loss of an eye, 66 $\frac{2}{3}$ per cent of daily wages during 100 weeks.

(t) For the loss of a natural tooth, 66 $\frac{2}{3}$ per cent of daily wages for four weeks for each tooth lost.

(u) For the total loss of hearing in one ear, 66 $\frac{2}{3}$ per cent of daily wages during 40 weeks. For the total loss of hearing in both ears by one accident, 66 $\frac{2}{3}$ per cent of daily wages during 160 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).

(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 66 $\frac{2}{3}$ per cent 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: *Provided, however,* That in cases in which the disability is determined as a percentage of total and permanent disability the duration of the compensation shall be a corresponding portion of 500 weeks. 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.

(c) 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 24 hours after the occurrence of the hernia; fifth, that there was such physical distress that the attendance of a licensed physician was required within 24 hours after the occurrence of the hernia. In the case of hernia as above defined, the provisions of paragraphs 13, 14, and 11 (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 20 weeks, following which the obligation shall cease and terminate, unless death results from the hernia, in which case the provisions of paragraph 12 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 \$150, together with compensation as provided in paragraph 11 (a) during the periods of disability prior to and following the operation, subject to the provisions of paragraph 13. 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 12 shall apply.

(y) The weekly compensation payments specified in paragraph 11 are all subject to the same limitations as to maximum and minimum as are stated in clause (x) hereof.

(z) In case of the death of the 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 12 of this act, or, if no dependents, the remaining amount due, but not exceeding \$150, shall be paid in a lump sum to the proper person for funeral expenses: *Provided, however*, That no compensation shall be due any other person than the injured employee on account of compensation being paid in excess of 400 weeks on account of disability total in character and permanent in quality, as provided by paragraph 11 (b) hereof.

12 (as amended 1914, ch. 244; 1919, ch. 93; 1921, ch. 85; 1923, ch. 49). *Death benefits*.—In case of death, compensation shall be computed, but not distributed, on the following basis:

- (a) For one dependent, 35 per cent of wages.
- (b) For two dependents, 40 per cent of wages.
- (c) For three dependents, 45 per cent of wages.
- (d) For four dependents, 50 per cent of wages.
- (e) For five dependents, 55 per cent of wages.
- (f) For six or more dependents, 60 per cent 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, step-children, 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 the decedent's widow and natural children under 16 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 an \$8 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.

(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 according to the relative dependency. Payment on behalf of infants shall be made to the surviving parent, if any, or to the statutory or testamentary guardian.

(i) If death results from the accident, whether there be dependents or not, expenses of last sickness in accordance with the provisions for medical and hospital service as set forth in paragraph 14 of this act. Also the cost of burial, not to exceed \$150.

(j) In computing compensation to those named in this paragraph, except in the case of husband, wife, parents, and step-parents, only those under 16 or over 40 years of age shall be included, and then only for that period in which they are under 16 or over 40: *Provided, however*, That payments to such physically or mentally deficient persons as are, for such reason, depend-

ent, shall be made during the full term of compensation payment of 300 weeks.

(k) The compensation in case of death shall be subject to a maximum compensation of \$17 per week and a minimum of \$8 per week: *Provided*, That if at the time of the injury, the employee receives wages of less than \$8 per week, then the compensation shall be for the full amount of such wages per week. This compensation shall be paid during 300 weeks: *Provided*, That if at the expiration of 300 weeks there shall be one or more dependents under 16 years of age, compensation shall be continued for such dependents until they reach 16 years of age, at the schedule provided under clauses (a), (b), (c), (d), (e), and (f), of paragraph 12.

13 (as amended 1919, ch. 93; 1923, ch. 49; 1925, ch. 163). *Waiting time*.—No compensation other than medical aid shall accrue and be payable until the employee has been disabled seven 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. Should the total period of disability extend beyond seven weeks additional compensation shall at once become payable covering the above prescribed waiting period.

14. (as amended 1919, ch. 93; 1923, ch. 245). *Medical, etc., aid*.—The employer shall furnish to the injured workman such medical, surgical and other treatment, and hospital service as shall be necessary to cure and relieve the workman of the effects of the injury and to restore the functions of the injured member or organ where such restoration is possible: *Provided, however*, That the employer shall not be liable to furnish or pay for physicians' or surgeons' services in excess of \$50 and in addition to furnish hospital service when necessary in excess of \$50, unless the injured workman or the physician who treats him, or any other person on his behalf, shall file a petition with the workmen's compensation bureau stating the need for such physician's or surgeon's service in excess of \$50, as aforesaid, and such hospital service or appliances in excess of \$50 as aforesaid, and the workmen's compensation bureau after investigating the need of the same and giving the employer an opportunity to be heard, shall determine that such physician's and surgeon's treatment and hospital services are or were necessary, and that the fees for the same are reasonable and shall make an order requiring the employer to pay for or furnish the same. If the employer shall refuse or neglect to comply with the foregoing provisions of this paragraph, the employee may secure such treatment and services as may be necessary and as may come within the terms of this paragraph and the employer shall be liable to pay therefor: *Provided, however*, That the employer shall not be liable for any amount expended by the employee or by any third person on his behalf for any such physician's treatment and hospital services, unless such employee or any person on his behalf shall have requested the employer to furnish the same and the employer shall have refused or neglected so to do, or unless the nature of the injury required such services, and the employer or his superintendent or foreman, having knowledge of such injury shall have neglected to provide the same, or unless the injury occurred under such conditions as make impossible the notification of the employer, or unless the circumstances are so peculiar as shall justify in the opinion of the workmen's compensation bureau the expenditure assumed by the employee for such physician's treatment and hospital services, apparatus, and appliances. All fees and other charges for such physician's and surgeon's treatment and hospital services shall be reasonable and based upon the usual fees and charges as prevail in the same community for similar physician's, surgeon's, and hospital services.

14 (a) (as amended 1919, ch. 93; 1922, ch. 245; 1923, ch. 49). *Order of payments*.—Compensation for all classes of injuries shall run consecutively, and not concurrently, except as provided in paragraph 14, as follows: First, medical and hospital services and medicines as provided in paragraph 14. After the waiting period, compensation during temporary disability. If total period of disability extends beyond seven weeks, compensation to cover waiting period. 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 500, except as provided in paragraphs 11 (b) and 12 (k) of this act.

15. *Notice.*—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 14 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 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 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 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 90 days after the occurrence of the injury, no compensation shall be allowed.

16. *Form of notice.*—[A form for substantial compliance is prescribed, but immaterial variations do not invalidate. Service may be personal or by mail.]

17. *Medical examinations.*—[The standard provision is made for submission to medical examination and the presence of the employee's physician. Any refusal to submit suspends benefits. When the right to compensation is thus suspended, no compensation shall be payable in respect of that period.]

18 (as amended 1921, ch. 230). *Disputes.*—[Disputes may be referred to the workmen's compensation bureau provided for in chapter 149, acts of 1918, below.]

19 (as amended 1919, ch. 93). *Payment in case of death.*—[Death benefits will be made directly to dependents of full age, and on behalf of infants to a surviving parent or statutory or testamentary guardian or other person designated on application of the workmen's compensation bureau. If a commuted sum is to be paid and distribution is impracticable, the bureau may require a bond to secure the proper payments to be made.]

20 (as amended 1921, ch. 230). *Procedure.*—[Procedure is as prescribed by chapter 149, acts of 1918, below. No agreement for a different sum than that which may be determined to be due by the proper officials shall operate as a bar to a determination or award if it is found by such official that the amount agreed upon is not the proper amount under the law.]

20 (e) (added 1919, ch. 93). *Refusing medical treatment.*—[If it appears that an employer is being prejudiced by the refusal of an injured employee to accept proffered medical and surgical treatment deemed necessary by the attending physician, or by failure to comply with the instructions of such physician, the employer may petition the workmen's compensation bureau, which is authorized to order suitable treatment, and, if this is refused, to modify the award as the evidence may justify.]

21 (a), 21 (b) (amended 1919, ch. 93), 22. *Payments; fees, etc.*—[At any time after the award is made, if future payments are certain, a sum equal to their total may be paid by the employer, by leave of the court, to an authorized depository, which shall hold and disburse the same for the benefit of the beneficiaries in the same amounts and same times as directed by the award. If it appears to be for the best interest of the beneficiaries, or that they have removed or are about to remove from the United States, 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 business or assets, future payments may be commuted to a lump sum representing the present value discounted at 5 per cent simple interest, on the application of either party. No commutation will be allowed without the approval of the bureau, which shall bear in mind the intent of the act to provide payments in lieu of wages. Commutation is not to be allowed for the purpose of satisfying a debt, or to make payments to physicians, lawyers, or any other person. Attorneys' fees may be only such amounts as are fixed by the bureau or the judge of the court of common pleas passing on the case.]

Weekly payments on account of such fees are also to be fixed in cases where no commutation is made.

Agreements may be modified at any time on the ground of change of conditions. Deferred payments draw interest after three months at 5 per cent per annum at the discretion of the bureau. Compensation claims and payments have the same preference as wage debts, are not assignable and are exempt from all claims of creditors.]

22 (a) added 1924, ch. 124). *Occupational disease*.—When employer and employee have accepted the provisions of Section II as aforesaid, compensation for personal injuries to or for death of such employee by any of the compensable occupational diseases hereinafter defined arising out of and in the course of his employment shall be made by the employer to the extent hereinafter set forth and without regard to the negligence of the employer.

22 (b) (added 1924, ch. 124, amended 1926, ch. 31). *List; willful self-exposure; definitions*.—When applicable in this act to occupational diseases the following words and phrases shall be construed to have the following meanings:

A. Compensable occupational diseases shall not include any other than those scheduled below and shall include those so scheduled only when the exposure stated in connection therewith has occurred during the employment and the disability has commenced within five months after the termination of such exposure.

Occupational diseases: anthrax; lead poisoning; mercury poisoning; arsenic poisoning; phosphorus poisoning; benzene, and its homologues, and all derivatives thereof; wood alcohol poisoning; chrome poisoning; caisson disease: mesothorium, or radium necrosis.

B. Willful self-exposure to occupational diseases shall include (1) failure or omission to observe such rules and regulations as may be promulgated by said department of labor and posted in the plant by the employer, tending to the prevention of occupational diseases, and (2) failure or omission to truthfully state to the best of the employee's knowledge, in answer to inquiry made by the employer, the location, duration and nature of previous employment of the employee in which he was exposed to any occupational disease as herein listed.

22 (c) (added 1924, ch. 124). *Benefits; procedure*.—[Benefits to be paid and procedure to be followed are the same in case of occupational diseases as for corresponding disabilities arising out of an accidental injury.]

22 (d)—22 (f) (all added 1924, ch. 124). *Notice; claim*.—[In the absence of actual knowledge of the contracting of an occupational disease, notice must be given by the claimant or some one in his behalf within five months from the date when the employee ceased to be subject to exposure to such disease, or no compensation will be payable on account thereof. Claims are forever barred unless a petition is filed in duplicate with the secretary of the bureau within one year from the termination of the exposure, or if payments have been agreed upon, within one year after the failure of the employer to make payment or within one year after the last payment made. The provisions of Sections II and III applicable to claims for injury or death by accident apply to those for occupational disease except as provided in the foregoing paragraph, 22 (a) to 22 (f), both inclusive.]

SECTION III.—*General provisions*

23 (as amended 1919, ch. 93; 1921, ch. 230; 1923, ch. 49). *Definitions*.—(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.

(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 the 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.

(e) No agreement, composition, or release of damages made before the happening of any accident, except the agreement defined in section 2 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 2 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 2 thereof.

(f) [This subdivision provides for the liability of third parties responsible for injury or death. This is not affected by this statute, nor does this act establish a measure of damages therein; but if the injured person or his dependents recover from the third party a sum equivalent to or greater than the total compensation payments provided by the act, the employer is released from the payment of such benefits; if the recovery is less, the employer is liable only for the difference. The employer's obligation continues until the payments, if any, by the third party are made. The employer may file with such third party a statement of the agreement or award with or against him and shall thereafter be entitled to a sum equivalent to the benefits paid by him previously, which amount should be deducted by the third party from payments made by him to the injured employee or his dependents.]

(g) Wherever in section 2 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 \$5 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 5½, or if the employee worked a greater proportion of the week regularly, then by 6, 6½, or 7, according to the customary number of working days constituting an ordinary week in the character of work involved.

(h) 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.

(i) To calculate the number of weeks and fraction thereof that compensation is payable for temporary disability; determine the number of calendar days of disability from and including as a full day the day that the employee is first unable to continue at work by reason of the accident, including also Saturdays, Sundays, and holidays, up to the first working-day that the employee is able to resume work and continue permanently thereat. Subtract from this number the waiting period and any days and fraction thereof the injured was able to work during this time, and divide the remainder by seven. If, however, the total period of disability extends beyond seven weeks, the waiting period shall not be subtracted from the number indicated above. The resulting whole number and sevenths will be the required period for which compensation is payable on account of temporary disability.

24-27. *Constitutionality; act in effect.*—[The unconstitutionality of any part does not affect other parts except that Sections I and II stand or fall together. Existing rights are not affected by this act, which became effective July 4, 1911.]

ACTS OF 1913

CHAPTER 145.—*Public employes*

[This act declares every employee of the State, county, municipality, or any board or commission, or any other governing body, including boards of education, to be within the terms of Section II of the compensation law. Excepted are persons receiving salaries in excess of \$1,200 per year and persons holding elective offices.]

ACTS OF 1917

CHAPTER 178 (as amended 1919, ch. 105; 1921, ch. 272; 1924, ch. 128).—*Workmen's compensation insurance*

[Employers other than the State or its subdivisions, accepting the compensation act, are required to make provision for the complete payment of all obligations arising under the act. In case of satisfactory proof of performance and financial standing of the business, an employer may carry his own liability insurance. Permission to this effect will be granted on investigation, and may be revoked in the judgment of the commissioner of banking and insurance. Self-insurers may reinsure the whole or any part of their risk, such contracts not being subject to the provisions of the act.

Other employers must insure in some stock company or mutual association authorized to do business in the State. Proof must be furnished on demand of the commissioner of banking and insurance of compliance with the law in respect of either of self-insurance or insurance in a stock or mutual company. Contractors placing work with a subcontractor are liable in the event of the subcontractor's failure to carry insurance as required by the act, but have recourse against the subcontractor for reimbursement. Contractors complying with the act are to post notices to that effect in conspicuous places in and about their establishments. Insured employers are primarily liable for the payment of compensation, but have recourse against the insurance carrier for the amount; but in case of death or insolvency of the employer, the carrier is directly liable to the injured employee or his dependents. Contracts of insurance may not be canceled without due notice, and must provide that they are made for the benefit of the employees of the insured employer, and may be enforced by them or their dependents; that as between the employee and the insurance carrier, notice, knowledge, or jurisdiction affecting the employer binds the company, and that the carrier will be bound by all awards or judgments against the employer for the payment of compensation. Classifications of risks, premiums, and rules, and any schedule rating, must be filed with the commissioner of banking and insurance, and are not effective until approved by him. Changes must be similarly submitted and approved.

A compensation rating and inspection bureau is created under the supervision of the commissioner of banking and insurance to carry out the purposes of this act in the supervision of workmen's compensation insurance. It maintains all rules, regulations, premium rates and their adjustment to the various hazards and the adoption of necessary rules and regulations for the accomplishment of its purposes.]

ACTS OF 1918

CHAPTER 149 (as amended 1919, ch. 92; 1921, ch. 229, 1925, ch. 98).—*Workmen's compensation bureau*

[This act creates in the department of labor a workmen's compensation bureau for the administration of the compensation law. The bureau consists of the commissioner of labor, who is chairman, with an added payment of \$1,500 per year for his services, and three deputy commissioners of compensation, one of whom is to be its secretary. The deputies, and such referees and other employees as the commissioner of labor may deem necessary are to be appointed by such commissioner in accordance with the civil service law of the State. The bureau and its officers, sitting individually or together,

have exclusive jurisdiction over all compensation claims, must approve any agreement made by the parties, and, in the absence of agreement, shall undertake on their own motion to bring about a settlement of any pending claim.

Claimants are to file petitions within one year, unless an agreement has been made whereupon payments have failed, then within one year after such failure. Forms of petitions and their answers are provided for, with hearings to be held on notice to both parties, not less than four weeks nor more than six weeks after the filing of the petition. Procedure is to be as prescribed by the act, the commissioner of labor, each deputy and each referee being authorized to hear and determine matters in dispute in a summary manner, and to modify awards and provide for their commutation. A copy of the decision of the commissioner or referee is to be filed in the office of the county clerk, when it shall have the same effect as a judgment of the court of common pleas. Provision is made for records, the payment of witness fees, subpoenas, compulsion as to attendance and the giving of testimony through court action and the taking of depositions of absent witnesses. No filing fees are to be allowed. The cost and reasonable attorney's fee may be allowed the successful party. Appeals may be taken to the court of common pleas of the county, notice thereof acting as a stay of execution of judgment until the determination or dismissal of the appeal. Appeals are to be tried exclusively on transcripts of record and testimony. Proceedings are summary and judgment is to be entered as in other cases tried in the court of common pleas. Review of questions of law and fact by the supreme court may be had by certiorari.]

ACTS OF 1924

CHAPTER 187.—*Reports of accidents, etc.*

[This act requires employers carrying insurance as required by chapter 178, Acts of 1917, above, to report the occurrence of accidents, or the contracting of compensable occupational diseases to the insurance carrier and to the department of labor of the State, a copy to be retained on file by the employer. Supplemental reports must likewise be made at the expiration of the waiting period or immediately upon return to work. Such further information must also be supplied as is necessary for the administration of the act. Self insurers must make similar reports to the workmen's compensation bureau, keeping one on file. Insurance carriers are also to make reports, to the bureau, of accidents and compensable occupational diseases reported to them.

First reports filed with the bureau as herein provided are not to be made public nor open to inspection unless, in the opinion of the commissioner of labor, some public interest shall so require; nor may such reports be used as evidence against any employer in any suit or action at law brought by the employee for the recovery of damages.]

NEW MEXICO

ACTS OF 1917

CHAPTER 83.—*Compensation of workmen for injuries*

SECTION 1. Title.—This act shall be known as the "Workmen's compensation act."

SEC. 2. Act applies when.—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 10 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.

SEC. 3. Insurance.—[Employers in the occupations covered by the act must file in the office of the clerk of the district court where the labor is to be performed a good and sufficient undertaking in the nature of insurance or security for the payment of benefits under the act. However, if the employer is able to show himself financially solvent to the satisfaction of the judge, a certificate shall issue excusing such employer from filing the undertaking named. Public utility corporations doing business generally throughout the State may meet the requirement by filing proof in the court of the county where the corporation has its principal office. The undertaking required shall be either policy or insurance issued by an authorized company or bond or other sufficient undertaking with good and sufficient surety. Names and addresses must be given, and surety must be in a form and amount approved by the judge. The amounts required may be either increased or decreased as the occasion may require. Insurance policies and contracts or bonds of guarantee must provide that the insurance carrier, guarantor, or surety, as the case may be, will be directly and primarily liable to the workman or his dependents for the compensation for which the employer is liable.]

SEC. 4. Presumption as to contracts.—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 14 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. *Remedy exclusive.*—[The rights and remedies provided by this act for workmen and their dependents coming under its terms are exclusive of all others, at common law or otherwise.]

SEC. 6. *Rejection.*—[If an employer who would otherwise be subject to the provisions of this act elects not to be bound by it, he is, in the event of an action for damages by an employee, deprived of the common-law defenses, such defenses being available only where a workman is not bound by the terms of the act and the employer has filed the undertaking or certificate required by section 3 above.]

SEC. 7. *Compensation reduced, when.*—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 50 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 50 per cent.

SEC. 8. *Willful intent, etc.*—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.

SEC. 9. *Termination of agreements.*—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 30 days' notice to the other in writing, prior to any accidental injury suffered by such workman.

SEC. 10. *Extrahazardous occupations.*—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 railroads; 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.

SEC. 11. *Interstate commerce.*—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.

SEC. 12. *Definitions.*—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 electric current, and water power plant, including towers and standpipes, power plant, blast furnace, paper mill, printing plant, flour mill, glass factory, cement plant, artificial-gas plant, machine or machine repair shop, salt plant, oil refinery plant, chemical manufacturing plant, coke ovens and coal washeries.

(b) "Workshop" means any yard, plant, premises, room, or place where power-driven machinery is employed and manual labor is exercised incidental to the process of making, altering, repairing, printing, or ornamenting, finishing or adapting for sale or otherwise any article or part of article, over which premises, room or place the employer of the person working therein has the right of access or control.

(c) "Mill" means any plant, premises, room or place where machinery is used, any process of machinery, changing, altering or repairing any article or commodity for sale or otherwise, together with the yards and premises which are part of the plant, including elevators, warehouses and bunkers, sawmills, 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.

(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 18 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 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.

6. Questions as to who constitute dependents, and the extent of their dependency, shall be determined as of the date of the injury, and their right to any death benefit shall cease upon the happening of any one of the following contingencies:

I. Upon the marriage of the widow or widower.

II. Upon a child reaching the age of 18 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 periods 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 "causal 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.

SECS. 13-15. *Procedure*.—[Compensation is to be paid in monthly installments, beginning not later than 31 days after the date of the injury. Notice must be submitted in writing within two weeks after the accident unless prevented by the injury or other causes beyond the employee's control; then as soon as possible, and not later than 60 days after the accident. Such notice will not be required where the employer or an agent in charge of the work had actual knowledge of the occurrence. Otherwise, failure to give notice within two weeks bars compensation for the period of default. If the employer having knowledge of the accident fails or refuses to pay the compensation here provided, the workman must file claim, or a dependent in case of his death, not later than 60 days after such refusal or failure of the employer to pay. The claim must be informal, but setting forth sufficient facts for its determination; if defective, defects may be corrected by the court or the claimant at any time before being heard. The clerk of the court is to furnish suitable blanks for such claims. After 20 days, allowed for answer or adjustment by the employer, the clerk of the court is to forward the claim to the judge for hearing. If within the 20 days a settlement or release signed by the parties is filed, judgment will enter thereon. Trial may be either by jury or by the court, but in a summary manner as far as possible. On conclusion of the testimony the court renders judgment in accordance with the merits of the case. Provision is made for the subpoenaing of witnesses as in civil cases. No costs shall be charged other than witness fee and mileage, per diem expenses of the clerk or other person taking testimony, and physicians' fees, if directed by the court to make an examination, which shall not exceed \$5 and the same fees and mileage as allowed other witnesses. Judgments will be against the employer, his insurer

or sureties, directing payment of the amount then due and further amounts at regular intervals on dates fixed. Executions for such amounts are to be issued in the event of an affidavit filed that payments have not been or are not being made, and that disability still continues, unless an examination by a physician has been arranged for, in which event execution will not issue until further order of the court. Judgments have the same effects as judgments and executions in civil cases.

Final orders or judgments rendered by the court are reviewable by the supreme court on appeal or writ of error as in other cases, except that they shall be advanced on the calendar and disposed of as promptly as possible.]

Sec. 16. *Claims on account of death.*—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.

Sec. 17 (as amended 1919, ch. 44; 1921, ch. 184.) *Benefits; schedule.*—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 10 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 31 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 13 hereof:

(a) For total disability the workman shall receive 50 per cent of his earnings, not to exceed a maximum compensation of \$12 per week, nor be less than a minimum of \$6 per week: *Provided*, That if at the time of injury the workman receives earnings of less than \$6 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 520 weeks.

In case death proximately results from the injury within the period of one year, compensation shall be in the amounts, and to the persons following:

(1) If there be no dependents, the compensation shall be limited to the funeral expenses not to exceed \$75 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 \$75 for funeral expenses and the percentage herein-after specified of the average weekly earnings, subject to the limitations of this act, to continue for the period of 300 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, 25 per cent of earnings of deceased with 10 per cent additional for each child in excess of two, with a maximum of 60 per cent to be paid to their guardian.

2. To the widow or widower, if there be no children, 40 per cent of earnings, not to exceed a maximum compensation of \$12 per week.

3. To the widow or widower, if there be one child, 45 per cent of earnings.

4. To the widow or widower, if there be two children, 50 per cent of earnings.

5. To the widow or widower, if there be three children, 55 per cent of earnings.

6. To the widow or widower, if there be four or more children, 60 per cent of earnings.

7. If there be neither widow, widower, nor children, then to the father and mother, or the survivor of them, if dependent to any extent upon the workman for support at the time of his death, 20 per cent of earnings.

8. If there be neither widow, widower, children, nor dependent parent, then to the brothers and sisters, if actually dependent to any extent upon the decedent for support at the time of his death, 15 per cent of earnings for one brother or sister, and 5 per cent additional for each additional brother or sister, with a maximum of 25 per cent, such compensation to be paid to their guardian: *Provided*, That the maximum compensation to partial dependents shall not exceed the respective amounts theretofore contributed by the deceased workman.

The earnings upon which death compensation shall be based shall not, in any case, be taken to exceed \$30 per week, nor less than \$12 per week, except where the earnings are less than \$12 per week, and in that case upon the amount of earnings.

(b) For disability partial in character but permanent in quality, such compensation shall be measured by the extent of such disability. In the following cases the compensation shall be 50 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—	Weeks
One arm at or near shoulder, dextrous member.....	150
One arm at elbow, dextrous member.....	140
One arm between wrist and elbow, dextrous member.....	130
One arm at or near shoulder, nondextrous member.....	140
One arm at elbow, nondextrous member.....	130
One arm between wrist and elbow, nondextrous member.....	120
One hand, dextrous member.....	110
One hand, nondextrous member.....	100
One thumb and the metacarpal bone thereof.....	50
One thumb at the proximal joint.....	30
One thumb at the second distal joint.....	20
One first finger and the metacarpal bone thereof.....	25
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.....	20
One second finger at the proximal joint.....	15
One second finger at the second joint.....	10
One second finger at the distal joint.....	8
One third finger and the metacarpal bone thereof.....	15
One third finger at the proximal joint.....	10
One third finger at the second joint.....	8
One third finger at the distal joint.....	8
One fourth finger and the metacarpal bone thereof.....	12
One fourth finger at the proximal joint.....	12
One fourth finger at the second joint.....	8
One fourth finger at the distal joint.....	6
Loss of all fingers on one hand where thumb and palm remains.....	55
One leg at or so near hip joint as to preclude the use of an artificial limb.....	140
One leg at or above the knee where stump remains sufficient to permit the use of an artificial limb.....	120
One leg between knee and ankle.....	110
One foot at the ankle.....	100
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 the great toe with the metatarsal bone thereof.....	12
One toe other than the great toe at the proximal joint.....	8
One toe other than the great toe at second or distal joint.....	6
Loss of all toes of one foot at proximal joint.....	35
One eye by enucleation.....	110
Total blindness of one eye.....	100
Total deafness in one ear.....	35
Total deafness in both ears.....	135

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 \$500.

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.

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.

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.

In all other cases of 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 \$75 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.

SEC. 18 (as amended 1919, ch. 44; 1921, ch. 184). *Waiting time; medical, etc., aid.*—No compensation shall be allowed for the first 10 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 13 hereof.

During the first 10 days after the injury the employer shall furnish reasonable surgical, medical, and hospital services and medicine, as and when needed, not to exceed \$150 in value, unless the workman refused to allow them to be furnished by the employer. In case, however, the employer has made provisions for, and has at the service of the workman at the time of the accident or subsequent thereto during disability, adequate surgical, hospital, and medical facilities and attention, whether such facilities and attention are provided by the employer gratis, or are in whole or in part provided under any plan in force between the employer and the workman, then the employer shall be under no obligation to furnish during said first 10 days after the injury any other or additional surgical, medical, or hospital services or medicines than those so provided.

Compensation for all classes of injuries shall run consecutively and not concurrently, as follows:

First 10 days surgical, medical, and hospital services and medicines, as provided in this paragraph. After the first 10 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.

SEC. 19. *Medical examination.*—[Where right to compensation exists, the employee must submit to medical examination by the employer's physician or by a physician selected by the court. He may have his own physician present at the time. Refusal or obstruction suspends right to compensation, and if persisted in after direction by the court, compensation is barred for the period. Persistence in unsanitary or injurious practices will lead to a reduction or suspension of compensation. Physicians in attendance must testify, communications made by the workman at any examination not to be considered as privileged.]

SEC. 20. Attachment, etc.—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.

SEC. 21. Safety laws.—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.

SEC. 22. Fees.—[No fees of attorneys, agents or interpreters may exceed five per cent of the whole amount received or to be received by any beneficiary or beneficiaries on account of injuries to any workman.]

SEC. 23. Medical examination on entering employment.—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.

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.

SEC. 24. Examinations of beneficiaries; powers of courts; third party liability.—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.

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.

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.

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 \$1,000 for any such offense.

In case for any reason any section, paragraph, clause, or provision of this act shall be held to be unconstitutional or invalid, the same shall not be held to affect any other section, paragraph, clause, or provision hereof, which can, without the same, be administered and enforced in substantial compliance with the general intent hereof; except that sections 2 and 6 hereof are hereby declared to be inseparable, and if either of the said two sections be declared void or inoperative in an essential part, then this act shall be and be held to be void and inoperative.

NEW YORK
CONSTITUTION

ARTICLE 1.—Safety of workmen—Compensation for injuries

SECTION 19 (adopted Nov. 4, 1913). *Power of legislature.*—[Nothing in the constitution is to be construed so as to limit the power of the legislature to enact laws to protect the life, health, and safety of employees or to provide a compensation and insurance system which shall furnish the exclusive remedy for injuries to employees or death resulting therefrom, providing fixed and determinable sums in cases of death, the costs to be regarded as a proper charge in the cost of operating the business of the employer.]

CONSOLIDATED LAWS

CHAPTER 67 (added by chapter 41, Acts of 1914).—*Compensation of workmen for injuries*

[This statute was first enacted as chapter 816, Acts of 1913, but for constitutional reasons was reenacted as chapter 41, Acts of 1914. Amendments were made from time to time, an extensive revision and rearrangement being made in 1922 (ch. 615). Taking this revision as the basis, subsequent amendments will be noted in their proper places, but no changes prior to 1922 will be indicated.]

ARTICLE 1

SECTION 1. *Title.*—This chapter shall be known as the “workmen’s compensation law.”

SEC. 2. *Definitions.*—As used in this chapter, 1. “Hazardous employment” means a work or occupation described in section 3 of this chapter.

2. “Department” means the department of labor of the State of New York; “Commissioner” means the industrial commissioner of the State of New York; “Board” means the industrial board of the State of New York.

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 3 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 3.

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 5 of this chapter.

11. "Child" shall include a posthumous child, a child legally adopted prior to the injury of the employee, and a stepchild or acknowledged illegitimate child 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 subdivisions three or four of section 50.

13. "Manufacture," "construction," "operation," and "installation" shall include "repair," "demolition," "fabrication," 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.

SEC. 3 (as amended 1924, ch. 658). *Employments covered.*—1. Hazardous employments. Compensation shall be payable for injuries or death incurred by employees in the following employments:

Group 1. Canning of: Fish; foodstuffs; fruit; vegetables.

Group 2. Care of: Buildings; grounds; trees.

Group 3. Construction of: Bridges; buildings; car shops; conduits; curbs; dams; dynamos; electric light and power lines or appliances; electric railways; highways; incline railways; machine shops; manufacturing plants; power plants; railways; sewers; sidewalks; steam plants; steam railways; steel bridges and buildings; street railways; structures of all kinds; subaqueous works; subways; telegraph lines; telephone lines.

Group 4. Installation of: Boilers; dynamos; electric light and power lines or appliances; elevators; engines, stationary; fire escapes; heating apparatus; lighting apparatus; machinery, heavy; pipes; telephones.

Group 5. Laying of: Cables; pipes; tiles; wires.

Group 6. Manufacture of: Acids; adding machines; aeroplanes; agricultural implements; aircraft; alcohol; ammonia; ammunition; anchors; artificial ice or stone; asbestos; asphalt; asphalted paper; automobiles; baby carriages, toy; bags, cloth and paper; barrels; baskets; beds; bedsprings; belting; bicycles; biscuits; blacking or polish for shoes; blankets; boats, small; boilers; bolts; bone articles; boots; boxes; bricks; brooms; brushes; butter; buttons; cables; calcium carbide; cameras and supplies; candles; candy; canoes; canvas; caps; cardboard boxes; carpets; carpet sweepers; carriage mountings; carriages; cash registers; castings; cattle foods; celluloid; cement; cereals; charcoal; cheese; cheese boxes; chemical preparations, noncorrosive; chemicals; cigarettes; cigars; cloth; clothing; coffins; collars; color; concrete blocks; condiments; confectionery; cordage; corrosive acids or salts; corrugated paper boxes; corsets; crackers; cutlery; dairy products; door screens; doors; drugs; dyes; electric fixtures; elevators; engines, heavy and traction; excelsior; explosives; extracts; fabrics; fabrics, articles from; felt; fertilizers; fibre; films for pictures; firearms; fireproofing; fixtures, water, gas, or electric; foodstuffs; forgings; furnaces; furniture; furs; gas fixtures; gases; gasoline; gelatine; glass; glass products and wares; gloves; glue; gold ware; gunpowder; hardware; harness; hats; headings; hemp or manila products; hose, rubber; hosiery; ice, artificial; ice cream; ink; implements, agricultural; instruments; interior woodwork; iron, structural; ivory articles; japans; jewelry; kegs; leather goods and products; light machines; liquors; locomotives; machinery; machines, adding, light and threshing; malt liquors; manila or hemp products; maltesses; mattresses; meat products; meats; medicines; men's clothing; metal articles, beds, instruments, toys, utensils, and wares; metal products, sheet; metal, structural; milk products; mineral water; motor vehicles; mouldings; moving-picture films and machines; nails; oil; organs; paint; paper; paper boxes; paper, tarred, pitched, or asphalted; paste; paving blocks and material; perfumes; petroleum and products thereof; pharmaceutical preparations; photographic cameras and supplies; pianos; pipes; pitched paper; plaster, compounds of plated ware; polish for shoes; porcelain; pottery; printers' rollers; printing ink; pyroxilin and its compounds and plastics; rails; rattan ware; registers, cash; robes; ropes; rubber goods; saddlery; safes; salts, or acids, corrosive; sanitary fixtures; screens, window and door; screws; shades, window; shafting; sheet metal and products thereof; shell articles; shirts; shoddy; shoe blacking or polish; shoes; silverware; sleighs; soaps; socks;

soda water; spices; spirituous liquors; spokes; stationery; staves; steel, structural; stockings; stone, artificial; stoves; structural steel, iron or metal; sweepers, carpet; tar; tarred paper; terra-cotta; textiles; textiles, articles from; thread; threshing machines; tile; tires, rubber; tobacco, and products thereof; toilet preparations; tools; toys, metal and wooden; traction engines; trunks; tubing, metal and rubber; tubs; turpentine; typewriters; umbrellas; utensils; valises; varnish; vats; vehicles; veneer; wagons; wallpaper; water fixtures; waters, mineral or soda; wax; white ware; wicker ware; window screens and shades; wine; wire and wire goods; women's clothing; wooden articles; woodwork, interior; yarn.

Group 7. Operation of: Aeroplanes; air craft; barges; boats; boilers, stationary; cables, telegraph; car shops; cars; dynamos; electric light and power lines or appliances; electric railways; electric vehicles, rollers and engines; elevators, freight, passenger, and grain; engines, stationary and traction; gas vehicles, rollers and engines; gas wells; gasoline vehicles, rollers and engines; grain elevators; hand trucks; horse-drawn vehicles, rollers and engines; incline railways; lighters; machine shops; oil wells; plants, power and other; railways; rollers; ships; stationary engines and boilers; steam plants; steam railways; street railways; telegraph lines; telephone lines; threshing machines; traction engines; transports; trucks; tug boats; vehicles; vessels; wagons; waterworks.

Group 8. Preparation of: Fish; foodstuffs; fruit; gelatine; meat stuffs; meats; metals; minerals; paste; vegetables; wax.

Group 9. Removal of: Ashes; awnings; garbage; snow.

Group 10. Sinking of: Drilled wells; gas wells; oil wells; salt wells.

Group 11. Storage or handling of: Ammunition; cargoes; corrosive acids or salts; chemicals; explosives; gasoline; gunpowder; ice; petroleum.

Group 12. Work as: Barbers; blacksmiths; carpenters; chauffeurs; drivers; furriers; garbage sorters; horseshoers; janitors; life guards; longshoremen; marble workers; masons; movers; sheet-metal workers; teamsters; theatrical electricians, flymen, lamp operators, moving-picture machiners, property men, stage carpenters, and stage hands.

Group 13. Work at: Awning erection; blasting; bleaching; boiler covering; bookbinding; booming timber or logs; bottling; bricklaying; building care, maintenance, and salvage; cable laying or repair, underground; canning; carpentry; clam cultivating, harvesting, opening, or planting; cleaning clothes, streets, windows, or buildings; concreting; cork cutting; decorating; disinfecting; dredging; dyeing; electrotyping; embossing; engraving; excavation; glazing; grave digging; heating; ice distribution, harvesting, or storage; landscape gardening; lighting; lithographing; logging; lumbering, except operations solely for the production of firewood on farm lands, in which not more than four persons are engaged by a single employer; marble cutting; marine wrecking; milling; mining; multigraphing; oyster cultivation, planting, harvesting, or opening; ore reduction; painting; papering; paving; photo-engraving; picture hanging; pile driving; pipe covering; plastering; plumbing; printing; raffing; renovating; river driving; road building; roofing; salvaging of buildings or contents; sea food cultivation, harvesting, or planting; shaft sinking; shipbuilding; smelting; stereotyping; stone crushing, cutting, dressing, grinding, or setting; storage of all kinds and storage for hire; street cleaning or construction; structural carpentry; subaqueous construction; subway construction; tree moving, planting, trimming, and surgery; tunneling; undertaking; upholstering; warehousing; well digging or drilling; window cleaning; wrecking, marine.

Group 14. Work in: Abattoirs; bakeries; bark mills; boarding stables; breweries; caissons; clay pits; coal yards; compressed-air compartments; dining cars; distilleries; express cars; fish markets; flax mills; foundries; garages; garbage plants; gravel pits; groceries, wholesale; hotels having four or more workmen or operatives; junk dealers' places; knitting factories; laboratories; lath mills; laundries, power; life-saving stations; limekilns; livery stables; lumber yards; machine shops; markets, fish, meat, poultry; meat markets; packing houses; paper mills; parlor cars; pickle factories; planing mills; poultry markets; printing plants; pulp mills; quarries; rolling mills; sales stables; sand pits; sash and door factories; sawmills; sewage disposal plants; shale pits; shingle mills; sleeping cars; spinning manufactories;

stables, livery, boarding, or sales; storage warehouses; sugar refineries; tanneries; weaving manufactories; wholesale groceries.

Group 15. Employment as a keeper, guard, nurse, or orderly in a prison, reformatory, insane asylum, or hospital maintained or operated by the State or a municipal corporation or other subdivision thereof, notwithstanding the definitions of the terms "employment," "employer," or "employee" in subdivisions 3, 4, and 5 of section 2 of this chapter.

Group 16. Any employment by the State, notwithstanding the definitions of the terms "employment," "employer," or "employee" in subdivisions 3, 4, and 5 of section 2 of this chapter.

Group 17. Any employment enumerated in the foregoing groups and carried on by a municipal corporation or other subdivision of the State, notwithstanding the definition of the term "employment" in subdivision 5 of section 2 of this chapter.

Group 18. 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.

Group 19. An employer may bring an employment that is not listed in this section within the coverage of this chapter by securing compensation to his employee or employees engaged in such employment in accordance with section 50 of this chapter.

Any employee in the service of 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 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 commissioner, or in the event that such contract of hire was made in advance of election of the employer, such employee shall not have given to his employer and filed with the commissioner, within 20 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.

2. Occupational diseases: Compensation shall be payable for disabilities sustained or death incurred by an employee resulting from the following occupational diseases:

COLUMN 1	COLUMN 2
<i>Description of diseases</i>	<i>Description of process</i>
1. Anthrax.	1. Handling of wool, hair, bristles, hides, or skins.
2. Lead poisoning or its sequelæ.	2. Any process involving the use of lead or its preparations or compounds.
3. Zinc poisoning or its sequelæ.	3. Any process involving the use of zinc or its preparations or compounds or alloys.
4. Mercury poisoning or its sequelæ.	4. Any process involving the use of mercury or its preparations or compounds.
5. Phosphorus poisoning or its sequelæ.	5. Any process involving the use of phosphorus or its preparations or compounds.
6. Arsenic poisoning or its sequelæ.	6. Any process involving the use of arsenic or its preparations or compounds.
7. Poisoning by wood alcohol.	7. Any process involving the use of wood alcohol or any preparation containing wood alcohol.
8. Poisoning by nitro, hydro, and amido derivatives of benzene (dinitro-benzol, anilin, and others), or its sequelæ.	8. Any process involving the use of a nitro, hydro, or amido derivative of benzene or its preparations or compounds.

COLUMN 1—Continued

Description of diseases—Continued

9. Poisoning by carbon bisulphide or its sequelæ.
10. Poisoning by nitrous fumes or its sequelæ.
11. Poisoning by nickel carbonyl or its sequelæ.
12. Dope poisoning (poisoning by tetrachlor-methane or any substance used as or in conjunction with a solvent for acetate of cellulose) or its sequelæ.
13. Poisoning by formaldehyde and its preparations.
14. Chrome ulceration or its sequelæ.
15. Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye, due to tar, pitch, bitumen, mineral oil, or paraffin, or any compound, product, or residue of any of these substances.
16. Glanders.
17. Compressed-air illness or its sequelæ.
18. Miners' diseases, including only cellulitis, bursitis, ankylostomiasis, tenosynovitis, and nyctagnus.
19. Cataract in glassworkers.

COLUMN 2—Continued

Description of process—Continued

9. Any process involving the use of carbon bisulphide or its preparations or compounds.
10. Any process in which nitrous fumes are evolved.
11. Any process in which nickel carbonyl gas is evolved.
12. Any process involving the use of any substance used as or in conjunction with a solvent for acetate of cellulose.
13. Any process involving the use of formaldehyde and its preparations.
14. Any process involving the use of chromic acid or bicromate of ammonium, potassium, or sodium, or their preparations.
15. Handling or use of tar, pitch, bitumen, mineral oil, or paraffin, or any compound, product, or residue of any of these substances.
16. Care or handling of any equine animal or the carcass of any such animal.
17. Any process carried on in compressed air.
18. Any process involving mining.
19. Processes in the manufacture of glass involving exposure to the glare of molten glass.

ARTICLE 2

SECTION 10. *Compensation payable, when.*—Every employer subject to this chapter shall in accordance with this chapter secure compensation to his employees and pay or provide compensation for their disability or death from injury arising out of and in the course of the employment, without regard to fault as a cause of the injury, except that there shall be no liability for compensation under this chapter when the injury has been solely occasioned by intoxication of the injured employee while on duty or by willful intention of the injured employee to bring about the injury or death of himself or another.

SEC. 11. *Remedy exclusive.*—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, his personal representatives, husband, parents, dependents or next of kin, or anyone 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 50 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.

Sec. 12 (as amended 1924, ch. 318). *Waiting time.*—No compensation shall be allowed for the first seven days of disability, except the benefits provided for in section 13 of this chapter: *Provided, however,* That in case the injury results in disability of more than 49 days, the compensation shall be allowed from the date of the disability.

Sec. 13. *Medical, etc., aid.*—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 for such period as the nature of the injury or the process of recovery may require. 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; nor shall any claim for medical or surgical treatment be valid and enforceable, as against such employer, unless within 20 days following the first treatment, the physician giving such treatment, furnish to the employer and the industrial commissioner a report of such injury and treatment, on a form prescribed by the industrial commissioner. All fees and other charges for such treatment and services shall be subject to regulation by the commissioner 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.

Sec. 14. *Basis of compensation.*—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:

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.

Sec. 14-a (added 1923, ch. 572). *Minors illegally employed.*—[Compensation and death benefits provided by this article are doubled in the case of minors employed under 18 years of age in violation of any provision of the labor law. No insurance policy is available to protect the employer in such case, he alone being liable for the increased compensation or death benefits. A minor over 16 years of age may apply for a certificate of age to the proper certifying officer. Such certificate shall be conclusive evidence for an employer as to the age stated therein and the provisions of this section will not apply while the

minor is engaged in an employment lawful for the age and sex certified to in such certificate.]

Sec. 15 (amended 1924, chs. 317, 320, 500; 1925, ch. 656; 1926, ch. 261). *Schedule for disability.*—The following schedule of compensation is hereby established:

1. Permanent total disability: In case of total disability adjudged to be permanent 66⅔ per cent 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.

2. Temporary total disability: In case of temporary total disability, 66⅔ per cent of the average weekly wages shall be paid to the employee during the continuance thereof, but not in excess of \$3,500 except as otherwise provided in this chapter.

3. Permanent partial disability: In case of disability partial in character but permanent in quality the compensation shall be 66⅔ per cent of the average weekly wages and shall be paid to the employee for the period named in this subdivision, as follows.

Member lost	Number of weeks' compensation	Member lost	Number of weeks' compensation
a. Arm -----	312	g. First finger -----	46
b. Leg -----	288	h. Great toe -----	38
c. Hand -----	244	i. Second finger -----	30
d. Foot -----	205	j. Third finger -----	25
e. Eye -----	160	k. Toe other than great toe -----	16
f. Thumb -----	75	l. Fourth finger -----	15

m. Loss of hearing: Compensation for loss of the hearing of both ears, for 150 weeks.

n. Phalanges: Compensation for the loss of more than one phalange of a digit shall be the same as for loss of the entire digit. Compensation for loss of the first phalange shall be one-half of the compensation for loss of the entire digit.

o. Amputated arm or leg: Compensation for an arm or a leg, if amputated at or above the elbow or the knee, shall be the same as for loss of the arm or leg; but if amputated between the elbow and the wrist or the knee and the ankle, shall be the same as for loss of a hand or foot.

p. Binocular vision or per cent of vision: Compensation for loss of binocular vision or for 80 per cent or more of the vision of an eye shall be the same as for loss of the eye.

q. Two or more digits: Compensation for loss of two or more digits, or one or more phalanges of two or more digits, of a hand or foot may be proportioned to the loss of use of the hand or foot occasioned thereby but shall not exceed the compensation for loss of a hand or foot.

r. Total loss of use: Compensation for permanent total loss of use of a member shall be the same as for loss of the member.

s. Partial loss or partial loss of use: Compensation for permanent partial loss or loss of use of a member may be for proportionate loss or loss of use of the member.

t. Disfigurement: The board may award proper and equitable compensation for serious facial or head disfigurement, not to exceed \$3,500.

u. Other cases: In all other cases in this class of disability, the compensation shall be 66⅔ per cent of the difference between his average weekly wages and his wage-earning capacity thereafter in the same employment or otherwise, payable during the continuance of such partial disability, but subject to reconsideration of the degree of such impairment by the board on its own motion or upon application of any party in interest.

4. Effect of award: An award made to a claimant under subdivision 3 shall in case of death arising from causes other than the injury be payable to and for the benefit of the persons following:

a. If there be a surviving wife (or dependent husband) and no child of the deceased under the age of 18 years, to such wife (or dependent husband).

b. If there be a surviving wife (or dependent husband) and surviving child or children of the deceased under the age of 18 years, one-half shall be pay-

able to the surviving wife (or dependent husband) and the other half to the surviving child or children.

The board may in its discretion require the appointment of a guardian for the purpose of receiving the compensation of the minor child. In the absence of such a requirement by the board the appointment for such a purpose shall not be necessary.

c. If there be a surviving child or children of the deceased under the age of 18 years, but no surviving wife (or dependent husband) then to such child or children.

An award for disability may be made after the death of the injured employee.

4-a. Protracted temporary total disability in connection with permanent partial disability. In case of temporary total disability and permanent partial disability both resulting from the same injury, if the temporary total disability continues for a longer period than the number of weeks set forth in the following schedule, the period of temporary total disability in excess of such number of weeks shall be added to the compensation period provided in subdivision 3 of this section: Arm, 32 weeks; leg, 40 weeks; hand, 32 weeks; foot, 32 weeks; eye, 20 weeks; thumb, 24 weeks; first finger, 18 weeks; great toe, 12 weeks; second finger, 12 weeks; third finger, 8 weeks; fourth finger, 8 weeks; toe other than great toe, 8 weeks.

In any case resulting in loss or partial loss of use of arm, leg, hand, foot, eye, thumb, finger or toe, where the temporary total disability does not extend beyond the periods above mentioned for such injury, compensation shall be limited to the schedule contained in subdivision 3.

5. Temporary partial disability. In case of temporary partial disability resulting in decrease of earning capacity, the compensation shall be two-thirds of the difference between the injured employee's average weekly wages before the accident and his wage-earning capacity after the accident in the same or another employment but shall not exceed in total \$3,500.

6. Maximum and minimum compensation for disability: Compensation for disability shall not exceed \$20 per week nor be less than \$8 per week: *Provided, however,* That if the employee's wages at the time of injury are less than \$8 per week, he shall receive his full weekly wages.

7. 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.

8. 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 66 $\frac{2}{3}$ per cent 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 of \$500. The State treasurer shall be the custodian of this special fund, and the commissioner shall direct the distribution thereof.

9. [Employees totally or partially incapacitated for remunerative occupations, receiving rehabilitation training under the State department of education, are given an additional allowance necessary for rehabilitation, not more than \$10 of which may be expended weekly for maintenance. A vocational rehabilitation fund is maintained by payments in cases of death of persons leaving no dependents, the contribution being \$500 in each case. This fund is in the hands of the State treasurer disbursed on vouchers signed by the industrial commissioner or deputy commissioner.]

Sec. 16 (as amended 1923, chs. 536, 571; 1924 ch. 319). *Death benefits.*—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 \$200.
2. If there be a surviving wife (or dependent husband) and no child of the deceased under the age of 18 years, to such wife (or dependent husband) 30 per cent 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 a surviving child or children of the deceased under the age of 18 years, the additional amount of 10 per cent of such wages for each such child until of the age of 18 years; in case of the subsequent death or remarriage of such surviving wife (or dependent husband) any surviving child of the deceased employee, at the time under 18 years of age shall have his compensation increased to 15 per cent of such wages, and the same shall be payable until he shall reach the age of 18 years: *Provided*, That the total amount payable shall in no case exceed 66 $\frac{2}{3}$ per cent of such wages. The board 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 board the appointment of a guardian for such purposes shall not be necessary.
3. If there be a surviving child or children of the deceased under the age of 18 years, but no surviving wife (or dependent husband), then for the support of each such child until the age of 18 years, 15 per cent of the wages of the deceased: *Provided*, That the aggregate shall in no case exceed 66 $\frac{2}{3}$ per cent of such wages.
4. If there be no surviving wife (or dependent husband) or child under the age of 18 years or if the amount payable to surviving wife (or dependent husband) and to children under the age of 18 years shall be less in the aggregate than 66 $\frac{2}{3}$ per cent of the average wages of the deceased, then for the support of grandchildren or brothers and sisters under the age of 18 years, if dependent upon the deceased at the time of the accident, 15 per cent of such wages for the support of each such person until the age of 18 years; and for the support of each parent, or grandparent, of the deceased, if dependent upon him at the time of the accident, 25 per cent of such wages during such dependency. But in no case shall the aggregate amount payable under this subdivision exceed the difference between 66 $\frac{2}{3}$ per cent 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.
5. Any excess of wages over \$150 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.
6. If there be a person entitled to death benefits under the provisions of this section, who shall be under the age of 18 years, and who shall be an inmate of any institution and a public charge upon the department of public welfare of the city of New York, or any other department or body, the benefits allowed hereunder shall be payable to the said department of public welfare of the city of New York or any other department or body to the extent of the reasonable charges for the care and maintenance, during the continuance as a public charge in said institution, of said beneficiary and until the said person shall have attained the age of 18 years. Any sum or sums remaining after the said payment out of the benefits shall be distributed as provided by the other subdivisions of this section.

Sec. 17. *Aliens*.—[Aliens, nonresidents (or about to become nonresidents) of the United States or Canada, are allowed the same benefits as residents, but dependents in foreign countries are limited to the surviving wife and child or children, or if none, the surviving father or mother supported wholly or in part for the previous year. The commission may, at its option, or on the application of the insurance carrier, commute all future installments at one-half their commuted amount.]

SECS. 18 (as amended 1923, ch. 262), 19, 20 (as amended 1924, ch. 318), 21, 22 (both as amended 1923, ch. 568), 23, 24. *Procedure*.—[Notice of injury or death must be given to the commissioner and the employer within 30 days after the accident causing the same. This may be by the claimant or someone in his behalf, stating in ordinary language the facts in the case. Delivery may be by registered letter, and notice to one partner or to an agent of a corporation is sufficient. Failure to give notice unless for some sufficient reason it could not be given, or on the ground that the employer or an agent

had knowledge of the accident, or that he was not prejudiced by such failure is a bar to any claim; but notice will be deemed to have been waived unless an objection on account of failure was raised before hearing had. The injured workman must submit to such physical examination as the commissioner or board may require and refusal suspends proceedings, and no payment shall be made for the period.

A claim may be submitted at any time after seven days from an injury or at any time after a death. The commissioner or board must make such investigation as deemed necessary, and must hold a hearing on the application of either party, giving its award within 30 days after the claim was submitted. Either party may present evidence at the hearing and be represented by counsel. The decision of the board is final as to all questions of fact, and also as to questions of law unless appeal is taken within 30 days; the board may also certify questions of law to the appellate division of the supreme court. Awards draw interest from 30 days after the making thereof.

In proceedings on claims it is presumed, in the absence of substantial evidence to the contrary, that the claim comes within the provisions of this chapter, that sufficient notice was given, that the injury was not due to willful intent or intoxication while on duty. Awards may be modified by the board on its own motion, or on the application of any party in interest on the ground of a change in conditions, but such review does not affect prior payments except that an award for increased wages under subdivision 5 of section 14 may be made effective from the date of injury.

Awards or decisions of the board are final unless reversed or modified on appeal, which must be taken within 30 days. Proceedings are to be summary and such cases have precedence over all other civil cases. The board is a party to every such appeal, being represented by the attorney general. An appeal may also be taken to the court of appeals under fixed conditions. If proceedings appear not to have been brought on reasonable grounds the whole cost may be assessed upon the party bringing them. Claims of attorneys for legal services are not enforceable unless approved by the board, nor may any other fee or gratuity be exacted or received except as determined by the board. Soliciting the business or appearing before the board on behalf of a claimant or making it a business to solicit employment for a lawyer in connection with claims for compensation is a misdemeanor. Interest from the date of the award is payable on awards affirmed on appeal to the appellate division.]

SEC. 25 (as amended 1925, ch. 657; 1926, ch. 260). *Payment of awards.*—[Benefits are to be paid periodically in like manner as wages without waiting for an award by the board except in controverted cases. The first payment is due on the fourteenth day of disability and biweekly thereafter, though payments may be fixed at monthly or other periods as the board may deem advisable. The beginning of payments must be reported to the board by the employer as well as stoppage or suspension. If the employer contests the claim he must file notice of the fact with the commissioner stating the facts and the reason why compensation is not being paid. Investigation is to be made by the commissioner, who may also make inquiry as to cases in which payments are being made, the finding to properly protect the rights of the parties. If the payment is delinquent for 18 days, 10 per cent additional accrues for the benefit of the claimant until such delay or default is excused on application and a showing that conditions over which the employer or insurance carrier had no control caused such delay. No case may be closed without notice to all parties concerned and opportunity for hearing. Advance payments entitle the employer to reimbursement out of unpaid installments if claim therefor is filed before the compensation is paid. If the employer or insurer fails to make payments according to the terms of the award within 10 days thereafter, a penalty equal to 20 per cent of the unpaid compensation becomes due. Final reports are to be made within 16 days after the cessation of payments for any cause, giving accident data and the whole amount of compensation paid. Failure so to do entails a penalty of \$100, one-half to go to the permanent disability fund and one-half to the expense fund of the department. The commissioner may require the making of deposits to secure prompt and convenient payment of compensation awards. Periodical payments may be commuted in one or more lump sum payments in the discretion of the board.]

SEC. 26 (as amended 1926, ch. 256). *Defaulted payments.*—[In cases of default for 30 days after payment due, or failure to secure payments as required by

section 50 of this act, with default for 10 days, a party in interest may file with the county clerk for the county where the employer has his principal place of business a certified copy of the award, whereupon judgment must enter in conformity with the decision. If the payment in default is an installment, the commissioner may declare the entire award due and judgment be rendered accordingly, with the same effect as in suits determined by the court. Such judgment is subject to being vacated or modified to conform with later awards or decisions, and an award may be compromised by the board as may best serve the interests of the parties entitled to benefits. No fees for filing or recording transcripts are allowed.]

SEC. 27. *Deposits.*—[The board may in its discretion permit or require installment payments to be commuted at their present value and to be paid into the State fund in cases in which awards for permanent total or permanent partial disability run for 104 weeks or more, together with an additional sum to meet the expenses of administering such fund. Such payment discharges the employer or insurance carrier. The special fund so established is to be kept separate, not liable for any losses or expenses other than its own administration.]

SEC. 28 (as amended 1925, ch. 658.) *Limitations.*—[Claims are barred unless filed within one year after the injury or death giving rise thereto unless the employer has made an advance payment, and the board may at any time order a hearing in such case as though a claim had been filed. The limitation must be pleaded on the first hearing.]

SEC. 29 (as amended 1924, ch. 499.) *Third party liability.*—[Where a right of recovery lies against a third party, election must first be made whether to take compensation under this chapter or to sue for remedy against such third party. The commissioner may prescribe the mode of such election. If compensation is claimed the award operates as an assignment of the cause of action to the person liable for the payment of the award; but if election is made to proceed against a third party, the person liable for compensation must contribute only the deficiency, if any, between the recovery and the compensation payable for the injury or death. A compromise may be effected for an amount less than the compensation benefits only with the approval of the party liable for the payment of such benefits. If the beneficiaries are minors' dependents, election shall be made by or on behalf of such minor as the board may determine in such case.]

SECS. 30-34. *Employee's insurance; waivers; status of benefits.*—[No benefits, savings, or insurance of the injured employee may be considered in determining benefits under this chapter except in the case of public employees entitled to benefits under a pension system not sustained in whole or in part by contributions of the employee. No agreement by which an employee is to pay any portion of the premium for his employer's insurance is valid, and employers deducting from the wages of their employees for such purposes are guilty of a misdemeanor. Employees may not waive their rights under the act. Benefits may not be assigned, released or commuted except as provided in this chapter, and are exempt from all claims of creditors and from levy, execution, or attachment. Benefits must be paid only to beneficiaries, and in case of the death of an injured employee to whom there was due at the time any compensation, the amount shall be payable to his dependents. An award for disability may be made after the death of the injured employee. Compensation payments have the same preference against the assets of the employer or insurance carrier as allowed for unpaid wages, without limit as to the amount.]

ARTICLE 3

SECTION 37. *Definitions.*—Whenever used in this article: 1. "Disability" means the state of being disabled from earning full wages at the work at which the employee was last employed.

2. "Disablement" means the act of becoming so disabled, as defined in subdivision one.

SEC. 38. *Occupational disease.*—The disablement of an employee resulting from an occupational disease described in subdivision two of section three shall be treated as the happening of an accident within the meaning of this chapter and the procedure and practice provided in this chapter shall apply to all proceedings under this article, except where specifically otherwise provided herein.

SEC. 39. Right to compensation.—If an employee is disabled or dies and his disability or death is caused by one of the diseases mentioned in subdivision two of section three, and the disease is due to the nature of the corresponding employment as described in such subdivision in which such employee was engaged and was contracted therein, he or his dependents shall be entitled to compensation for his death or for the duration of his disablement in accordance with the provisions of article two, except as hereinafter stated: *Provided, however,* That if it shall be determined that such employee is able to earn wages at another occupation which shall be neither unhealthful nor injurious, and such wages do not equal his full wages prior to the date of his disablement, the compensation payable shall be a percentage of full compensation proportionate to the reduction in his earning capacity.

SEC. 40. Time limit.—Neither the employee nor his dependents shall be entitled to compensation for disability or death resulting from disease unless the disease is due to the nature of his employment and contracted therein within the 12 months previous to the date of disablement, whether under one or more employers.

SEC. 41. Examining physicians.—The industrial commissioner shall appoint one or more physicians whose duty it shall be to examine any claimant under this article and to make report in such form as the commissioner may require.

SEC. 42. Date of disablement.—For the purposes of this article the date of disablement shall be such date as the board may determine on the hearing on the claim.

SEC. 43. Fraud.—If an employee, at the time of his employment, willfully and falsely represents in writing that he has not previously suffered from the disease which is the cause of disability or death, no compensation shall be payable.

SEC. 44. Liability of employer.—The total compensation due shall be recoverable from the employer who last employed the employee in the employment to the nature of which the disease was due and in which it was contracted. If, however, such disease was contracted while such employee was in the employment of a prior employer, the employer who is made liable for the total compensation as provided by this section, may appeal to the board for an apportionment of such compensation among the several employers who since the contraction of such disease shall have employed such employee in the employment to the nature of which the disease was due. Such apportionment shall be proportioned to the time such employee was employed in the service of such employers, and shall be determined only after a hearing, notice of the time and place of which shall have been given to every employer alleged to be liable for any portion of such compensation. If the board find that any portion of such compensation is payable by an employer prior to the employer who is made liable to the total compensation as provided by this section, it shall make an award accordingly in favor of the last employer, and such award may be enforced in the same manner as an award for compensation.

SEC. 45. Notice.—The employer to whom notice of death or disability is to be given, or against whom claim is to be made by the employee, shall be the employer who last employed the employee during the said twelve months in the employment to the nature of which the disease was due and in which it was contracted, and such notice and claim shall be deemed reasonable as against prior employers.

SEC. 46. Employee to furnish information.—Information; penalty. The employee or his dependents, if so requested, shall furnish the last employer or the board with such information as to the names and addresses of all his other employers during the said 12 months as he or they may possess, and if such information is not furnished, or is not sufficient to enable such last employer to take proceedings against a prior employer under section 44, unless it be established that the disease actually was contracted while the employee was in his employment, such last employer shall not be liable to pay compensation, or if such information is not furnished or is not sufficient to enable such last employer to take proceedings against other employers under section 44, such last employer shall be liable only for such part of the total compensation as under the particular circumstances the board may deem just; but a false statement in the information furnished as aforesaid shall not impair the workmen's rights unless the last employer is prejudiced thereby.

SEC. 47. Presumption as to cause.—If the employee, at or immediately before the date of disablement, was employed in any process mentioned in the second column of the schedule of diseases in subdivision 2 of section 3, and

his disease is the disease in the first column of such schedule set opposite the description of the process, the disease presumptively shall be deemed to have been due to the nature of that employment.

SEC. 48. *Where disease is accident.*—Nothing in this article shall affect the rights of an employee to recover compensation in respect to a disease to which this article does not apply if the disease is an accidental personal injury within the meaning of subdivision 7 of section 2 of this chapter.

ARTICLE 4

SECTIONS 50 (as amended 1923, ch. 567), 51, 52 (as amended 1926, ch. 532), 53, 54 (as amended 1926, ch. 258), 55-57. *Security.*—[Compensation payments must be secured in one of three ways: First, by insurance in the State fund; second, insurance in any authorized stock or mutual company; and third, by furnishing satisfactory proof of financial ability of the employer to meet such payments as may become due under the act. Deposits of approved securities may be required in case of self insurers, also an agreement on the part of the employer to pay any awards commuted under section 27 into the special fund therein provided for. Permission of self-insurance may be revoked at any time for a good cause shown.

Counties, cities, villages, and towns may, by resolution of their governing bodies, participate in establishing a mutual self-insurance system on the assessment plan, the methods of which are prescribed; or such political subdivisions may insure in the State fund or with an approved insurance carrier. If they become self-insurers, municipalities are not required to furnish proof of financial ability, but must meet other requirements applicable to self-insurers. Municipal funds must be provided by levy, or if necessary, by temporary loans to meet compensation payments as they fall due.

Employers complying with the requirements as to securing the payment of compensation must post notices to that effect in and about their places of business. The commissioner may require a written statement setting forth the name of the company carrying the insurance or the manner in which the employer has complied with any provision of this chapter. Failure to respond to an inquiry constitutes presumptive evidence of neglect to comply with such provisions. Failure to secure the payment of compensation is a misdemeanor punishable by fine of not more than \$500 or imprisonment for not more than one year, or both. If the employer is a corporation, the president, secretary, and treasurer are liable for such failure.

Contributions to the State fund relieve the employer from all liability to the compensation provided for under this chapter, recourse being only to the State fund and not to the employer. Employers not insured in the State fund are relieved from liability only by the payment of the benefits by themselves or by the insurance carrier.

Policies of insurance must provide that the commissioner has the right to enforce the liability of the carrier for the benefit of the person entitled to compensation, but payment in whole or in part by either employer or the carrier is to that extent a bar to recovery against the other. Policies must also provide that notice, knowledge and jurisdiction of the employer, and awards and orders rendered against him are binding on the insurance carrier; nor shall the carrier be relieved from liability accruing during the life of the policy by reason of the insolvency or bankruptcy of the employer. Contracts or agreements indemnifying the employer from loss or damage on account of injuries to employees or the negligence of the employer or his agents are void unless covering also the liability for compensation provided for by this chapter. Contracts may not be canceled during their term without at least 10 days' notice. The cancellation of a policy of insurance in the State fund may be made only for nonpayment of premiums. Employers and the executive officers of corporations are not included in the insurance contract unless they elect to be brought within the coverage of this chapter in which case they shall be insured as employees on condition that the estimation of their wage values is reasonable and separately stated in and added to the valuation of their pay rolls upon which the premium is computed. Contractors in employments under the act subcontracting any part of their work are liable as employers unless the subcontractor primarily liable for compensation has assumed the same for his employees. An owner of timber other than farm

lands contracting for work or service in connection therewith involving a hazardous employment is liable for the compensation of employees of contractors or subcontractors injured in the course of their employment unless the person primarily liable has himself secured such benefits as provided in this chapter.

The head of any State or municipal department or board authorized to issue permits involving the employment of employees in hazardous employments as defined by this chapter may issue such permits only when the employer has produced satisfactory proof that compensation has been secured as provided by this chapter; but this does not create any liability on the part of the State or municipal department or agency to pay any compensation to the employees.]

ARTICLE 5

SECTION 90. State insurance fund.—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 applicable to the payment of losses sustained on account of insurance and to the payment of expenses in the manner provided in this chapter. Such fund shall be administered by the industrial commissioner.

SECS. 91, 92, 93 (as amended 1926, ch. 748), 94. Custody of fund; surplus; administrative expenses.—[The State treasurer is custodian of the State insurance fund under separate and additional bond. Payments are to be made on vouchers signed by the commissioner or deputy commissioner. Deposits and investments are regulated, the latter to be in accordance with the provisions of the law as to securities in which savings banks may invest. Ten per cent of the premiums collected is to be set aside as a surplus for a catastrophe fund, until \$100,000 is accumulated; thereafter 5 per cent is to be set aside until in the judgment of the commissioner the surplus is sufficiently large to cover the catastrophe hazard. Contributions may then be reduced or discontinued conditional on the maintenance of a sufficient standard. Reserves are to be set up and maintained according to rules approved by the superintendent of insurance.

The entire expense of administering the State insurance fund is to be paid out of the fund, the amount in any one year not to exceed 25 per cent of the earned premiums for that year. Officers or employees of the department having mixed duties are to be paid ratably from the administrative fund and the State insurance fund. A statement of the expenses must be included in the annual report of the commissioner to the legislature. All employees connected with the administration of the fund are subject to civil service requirement.]

SECS. 95 (as amended 1926, ch. 533), 96. Rates; dividends.—[Employments and employers in the State fund are to be classed in accordance with differences in degree of hazard for the purpose of determining premium rates; a system of merit rating may also be employed. Rates are to be as low as consistent with the maintenance of a solvent fund and reasonable reserves and surplus. Classes may also be made for the purpose of accounting and declaration of dividends but for the purpose of paying compensation the fund is a unit. Separate accounts are to be kept for each group, and if a credit remains to any group, the individual members thereof may receive as dividend such proportion of the balance as the amount of the earned premiums proportionately entitled him to. This right extends to members who have withdrawn from the group.]

SEC. 97. Accident prevention.—Groups for accident prevention. For any group established under the provisions of section 96, membership in the group of any employer otherwise entitled to be admitted thereto may be conditioned upon acceptance and maintenance of special rules as to accident prevention or medical care of employees. Such limitation of membership in the group may be established only upon proper evidence that a majority of the members of the group have approved such rules and only when such rules have been approved by the commissioner as sufficient to constitute a proper basis of differentiation as to membership in the group.

SECS. 98, 99. Collection of premiums.—[Premiums for any policy period are to be paid in advance based on the estimated expenditure of wages, with adjustments at the end of the policy period. If employers are in default, policies may be canceled after due notice, and the amount due collected by civil action.]

SEC. 100. Withdrawal from fund.—Any employer may, upon complying with subdivision 2 or 3 of section 50 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 written notice of his intention to withdraw not less than 30 days before the expiration of the period for which he has elected to insure in the fund.

SEC. 101. Records.—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, upon demand, a sworn statement of the same. Such record shall be open to inspection at any time and as often as may be necessary to verify the number of employees and the amount of the pay roll. Any employer who shall fail to keep such record, or who shall willfully falsify any such record, shall be guilty of a misdemeanor.

SEC. 102. Willful misrepresentation.—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.

SEC. 103. Inspections.—The commissioner shall have the right to inspect the plants and establishments of employers insured in the State insurance fund; and the inspectors designated by the commissioner shall have free access to such premises during regular working hours.

SEC. 104. Information confidential.—Information acquired by the State fund 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 who, without authority of the commissioner or pursuant to his regulations, or as otherwise required by law, shall disclose the same shall be guilty of a misdemeanor.

SEC. 105. Reports.—[The commissioner is to make annual reports of the State insurance fund to the superintendent of insurance of the State the same as is required of other insurance carriers; the fund is also subject to examination by the superintendent of insurance.]

SEC. 106. Advisory committee.—[An advisory committee of nine members made up of employers or officers of employers insured in the State fund is to be appointed by the governor for terms of three years, three members retiring every year. Such committee is to meet at least quarterly and consider the condition of the fund, its reserves, investments, and other matters relating to its administration. It is to have access to all records and books of account and may require the presence of officers and employees of the fund. Information obtained is confidential unless disclosed by order of the committee.]

ARTICLE 6

SECTIONS 110–112. Records; reports.—[Employers are required to keep a record of all injuries received by their employees in the course of their employment, reports thereof to be made to the commissioner in writing within 10 days after the occurrence, stating the details that may be required by the commission. Failure is a misdemeanor. Any information requested by the commission must be supplied, and any employer or his agent or employee may be examined under oath by the commissioner or other representative of the board deputized for the purpose. Employees are required to fill out blanks submitted or give good and sufficient reasons for failure so to do, the answer to be verified under oath. All books and records showing or indicating the wage expenditures of the employers must always be open for inspection by the commissioner or his auditors or inspectors.]

SEC. 113. Interstate commerce.—The provisions of this chapter shall apply to employers and employees 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: *Provided*, That awards according to the provisions of this chapter may be made by the board in respect of injuries subject to the admiralty or other Federal

laws in case the claimant, the employer, and the insurance carrier waive their admiralty or interstate commerce rights and remedies, and the State insurance fund or other insurance carrier may assume liability for the payment of such awards under this chapter.

SECS. 114-118, 119 (as amended 1926, ch. 257), 120-129. *Miscellaneous provisions.*—[Penalties are provided for false representations: limitations do not run during minority or mental incompetency in the absence of a committee or guardian; the sessions of the board are public, and the offices are to be open during all business hours; the board may adopt reasonable rules and regulations for the administration of the act. Procedure and additional evidence are not regulated by technical rules, but are to be in such manner as to ascertain the substantial rights of the employees. Declarations of deceased employees are to be received as evidence, and if corroborated by circumstances or other evidence will be sufficient to establish the accident and injury. The issuing of subpoenas, the payment of fees of witnesses (the same as in civil cases), and the taking of depositions within or without the State are provided for. In the case of dependent aliens residing abroad, transcripts of birth and marriage certificates properly authenticated may be received in evidence.

The power and jurisdiction of the department over each case is continuing, and it may from time to time modify awards and orders as in its opinion appears just. Other provisions relate to the supplying of blanks, estimates of expenses, the construction of the statute and the repeal of prior legislation.]

ACTS OF 1921

CHAPTER 50 (chapter 31 of the Consolidated Laws).—*Labor law*

[This act provides for the continuance of a department of labor with an industrial commissioner at its head, and an industrial board and industrial council. Chapter 345, acts of 1926, providing for the civil department of the State Government, and Chapter 427, acts of 1926, relating to the department of labor, effect no substantial change in titles or powers of these agencies, except that the industrial board will consist of five members instead of three, when the acts come into effect, January 1, 1927.

The sections of the act of 1921 that deal with the organization of the department and its administration of the compensation act are noted below.]

SECTIONS 10-14, 17, 19, 21, 22, 24, 26, 27, 33, 35, 37, 38-41. *Department of labor; compensation administration.*—[The department of labor is continued with an industrial commissioner at its head, appointed by the governor by and with the consent of the senate for a term of four years. A deputy commissioner and an industrial board of five members are provided for. The commissioner may appoint as many referees as necessary to perform the duties of holding hearings and conducting investigations as prescribed by the act. The commissioner as administrative head of the department is charged with the administration of the workmen's compensation act, and may sit with the industrial board in considering any matter except reviews under the provisions of the workmen's compensation law.

The industrial board has power to hear and determine all claims for compensation under the workmen's compensation law as therein provided, to require medical services, to enter orders and in general to carry out and enforce the provisions of the act. Annual reports are required, the commissioner, a member of the board, the deputy commissioner, referees and other officers may administer oaths and compel the attendance of witnesses, the production of books, papers, etc., and hold investigations or hearings and make inquiries, decisions rendered thereon becoming the order of the department when approved and confirmed by the commissioner or board and filed in its office. The commissioner and board are not bound by technical rules of evidence and are to conduct all hearings according to procedure prescribed by them respectively.]

NORTH DAKOTA

ACTS OF 1919.

CHAPTER 162.—*Compensation of workmen for injuries—State insurance fund*

SECTION 1. *Remedy exclusive.*—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.

SEC. 2 (as amended 1921, ch. 142: 1925, ch. 222). *Definitions.*—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 except also any employment of a 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, and excluding also any executive officer of a business concern who receives a salary of more than \$2,400 per year.

"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 corporations, 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 willful act of a third person directed against an employee because of his employment, but shall not include injuries caused by the employee's willful intention to injure himself or to injure another. The term "injury" includes in addition to an injury by accident, any disease proximately caused by the employment. 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 12 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 12 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 large regular wage, only such larger wages shall be taken in consideration in computing his average weekly wages.

"Child" includes step-children, adopted children, posthumous children, and acknowledged illegitimate children but does not include married children unless dependent. "Brother" and "sister" include step-brothers and step-sisters, 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 18 years of age or over that age and incapable of self-support. "Parent" includes step-parents and parents by adoption. "Widow" includes only 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" includes 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 (as amended 1921, ch. 141; 1925, ch. 223). *Benefits; medical, etc., aid; schedule.*—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 the 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 66⅔ 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 66⅔ 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 66⅔ per cent of his weekly wages for the following periods:

	Weeks
For a 1 per cent disability.....	5.2
For a 10 per cent disability.....	52.0
For a 20 per cent disability.....	104.0
For a 30 per cent disability.....	156.0
For a 40 per cent disability.....	208.0
For a 50 per cent disability.....	260.0
For a 60 per cent disability.....	312.0
For a 70 per cent disability.....	364.0
For a 80 per cent disability.....	416.0
For a 90 per cent disability.....	468.0

and 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, in any case, and 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 actual amount of his weekly wages. The weekly compensation for partial disability shall not be more than \$20. If the injured person was, at the time of the injury, a minor or employed in a learner's capacity, and was not physically or mentally de-

fective, the bureau shall, from time to time, determine the probable increase in weekly earning capacity of such person if such injury had not occurred, and shall base its award for compensation upon such probable weekly wage-earning capacity.

G. If death results from an injury within six years, the North Dakota workmen's compensation fund shall pay to the following persons for the periods specified a weekly compensation equal to the following percentages of the deceased employee's weekly wages: *Provided, however,* That no compensation shall be paid where death takes place more than one year after the cessation of disability resulting from the injury, or, if there has been no disability preceding death, if death takes place more than one year after the injury.

(a) To the widow, if there is no child, 35 per cent. Such 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 widower, if there is no child, 35 per cent if wholly dependent for support upon the deceased employee at the time of her death. Such compensation shall be paid until his death or marriage.

(c) To the widow or widower, if there is a child, or children, the compensation payable under clause (a) or (b), and in addition thereto 10 per cent for each child, not exceeding however, a total of 66 $\frac{2}{3}$ per cent for the widow or widower and the children. The compensation payable on account of any child shall cease when such child dies, marries, or reaches the age of 18, or, if over 18 and incapable of self-support, becomes capable of self-support.

(d) To the children, if there is no widow or widower, 25 per cent for one child and 10 per cent additional for each additional child, not exceeding, however, a total of 66 $\frac{2}{3}$ per cent, the compensation hereunder not to be for specific children but to be divided share and share alike. Compensation for each child shall be paid until such child dies, marries, or reaches the age of 18, or, if over 18 and incapable of self-support, becomes capable of self-support. Compensation for 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, 25 per cent; if both are wholly dependent, 20 per cent to each; if one or both are partly dependent, a proportionate amount in the discretion of the bureau. The foregoing percentages shall be paid only if there is no widow, widower, or child. If there is a widow, widower, or child, there shall be paid only so much of the foregoing percentages as, when added to the total of the percentages payable to the widow, widower, and children, shall not exceed the total of 66 $\frac{2}{3}$ 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, 20 per cent to such dependent; if more than one are wholly dependent, 30 per cent, divided among such dependents share and share alike; if none of them are wholly dependent, but one or more are partly dependent, 10 per cent divided among such dependents share and share alike. The foregoing percentages shall be paid only if there is no widow, widower, child, or dependent parent. If there is a widow, widower, child, or dependent parent, there shall be paid only so much of the foregoing percentages as, when added to the total percentages payable to the widow, widower, children, and dependent parents, shall not exceed a total of 66 $\frac{2}{3}$ 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 of the employee, 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 18, or, if over 18 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 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: *Provided, however,* That nothing herein contained shall be construed

to increase the compensation of the children of a widow or widower upon his or her remarriage.

(i) In case there are two or more classes of persons entitled to compensation under this section, and the apportionment of such compensation, hereinbefore 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 or she 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.

H. In case of death or of permanent total or if [of] 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 4 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.

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 expenses not to exceed \$150.

SEC. 4 (as amended special session 1919, ch. 73; 1921, ch. 145; 1925, ch. 220). *Bureau created.*—[A bureau known as the workmen's compensation bureau is established in the department of agriculture and labor consisting of the commissioner of agriculture and labor, the State insurance commissioner, and three compensation commissioners to be appointed by the governor and to give their entire time to the duties of the bureau. Terms of office are five years. One of the three appointees is to represent labor, one the public, and one employers; these may be removed by the governor for cause.

The commissioner of agriculture is ex officio chairman; the appointed members receive salaries of \$2,500 each per year. Provision is made for offices, a seal, the employment of assistants and clerical help, and the meeting of necessary expenses while traveling; also for expenditures to obtain statistical and other information required for the enforcement of the act, the total for all not to exceed in any one year the sum of \$55,000. The bureau may make its own rules; procedure is to be summary and simple without regard to the usual common-law or statutory rules of evidence; it may subpoena witnesses, administer oaths, examine books and papers, and is to furnish necessary blanks. A majority of the bureau constitutes a quorum, but neither employers nor employees are to remain without a representative for more than 30 days by reason of the death, resignation, or removal of their representative. Investigations and decisions made by a member, when approved and confirmed by a majority of the board are to be deemed as the act of the bureau. The bureau is given full power and jurisdiction over every employment and place of employment subject to the act as may be necessary to adequately enforce and administer the safety regulations which are to be issued by it when necessary. It is also charged with the duty of restoring to industry those injured in the course of employment, cooperating to that end with the Federal Board of Vocational Education.]

SEC. 5 (as amended 1921, ch. 143). *Duties of employers.*—[Employers are required to furnish the bureau, on its request, with information needed by it for the purposes of this act. Persons, corporations, etc., determined by the bureau to be employers within the meaning of the act must, on notice, furnish a pay roll for the preceding 12 months and an estimated pay roll for the 12 months next succeeding, filling out any blanks received from the bureau or give in writing a good and sufficient reason for any failure so to do. The bureau or any member may examine under oath any employer or his

officers or agents for the purpose of ascertaining the information required by the act. Books and pay rolls are to be open to inspection and any willful misrepresentation as to the pay roll entails a liability in ten times the amount of the difference between the premium paid and the amount which should have been paid. The information obtained by these reports is for the exclusive use and information of the bureau and is not open to the public or available in court proceedings in which the bureau is a party; but the information contained in the reports will be tabulated and published in statistical form for general information.]

SECS. 6, 7 (as amended 1923, ch. 347; 1925, ch. 221), 8 (as amended 1921, ch. 144; 1923, ch. 349; 1925, ch. 220). *Payments to State fund, classifications.*—[Employers subject to the act must contribute to the fund in proportion to their pay roll as determined by the classifications and rates fixed by the bureau. Employers so contributing are relieved from all liability for personal injuries or death sustained by the employees, claimants under the act having recourse only to the fund and not to the employer.]

Classifications are to be made according to the degree of hazard and premium rates fixed according to the payment of compensation and the maintenance of adequate reserves and surplus. A system of merit rating within any class may be established. Accurate accounts are directed and the appropriation of 10 per cent of the reserves as a surplus, until it amounts to \$30,000, after which 5 per cent will be credited to the fund until in the judgment of the bureau an adequate guarantee fund is formed. Annual payments based on estimated wage expenditures are to be adjusted at the end of any premium period according to the actual expenditure of wages for that period. The concluding paragraph of section 7 reads as follows:]

Whenever a subsequent injury occurs to an employee who has been injured previously in a different employment, the risk of the employer for whom such injured person was working at the time of such subsequent injury shall be charged only with the amount of the awards resulting from such subsequent injury; and whenever such subsequent injury, in connection with a previous injury, results in a permanent total disability, the compensation which is in excess of the amount to which the injured employee would have been entitled solely by the subsequent injury shall be charged to the surplus fund and not to the classification or the risk to which the subsequent injury is charged.

[If premium payments exceed \$100 per annum, the employer has the option of paying the same in two or four installments with interest on deferred payments at the rate of 5 per cent per annum. The time for each payment is fixed, and if default occurs, penalties of 1 per cent for the first 15 days, 2 per cent for the next 15 days and 3 per cent for the next 30 days and for each 30 days thereafter, are prescribed, minimum amounts being also fixed at \$3, \$5, and \$10 for each case respectively. Collection is to be enforced by proceedings brought by the attorney general; judgments being a prior lien over all other judgments and liens except those now in existence, and cases arising under this section have precedence over all other civil actions. Service on nonresident employers may be made on any agent, representative, or firm within the State. Garnishments and attachments may be availed of, with no exemption but those that are absolute.]

SEC. 9. *Effect of compliance.*—[Employers complying with the provisions as to premium payments are not liable in any section for injury or death of employees except that in the case of minors unlawfully employed, both compensation and action at law may be availed of.]

SEC. 10 (as amended 1923, ch. 350). *Payment of benefits.*—[The bureau disburses to beneficiaries the amounts due from the fund, payments being in lieu of any and all right of action against the employer; but compensation will not be paid on account of injuries or death occurring outside the State unless the employer and the bureau have previously contracted for insurance protection for such extraterritorial employment. No employer may so contract unless his principal plant and main or general office is located within the State, and at least two-thirds of his entire pay roll is for work performed within the State.]

SEC. 11 (as amended 1925, ch. 225). *Noncomplying employers.*—[Employers subject to the act who fail to make the premium payments required are not entitled to its benefits during the period of noncompliance but are liable in actions for damages without the common-law defenses. Such employers are also subject to the action prescribed for the recovery of premiums in default.]

Employees of defaulting employers may, in lieu of bringing suit for injuries against the employer, file application to the bureau for an award of compensation, which shall thereupon hear and determine the application as in other claims before the bureau; but the amount of recovery allowed, together with reasonable costs and attorney's fees, must be paid by the employer within 30 days after notice of the determination by the bureau. In case of neglect, failure or refusal to pay, the amount constitutes a liquidated claim for damages against the employer to be recovered in an action in the name of the State for the benefit of the claimant, and no exemption except absolute exemptions will be allowed against any levy under execution pursuant to judgment in such action.]

Sec. 12. *Voluntary contributions.*—[Employers carrying on employments not classed as hazardous by the act may comply therewith and pay premiums into the fund, thereby becoming relieved of liability for injuries or death of their employees, if the injured employee has remained in their employment with notice of the fact of such payment. Every employer paying premiums, provided by this act, into the fund must post notices to that effect conspicuously in his place of employment.]

SECS. 13, 14. *Custody of fund; reinsurance.*—[The State treasurer is custodian of the workmen's compensation fund, making payment on vouchers authorized by the bureau. Separate bond is required. The bureau may reinsure any risk or any part thereof and enter into agreements of reinsurance.]

SECS. 15-18. *Procedure.*—[Claim by the claimant or some one in his behalf must be made within 60 days after injury or death. Claims are to be on forms furnished by the bureau, containing prescribed information and may be delivered at the office of the bureau or to a designated representative, or by mail. Injured employees must as often as may be reasonably required submit to medical examinations at the instance of the board. A physician employed by the injured man may be present. Examinations after the first entitle the employee, in the discretion of the bureau, to reasonable traveling and other expenses and loss of wages incurred. Refusal or obstruction of examination suspends benefits for the period, and no compensation will be paid for such time. If the bureau's physician and that of the employee disagree, an impartial physician shall be called in.]

The bureau's power and authority to hear and determine all questions within its jurisdiction is complete, but if the final action is a denial of all benefits on grounds owing to the basis of claimant's right, an appeal may be taken to the district court for trial in the ordinary way. The bureau will be represented by the State's attorney of the county, and an award in the claimant's favor will be paid as other awards against the compensation fund. Costs, including a reasonable attorney's fee, are to be taxed against the unsuccessful party, and the right to prosecute error exists as in ordinary cases.

Where claims have been made within the time specified, the bureau may at any time, on its own motion or on application, review an award and modify it according to facts found, or if compensation has been refused or discontinued may award payments.]

Sec. 19. *Reports of accidents.*—[Employers must keep records of all injuries received by employees in the course of their employment and report the same within one week after their occurrence to the bureau on blanks to be filled in with the desired information.]

Sec. 20. *Third party liability.*—[If a third party is liable, the injured employee or his dependents have the option of taking compensation or proceeding at law against such third party. If compensation is awarded, the fund is subrogated to the rights of the claimant, any excess recovery, less expenses and costs of action, to go to the beneficiary.]

SECS. 21, 22. *Waivers; assignments.*—[Any waiver of the employee of his rights under this act is void, nor may any portion of the premium be deducted from his wages. Assignments of claims are also void and all compensation is exempt from action by creditors.]

Sec. 23. *Misrepresentation.*—[The making of false claims or affidavits is punishable as for perjury.]

Sec. 24. *Suits.*—[The attorney general of the State, or the State's attorney of any county, must upon the request of the bureau, prosecute necessary actions or proceedings for the purpose of enforcing the act or for the recovery of moneys due or penalties assessed.]

SEC. 25. Reports.—[Annual reports of the operations of the bureau are to be made to the governor and such information as to transactions as the bureau may think useful is to be published and distributed among employers and employees.]

SEC. 26. Construction.—[The unconstitutionality of any part does not affect other parts of the act.]

SEC. 27. [Repealed.]

SEC. 28. Act in effect.—[The act became effective on its approval, March 5, 1919, disbursements from the fund to begin July 1, 1919.]

OHIO
CONSTITUTION

ARTICLE II.—Legislative—Compensation of workmen for injuries.

SECTION 35 (as amended 1923). 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. * * * Such compensation shall be in lieu of all other rights to compensation, or damages, for such death, injuries, or occupational disease, and any employer who pays the premium or compensation provided by law, passed in accordance herewith, shall not be liable to respond in damages at common law or by statute for such death, injuries or occupational disease. 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. Such board shall set aside as a separate fund such proportion of the contributions paid by employers as in its judgment may be necessary, not to exceed 1 per cent thereof in any year, and so as to equalize, in so far as possible, the burden thereof, to be expended by such board in such manner as may be provided by law for the investigation and prevention of industrial accidents and diseases. Such board shall have full power and authority to hear and determine whether or not an injury, disease or death resulted because of the failure of the employer to comply with any specific requirement for the protection of the lives, health, or safety of employees, enacted by the general assembly or in the form of an order adopted by such board, and its decision shall be final; and for the purpose of such investigations and inquiries it may appoint referees. When it is found, upon hearing, that an injury, disease, or death resulted because of such failure by the employer, such amount as shall be found to be just, not greater than 50 nor less than 15 per cent of the maximum award established by law, shall be added by the board, to the amount of the compensation that may be awarded on account of such injury, disease, or death, and paid in like manner as other awards; and, if such compensation is paid from the State fund, the premium of such employer shall be increased in such amount, covering such period of time as may be fixed, as will recoup the State fund in the amount of such additional award, notwithstanding any and all other provisions in this constitution.

GENERAL CODE

Industrial commission—Administration of workmen's insurance law

SECTIONS 871-1 (as amended 1919, p. 95), **871-2**, **871-3**, **871-4** (as amended 1915, p. 26), **871-6**, **871-8**, **871-9** (as amended 1917, p. 157), **871-12** (as amended 1913, p. 656). *Appointment and duties.*—[An industrial commission composed of three members is appointed by the governor with the advice and consent of the senate. Terms are six years and not more than two of the members may belong to the same political party. Not more than one shall represent employers and not more than one employees. Members may be removed by the governor at any time for inefficiency, neglect of duty or misconduct; they may hold no position of trust or profit or engage in conflicting business. Salaries are \$4,000 each. An office is provided at Columbus where sessions are to be continuous of which records must be kept. The commission has an official seal and exercises all the duties of the State liability board of awards which it supersedes.]

*Workmen's insurance—State liability board*¹

(P. 524, Acts of 1911; amended, pp. 72 and 396, Acts of 1913.)

SECTIONS 1465-37, 1465-41, 1465-44. *Board created; powers.*—[A State liability board of awards (now superseded) was created to administer the act of 1911. A majority of the board constitutes a quorum for the transaction of business, and one member may hold hearings, make investigations, inquiries, and decisions, which when approved and confirmed by a majority become the order of the board. Sessions may be held at any place within the State. The board has authority to adopt reasonable and proper rules for its proceedings, the service of notices, forms of applications, methods of investigations, examination, and inspection and to prescribe the time for making awards.]

SECS. 1465-45 (as amended 1919, p. 313), 1465-46. *Reports by employers.*—[Employers must, on request of the industrial commission, furnish all information required by it for the purposes of carrying out the act. Annual reports must be made by all employers of five or more employees regularly in the same business, stating the number of employees during the year, the kinds of employment and the aggregate wages paid. Blanks submitted must be correctly filled or a sufficient reason given in writing for any failure so to do. Investigations may be made for the purposes of ascertaining information required to be furnished by employers under this act. Such information is exclusively for the use of the commission, but may be published in statistical form for public and official use. Penalties are provided for divulging information obtained by the commission.]

SECS. 1465-47 to 1465-49 (all as amended 1919, p. 313), 1465-50 (as amended 1917, p. 157), 1465-51, 1465-52. *Powers and duties of members.*—[Each member of the industrial commission and its designated employees have the power to administer oaths, certify to official acts, take depositions, issue subpoenas, and compel the attendance of witnesses, the production of books, papers, etc. Refusal to comply with orders of the commission may be punished as for contempt in proceedings by the probate judge of the county on application to him. Fees and mileage are to be paid as in civil cases in courts of common pleas. Depositions may be taken within or without the State, and a transcribed copy of the evidence and proceedings properly verified may be received in evidence by the board. The board is to prepare and furnish blank forms as may be deemed proper and advisable for use in administering the act.]

SECS. 1465-53 (as amended 1919, p. 313), 1465-53a (added 1921, p. 181; amended 1925, p. 218), 1465-54 (as amended 1917, p. 157; 1919, p. 313). *Classes and rates.*—[The commission is directed to classify occupations and industries with respect to their degree of hazard and fix rates of premiums based on the pay roll of each class so as to maintain an adequate fund for the compensation provided in the act. Such rates are to be adequate also to maintain the State occupational disease fund, from which 10 per cent of the payments must be set aside for the creation of a surplus until \$250,000 is accumulated, after which not more than 5 per cent of the money paid into the occupational disease fund shall be credited to the surplus fund. Rates for each class are to be the lowest possible consistent with solvency and the maintenance of a reasonable surplus. Accurate accounts of the premiums paid in each of the several classes and losses on account of injuries and death must be kept, as well as receipts and disbursements involving each individual employer. A surplus of \$100,000 is to be accumulated by applying 10 per cent of the receipts thereto, after which not more than 5 per cent will be credited to the surplus fund. The commission has power to apply such form of rating system as in its judgment is best calculated to rate risks according to individual industrial accident experience to encourage and stimulate accident prevention.]

SECS. 1465-55 (as amended 1919, p. 313), 1465-55a (added 1921, p. 500; amended 1925, p. 218), 1465-56 (as amended 1917, p. 157; 1921, p. 181; 1925, p. 218), 1465-57, 1465-58 (as amended 1921, p. 524; 1925, p. 218), 1465-58a (added 1919, p. 277; amended 1921, p. 47), 1465-59. *Administration and custody of fund.*—[The commission is to adopt rules and regulations with respect to the collection, maintenance, and disbursements of the State insurance fund, providing for the return of excess surplus accruing in any case in the form of cash refunds or credit premiums; also for adjustments of estimated pre-

¹ This board is superseded by the Industrial Commission of Ohio. See sections 871-1, etc., above.

miums on the basis of actual pay roll for the period. An audit by the auditor of State is authorized and directed covering the State insurance fund and the fund for investigation and prevention of industrial accidents and diseases, to be made at such time as he may deem necessary.

The treasurer of the State is custodian of the funds, giving separate bond therefor, making payments therefrom of vouchers authorized by the industrial commission; provision is made for deposits and investments in designated securities.]

SEC. 1465-60 (as amended 1919, p. 313; 1923, p. 274). *Employers*.—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 three or more workmen or operatives regularly in the same business, or in or about the same establishment under any contract or hire, express, or implied, oral or written.

SEC. 1465-61 (as amended 1917, p. 157; 1919, p. 313; 1923, p. 274). *Employees*.—The terms "employee," "workman" and "operative" as used in this act, shall be construed to mean:

1. Every person in the service of the State, or of any county, city, 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 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 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 sections 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.

SECS. 1465-62, 1465-63 (as amended 1919, p. 555; 1923, p. 264; 1925, p. 507), 1465-64 to 1465-67. *Public employees*.—[Employers designated in subsection 1 of section 1465-60 must contribute to the State insurance fund proportionately to the pay roll of employees as is designated in subsection 1 of section 1465-61. Premium rates are prescribed by the act for the different classes of employers and adjustments between funds are provided for. The industrial commission must inform the general assembly on the first day of each regular session as to the estimated amount of money required to be contributed by the State for the two years next ensuing as its proper portion of the insurance fund. Lists are to be made up showing expenditures of cities, counties, townships, school districts, etc., with provision for making payments to injured employees and the dependents of those killed. Separate accounts are to be maintained of the money paid into the State fund by the State and its political subdivisions and the disbursements made therefrom.]

SEC. 1465-68 (as amended 1925, p. 218). *Payments from funds*.—Every employee mentioned in section 1465-61, 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 1, 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 medi-

cal, nurse, and hospital services and medicines, and such amount of funeral expenses as are payable in the case of other injured or killed employees.

Every employee mentioned in section 1465-61, 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 1465-69, 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 1465-79 to 1465-87 inclusive.

Any member of a partnership, firm, or association composed of two or more individuals, who is paid a fixed compensation for services rendered to such partnership, firm, or association, 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, shall be paid such compensation and benefits as are provided in case of other injured, diseased, or killed employees by this act, provided such partnership, firm, or association includes in the pay roll furnished by it to the industrial commission the compensation of such member and pays the premium based thereon.

SEC. 1465-68a (added 1921, p. 181). *Occupational diseases*.—Every employee who is disabled because of the contraction of an occupational disease as herein defined, or the dependents of an employee whose death is caused by an occupational disease as herein defined, shall, on and after July 1, 1921, be entitled to the compensation provided by sections 1465-78 to 1465-82, inclusive, and section 1465-89 of the General Code, subject to the modifications hereinafter mentioned: *Provided*, That no person shall be entitled to such compensation unless for 90 days next preceding the filing of a claim for compensation the employee has been a resident of the State of Ohio, or for 90 days next preceding the filing of a claim for compensation has been employed by an employer required by the workmen's compensation law of Ohio to contribute to the occupational disease fund of Ohio for the benefit of such employee, or to compensate such employee directly under the provisions of section 1465-69 of the General Code.

The following diseases shall be considered occupational diseases and compensable as such, when contracted by an employee in the course of his employment in which such employee was engaged at any time within 12 months previous to the date of his disablement and due to the nature of any process described herein :

DESCRIPTION OF DISEASE OR INJURY	DESCRIPTION OF PROCESS
1. Anthrax.	Handling of wool, hair bristles, hides and skins.
2. Glanders.	Care of any equine animal suffering from glanders; handling carcass of such animal.
3. Lead poisoning.	Any industrial process involving the use of lead or its preparation or compounds.
4. Mercury poisoning.	Any industrial process involving the use of mercury or its preparations or compounds.
5. Phosphorus poisoning.	Any industrial process involving the use of phosphorus or its preparations or compounds.
6. Arsenic poisoning.	Any industrial process involving the use of arsenic or its preparations or compounds.
7. Poisoning by benzol or by nitro and amidoderivatives of benzol (dinitro-benzol, anilin and others).	Any industrial process involving the use of benzol or a nitro—or amido—derivative of benzol or its preparations or compounds.
8. Poisoning by gasoline, benzine, naphtha, or other volatile petroleum products.	Any industrial process involving the use of gasoline, benzine, naphtha, or other volatile petroleum products.

DESCRIPTION OF DISEASE OR INJURY—CON.

DESCRIPTION OF PROCESS—CON.

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| 9. Poisoning by carbon bisulphide. | Any industrial process involving the use of carbon bisulphide or its preparations or compounds. |
| 10. Poisoning by wood alcohol. | Any industrial process involving the use of wood alcohol or its preparations. |
| 11. Infection or inflammation of the skin on contact surfaces due to oils, cutting compounds or lubricants, dust, liquids, fumes, gases or vapors. | Any industrial process involving the handling or use of oils, cutting compounds or lubricants, or involving contact with dust, liquids, fumes, gases or vapors. |
| 12. Epithelioma cancer or ulceration of the skin or of the corneal surface of the eye due to carbon, pitch, tar or tarry compounds. | Handling or industrial use of carbon, pitch or tarry compounds. |
| 13. Compressed air illness. | Any industrial process carried on in compressed air. |
| 14. Carbon dioxide poisoning. | Any process involving the evolution or resulting in the escape of carbon dioxide. |
| 15. Brass or zinc poisoning. | Any process involving the manufacture, founding, or refining of brass or the melting or smelting of zinc. |

Sec. 1465-68b (added 1921, p. 181). *Rights of employees.*—[Employees mentioned in the next preceding section and dependents of such employees and employers of the same are entitled to all the rights and subject to all the liabilities and penalties provided for by the act with the exception of 1465-90, which is not to apply to cases of an occupational disease, subject also to such other modifications or exemptions as are hereafter provided. The commission administers the occupational-disease fund with the same power and authority as the State insurance fund for compensation for injured employees.]

Sec. 1465-68c (added 1921, p. 181). *Restrictions.*—No compensation shall be awarded on account of disability or death from disease suffered by an employee who, at the time of entering into the employment from which the disease is claimed to have resulted, shall have willfully and falsely represented himself as not having previously suffered from such disease. Compensation shall not be awarded on account of both injury and disease, except when the disability is caused by such disease and an injury, in which event the commission may apportion the payment of compensation provided for in sections 1465-79 to 1465-82, General Code, inclusive, between the funds as in their judgment seems just and proper. If an employee is suffering from both occupational disease and an injury, and the industrial commission of Ohio can determine which is causing his disability, it shall pay compensation therefor from the proper fund.

Compensation for loss sustained on account of occupational disease by an employee mentioned in subdivision 1 of section 1465-61, General Code, or the dependents of such employee, shall be paid from the fund provided for in sections 1465-62 to 1465-67, General Code, inclusive.

Compensation for loss sustained on account of such disease by an employee mentioned in subdivision 2 of section 1465-61, General Code, or the dependents of such employee, shall be paid from the occupational disease fund or by the employer of such employee, in case such employer has elected to pay such compensation directly to his employees.

Sec. 1465-69 (as amended 1917, p. 157; 1919, p. 313; 1921, p. 491). *Private employers.*—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 premiums 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: *Provided, however,* That as to all employers who were subscribers to the State insurance fund prior to January 1, 1914, or who may first become subscribers to said fund in any other months 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 killed 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 1465-80, 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, 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, or revoke the right of such employer to pay compensation direct, 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.

Sec. 1465-69a (added 1919, p. 1145). *Duty of members of firms, etc.*—[Every member of the firm and general officers of private corporations, including public service corporations, mentioned in section 1465-60, must cause the firms and corporations which they represent to comply with the provisions of section 1465-69. Every day's refusal by such person after notice will be deemed a separate offense punishable by fine, or not more than \$500 and costs of prosecuting.]

Sec. 1465-69a [1465-69b] (added 1921, p. 151). *Payments to occupational disease fund.*—[Private employers under the act must pay into the occupational disease fund such amounts as the industrial commission may fix as premiums

according to classifications, rules, and rates for the occupation or employment of such employer. Semiannual payments are provided for. Self-insurance is permitted in respect of occupational diseases as for accidents, but they must contribute to the surplus of the occupational disease fund as provided in section 1465-53a.]

SEC. 1465-70. *Exemption from suits.*—[Employers complying with provisions as to securing payments are exempt from liability and damages at common-law or by statute, save as hereafter provided in case of injuries to the employees.]

SEC. 1465-71 (as amended, 1925, p. 218). *Small employers.*—[Employers of less than three workmen or operatives who pay into the State insurance fund premiums provided by the act are entitled to its benefits, being exempt from actions and suits for damages if their workmen remain in service with notice that the employer has paid such premiums. Any employer of one or more workmen or servants not employees within the classification defined in sections 1465-60 and 1465-61 may likewise insure in the State fund with similar effect.]

SEC. 1465-71a (added 1925, p. 218). *Notice of compliance.*—[Employers under the act, whether insuring in the State fund or self-insurers, must post conspicuously in their places of employment notices to that effect. The commission is to prepare semiannually a list of all employers who have complied with the workmen's compensation law, classified by counties, such list to be offered with a request for its gratuitous publication in the newspapers in the county seat of each county.]

SEC. 1465-72. *Disbursements to employees.*—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 funeral expenses as would have been paid and furnished by virtue of this act under a similar state of facts, by the state liability board 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 his 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 1919, p. 313). *Limitation.*—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.

SEC. 1465-72b (added 1921, p. 181; amended 1925, p. 218). *Same.*—In all cases of occupational disease, or death resulting from occupational disease, claims for compensation shall be forever barred, unless, within four months after the disability due to the disease began, application shall be made to the industrial commission of Ohio, or to the employer in the event such employer has elected to pay compensation direct, except in such cases as are provided for in section 1465-82, subdivision 4, General Code.

SECS. 1465-73, 1465-74 (as amended 1925, p. 218). *Failure of employers to secure payments.*—[Employers named in subdivision 2 of section 1465-60 who fail to comply with the provisions of section 1465-60 are not entitled to the benefits of the act during the period of their noncompliance, but are liable in actions for damages by injured employees or their dependents, the common-law defenses being abrogated. In lieu of proceeding in a suit for damages, an

employee suffering from injury or occupational disease, or his dependents in case of his death, may file an application with the commission for compensation to be heard and determined as other claims. Employers are obligated to pay the award or furnish a bond in such amount as the commission may require to secure its payments. On failure to comply with these requirements the award constitutes a liquidated claim for damages on which the attorney general shall forthwith institute a civil action for collection. Prompt procedure and early determination are provided for. Likewise proceedings may be instituted against self-insurers who have failed to make the payments of compensation or medical, etc., aid provided by the law. The payments of any judgment recovered as herein provided entitle the claimant to the compensation provided by the act. The attorney general is to report his efforts to recoup the State fund as herein provided, and if he certifies that such award can not be collected, the whole award shall be paid from the surplus created by section 1465-54 and any sum recovered on account of such award shall be credited to such fund as the commission may designate.]

SEC. 1465-75 (as amended 1919, p. 1145; 1925, p. 218). *Payment of premiums; default.*—[If the industrial commission finds that any employer is or has been at any time after January 1, 1923, an employer as named in subdivision 2 of section 1465-60. It shall determine the amount of premium payable by it or him for the period covered by such findings, and an estimated premium for the succeeding six months if the employer is subject to the act at the time of such determination. If the employer fails or refuses to furnish the pay roll required and pay the premium, or to become a self insurer, within 10 days after receiving notice, the commission will determine the amount of premium involved and order the same to be paid. If not paid within 10 days, civil action will be instituted by the attorney general, and unless bond is issued to secure payment if judgment is rendered against him, the commission shall appoint a receiver for the property and business of the employer in the State to take charge thereof and administer it under the orders of the court. Employers who have complied with the act, but who default in payments to the insurance fund for 10 days are subject to the same proceedings. The judgment shall not be a bar to the adjustment of the premiums provided for in section 1465-55. Defaults of less than 60 days' duration may be waived for good cause shown, and upon the payment of the premium for the period the employer and his employees will be entitled to the benefits and immunities provided by the act.

Payments of premiums for the period found by the commission entitles employees to benefits provided by the act, but claims arising during such period shall be determined as if filed against a noncomplying employer, and shall be paid from the State fund, the employer to indemnify it for such payments, for which bond may be required. The efforts of the attorney general to recoup the fund, and payments of compensation from the surplus are provided as in the case of noncomplying employers.]

SEC. 1465-76. *Willful injuries.*—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 22 [section 1465-69, General Code] 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 requirement 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.

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 22 [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 43 hereof. [Section 1465-90, General Code.] 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 22 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. Judgments.—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.

SEC. 1465-78. Waiting time.—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.

SEC. 1465-79 (as amended 1919, p. 313; 1923, p. 224). *Temporary total disability.*—In case of temporary disability, the employee shall receive 66% per cent of his average weekly wages so long as such disability is total, not to exceed a maximum of \$18.75 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 full wages; but in no case to continue for more than six years from the date of the injury, nor to exceed \$3,750.

SEC. 1465-80 (as amended 1919, p. 313; 1921, p. 291; 1923, p. 224). *Partial disability.*—In case of injury resulting in partial disability, the employee shall receive 66% per cent of the impairment of his earning capacity during the continuance thereof, not to exceed a maximum of \$18.75 per week, nor a greater sum in the aggregate than \$3,750, 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. 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 as specified herein, and shall be in addition to the compensation allowed to the claimant for the period of temporary total disability resulting from such injury, to wit:

For the loss of a thumb, 66% per cent of the average weekly wages during 60 weeks.

For the loss of a first finger, commonly called index finger, 66% per cent of the average weekly wages during 35 weeks.

For the loss of a second finger, 66% per cent of the average weekly wages during 30 weeks.

For the loss of a third finger, 66% per cent of the average weekly wages during 20 weeks.

For the loss of a fourth finger, commonly known as the little finger, 66% 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% per cent of the average weekly wages during 150 weeks.

For the loss of an arm, 66% per cent of the average weekly wages during 200 weeks.

For the loss of a great toe, 66% per cent of the average weekly wages during 30 weeks.

For the loss of one of the toes other than the great toe, 66% 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% per cent of the average weekly wages during 125 weeks.

For the loss of a leg, 66% per cent of the average weekly wages during 175 weeks.

For the loss of an eye, 66% per cent of the average weekly wages during 100 weeks.

For the permanent partial loss of sight of an eye, 66% 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.

In case an injury results in serious facial or head disfigurement which impairs the opportunities to secure or retain employment, the Industrial Commission of Ohio may, in its discretion, make such award of compensation as it may deem proper and equitable, in view of the nature of the disfigurement and not to exceed the sum of \$3,750.

The amounts specified in this clause are all subject to the limitation as to the maximum weekly amount payable as hereinbefore specified in this section.

SEC. 1465-81 (as amended 1921, p. 291; 1923, p. 224). *Permanent total disability.*—In cases of permanent total disability, the award shall be 66% 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 \$18.75 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.

SEC. 1465-82 (as amended 1917, p. 450; 1919, p. 313; 1921, p. 291; 1923, p. 224). *Death.*—In case the injury causes death within the period of two years, the benefits shall be in the amount 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 42 hereof. (Sec. 1465-89, General Code.)

2. If there are wholly dependent persons at the time of the death, the payment shall be 66% per cent of the average weekly wages, not to exceed \$18.75 per week in any case, 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 \$6,500, nor less than a minimum of \$2,000.

3. If there are partly dependent persons at the time of the death the payment shall be 66% per cent of the average weekly wages, not to exceed \$18.75 per week in any case, 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 \$6,500.

4. In cases in which compensation or disability 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 the 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.

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 16 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, or for whose maintenance such parent was legally liable at the time of his death.

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 1919, p. 313). *Dependents.*—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 dependents 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.

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.

SEC. 1465-84. *Basis for computing benefits.*—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.

SEC. 1465-85. *Young employees.*—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.

SEC. 1465-86. *Jurisdiction continuing.*—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.

SEC. 1465-87. (as amended 1917, p. 157). *Lump sums.*—The commission, under special circumstances, and when the same is deemed advisable, may commute payment of compensation or benefits to one or more lump-sum payments.

SEC. 1465-88 (as amended 1925, p. 218). *Exemptions.*—[Payments shall be made only to employees and their dependents, and are exempt from all claims of creditors and from any attachment or execution. They are likewise a preferred claim in bankruptcy assignments, taking precedence over all other claims except taxes and the cost of administration.]

SEC. 1465-89 (as amended 1917, p. 528). *Medical, etc., expenses.*—[Medical, nurse, and hospital services are to be provided in addition to compensation up to \$200, except in unusual cases where the actual costs are clearly shown to exceed that amount, when the commission shall have authority to pay such additional amounts as the satisfactory finding of facts warrants. Funeral expenses not to exceed \$150 are also to be allowed.]

SEC. 1465-89a (added 1925, p. 218). *Bureau of prevention.*—The Industrial Commission of Ohio having, by virtue of the provisions of section 35 of article 11 of the constitution of Ohio, the expenditure of the fund therein created for the investigation and prevention of industrial accidents and diseases, shall, in the exercise of such authority and in the performance of such duty, employ a superintendent and such experts, engineers, investigators, clerks, and stenographers as, in its opinion, may be deemed necessary and proper for the efficient operation of a bureau for the prevention of industrial accidents and

diseases, hereby created, and, subject to the approval of the governor, fix the schedule of compensation for such employees.

The commission shall set aside such portion of the contributions paid by employers, not to exceed 1 per cent thereof in any year, as in its judgment may be necessary for the payment of the salaries of such superintendent and the compensation of the other employees of such bureau, and the expenses of such investigations and researches for the prevention of industrial accidents and diseases as the commission shall deem proper. The superintendent, under the direction of the commission, shall conduct investigations and researches for the prevention of industrial accidents and diseases, and shall, from time to time, print and distribute such information as may be of benefit to employers and employees. The salary of the superintendent and the compensation of the other employees of such bureau, the expenses necessary or incidental to such investigations and researches for the prevention of industrial accidents and diseases, and the cost of printing and distributing such information, shall be paid by the commission from such prevention fund.

The superintendent, under the direction of the commission, shall prepare an annual report, addressed to the governor, of the expenditure of such fund, the purposes for which such expenditures have been made, and the results of such investigations and researches.

The superintendent of the bureau for the prevention of industrial accidents and diseases shall be a competent person with at least five years' experience in industrial accident or disease prevention work. Such superintendent and experts and technical assistants in such bureau, who are designated as such by the industrial commission at the time of their employment, shall be in the unclassified civil service of the State, and shall hold office during the pleasure of the commission.

The powers and duties herein devolved and imposed upon the industrial commission shall be exercised independently and without regard to the department of industrial relations.

SECS. 1465-90 (as amended 1917, p. 157; 1919, p. 313; 1921, p. 291; 1925, p. 218), 1465-91 (as amended 1921, p. 181), 1465-92, 1465-93 (as amended 1919, p. 313), 1465-94 (as amended 1919, p. 313), 1465-95 (as amended 1919, p. 313; 1925, p. 218), 1465-96, 1465-97. *Procedure.*—[The commission has full power and authority to hear and determine all questions within its jurisdiction, including extent of disability and amount of compensation, such decisions to be final. If a claim is denied as outside the jurisdiction of the commission, the claimant may file an application for a rehearing, whereupon the prior finding will be vacated and the case newly heard. If the claim is again rejected, the claimant may file a petition in the common pleas court, where proceedings will be according to the rules of civil procedure. The court shall certify its findings and the commission shall comply therewith. Costs are to be taxed against the unsuccessful party, but an attorney's fee shall not exceed 20 per cent of any award up to the sum of \$500 and 10 per cent of the amounts in excess thereof, in no case not more than \$500 in all. Either party may prosecute error as in ordinary civil cases.]

The commission is not bound by technical rules of evidence or forms of procedure other than as herein provided but may proceed so as to ascertain the substantial rights of the parties and carry out justly the spirit of the act; but no compensation shall be paid on account of occupational diseases, the existence of which is denied, unless a medical advisor, appointed by the commission, has made an examination of the case.

In actions for damages no provision of the act relating to the amount of compensation may be considered by or called to the attention of the jury. Minors are competent to act in their own rights, and no other person shall have any cause of action or right to compensation for injury to a minor workman; but payments of lump sums to minors may be made only to a legally appointed guardian.

Agreements by employees to waive their rights are void, except that a blind workman may waive compensation that may become due for injury or disability directly caused by or due to his blindness. Agreements by which employees pay any part of the insurance premiums are void.

Employees claiming compensation may be required by the commission to submit to medical examination at times and places reasonably convenient to the employee. The workman is entitled to actual and necessary expenses on

account of attendance for such examination if outside the place of residence of the claimant. Expenses of treatment away from home may likewise be authorized under extraordinary circumstances, if the commission unanimously approves. Refusal to submit to examination suspends right to consider compensation during the period of such refusal or obstruction.

All books, records, and pay rolls of employers showing or indicating the amount of wage expenditure must always be open for inspection by the commission. Employers misrepresenting their pay roll are liable in ten times the amount of the difference in premiums paid and what should have been paid, the liability to be enforced in a civil action in the name of the State.]

Sec. 1465-98. *Railway, etc., employees.*—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 State liability board of awards, 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. Payment of premium shall be on the basis of the pay roll of the workmen who accept as aforesaid.

Sec. 1465-99. *Reports of accidents.*—[Employers must keep a record of all injuries to employees and report the same to the commission within a week after the occurrence of an accident, stating the facts as to the nature, cost, etc.]

Sec. 1465-99a (added 1921, p. 181). *Reports of occupational diseases.*—Every physician in this State attending on or called in to visit a patient whom he believes to be suffering from an occupational disease as defined in this act shall, within 48 hours from the time of making such diagnosis, send to the Industrial Commission of Ohio a report stating (a) name, address, and occupation of patient; (b) name and address of business in which employed; (c) nature of disease; (d) name and address of employer of patient; (e) such other information as may be reasonably required by the Industrial Commission of Ohio.

The reports herein required shall be made on blanks to be furnished by the Industrial Commission of Ohio. The mailing of the report within the time stated in a stamped envelope addressed to the office of the Industrial Commission of Ohio shall be a compliance with this section.

Reports made under this section shall not be evidence of the facts therein stated in any action arising out of a disease therein reported.

It shall be the duty of the Industrial Commission of Ohio within 24 hours after the receipt of such report to send a copy thereof to the employer of the patient named in the report.

Whoever, being a physician practicing in the State of Ohio, neglects or refuses to make and transmit to the Industrial Commission of Ohio the report provided for in this section shall be fined not to exceed \$100 or imprisoned for not to exceed 90 days, or both, but no person shall be imprisoned under this section for a first offense, and the prosecution shall always be as and for a first offense unless the affidavit upon which the prosecution is instituted contains the allegation that the offense is a second or a repeated offense. The Industrial Commission of Ohio is directed to enforce the penal provisions of this section.

Sec. 1465-100. *Enforcement.*—[The attorney general or the prosecuting attorney of any county must institute proceedings for the enforcement of the act on the request of the commission, as also for the collection of money due the fund or any penalty.]

Sec. 1465-101 (as amended 1917, p. 6). *What agreements void.*—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.

SECS. 1465-102, 1465-103 (as amended 1921, p. 181), 1465-104 to 1465-106. *Miscellaneous provisions.*—[The commission is to make necessary expenditures to obtain statistical and other information necessary to the establishment of the classes provided for by the act. Expenditures are on vouchers signed by two members. The annual report of the commission is to include a general statement of the causes of action and decisions for which awards were made and a detailed statement of the condition of the respective funds. Classifications, rates, rules, and regulations are to be printed and distributed for public use.

No injunction may suspend or restrain orders, classifications, or rates adopted by the board or actions by State officials required in carrying out the provisions of the act. Should any section or provision of the act be unconstitutional, the unaffected parts shall stand.]

SEC. 1465-107. *Aliens.*—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.

SEC. 1465-108. *Same.*—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.

OKLAHOMA

COMPILED STATUTES—1921

Workmen's Compensation

ARTICLE I

SECTION 7282. Title.—This act shall be known as the “workmen’s compensation law.”

Sec. 7283 (as amended 1923, ch. 61). Scope.—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, water works, 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 clerical workers excepted; operation and repair of elevators in office buildings; logging, lumbering, lumber yards, 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.

Sec. 7284 (as amended 1923, ch. 61). Definitions.—As used in this act—

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 7283, except employees engaged as clerical workers exclusively, and shall not include any one engaged in agriculture, horticulture, or dairy or stock raising, or in operating any 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 ordinances, provisions equal to or better than that given under the terms of this act, 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, or labor in the employment of any person, firm, or corporation carrying on a business covered by the terms of this act, and shall include workmen associating themselves together under an agreement for performance of a particular piece of work, in which event such persons so associating themselves together shall be deemed employees of the person having the work executed: *Provided,* That if such associated workmen shall employ two or more laborers or workmen in the execution of such contract, then as to such employed workmen or laborers, both the associated employees and the principal employer shall at once become subject to the provisions of this act relating to independent contractors.

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 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 injury, 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 inter-insurance associations, or mutual associations with which employers have insured, and employers permitted to pay compensation, directly under the provisions of subdivision (d) of section 7308.

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 provisions of this act shall apply only to such employees as are engaged in manual or mechanical labor of a hazardous nature.

ARTICLE II

SECTION 7285 (as amended, 1923, ch. 61). *Compensation payable when.*—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 if he shall employ less than two workmen: *And provided further*, That the liability of any person, firm, or corporation having an interest in the subject matter, 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:

1. In the absence of provisions to the contrary in any contract with an independent contractor, such independent contractor shall be conclusively presumed to have agreed, as a part of the terms of the contract, that he will comply with the workmen's compensation laws of this State, and in case of a failure to do so, the person procuring such work to be done by independent contractors, may declare such failure a substantial violation of the contract, and terminate the same at his or their option. All unpaid balances due under such contract, or so much thereof as may be reasonably necessary, may be retained as indemnity against compensation claims under the workmen's compensation act of this State. The independent contractor shall at all times be liable for compensa-

tion due to his direct employees, or the employees of any subcontractor of such independent contractor, and the principal employer shall also be liable in the manner hereinafter specified for compensation due all such employees: *Provided, however,* That for the purposes of this act a lessor or sublessor shall be deemed not to be one having an interest in the subject matter, the principal employer, contracting employer, employer, general, intermediate, or immediate, independent contractor or intermediate contractor, of the lessee or of any subsequent sublessee, or of the employees of the lessee or of any subsequent lessee, including the employees of the subcontractors of the lessee or of any subsequent sublessee.

2. The person entitled to such compensation shall have the right to recover the same directly from his immediate employer, the independent contractor or intermediate contractor, and such claims may be presented against all of such persons in one proceeding. If it appears that the principal employer has failed to require a compliance with the workmen's compensation law of this State, by his or their independent contractor, then such employee may also proceed in the same investigation or case against such principal employer. If it shall be made to appear in such proceeding that the principal employer has failed to require a compliance with this act by his independent contractor, then such principal employer shall be liable for all such injuries to employees of his independent contractor, or the subcontractor of such independent contractor. If it appears in such proceeding that the principal employer is liable for compensation under the terms of this act, and the subcontractors of the independent contractor and their sureties are also liable, then judgment or order shall be issued against all of such parties and execution may be issued therefor, but such execution shall first be enforced against those found liable other than the principal employer, and will be enforced as against the principal employer only for the residue of such claim after exhausting the execution against others liable therefor. Payment of the compensation found due by any of the persons liable therefor shall be complete satisfaction of the claim as to other parties, but any person secondarily liable for such compensation shall have a cause of action against the person primarily liable for the recovery of any payment made on account thereof.

Sec. 7286. *Remedy exclusive; exception.*—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 action in the courts for damages on account of such injury, and in such 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 action 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.

Sec. 7287 (as amended 1923, ch. 61). *Waiting time.*—No compensation shall be allowed for the first five days of disability except the benefits as provided for in section 7288.

Sec. 7288 (as amended 1923, ch. 61). *Medical, etc., aid.*—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 may be necessary during 60 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 or neglects to provide the same within a reasonable time after knowledge of the injury, the injured employee, during the period of such neglect or failure, may do so at the expense of the employer: *Provided, however,* That the injured employee or another in his behalf may obtain emergency treatment at the expense of the employer where such emergency treatment is not provided by the employer. Whoever renders medical, surgical, or other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus, or emergency treatment, shall submit the reasonableness of the charges to the State industrial commission for its approval, and such charges shall be limited to such charges as prevail in the same community for similar treatment of like injured person, and when so approved shall be enforceable by the commission in the same manner as provided in this act for the enforcement of compensation payments: *Provided, however,* That the foregoing pro-

vision, relating to approval and enforcement of such charges, shall not apply where a written contract exists between the employer or insurance carrier and the person who renders such medical, surgical, or other attendance or treatment, nurse and hospital service, or furnishes medicine, crutches, or apparatus. The commission shall have authority to order a change of physicians at the expense of the employer when, in its judgment, such change is desirable or necessary: *Provided*, The employer shall not be liable to make any of the payments provided for in this section, in case of a contest of liability, where the commission shall decide that the injury does not come within the terms of this act.

Sec. 7289. Computation of wages.—Except as otherwise provided in this act, 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 and shall be determined 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 immediately preceding his injury, his average annual earnings shall consist of 300 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 300 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.

Sec. 7290 (as amended 1923, ch. 61). Schedule.—The following schedule of compensation is hereby established:

1. Permanent total disability. In case of total disability adjudged to be permanent, 66% per cent of the average weekly wages shall be paid to the employee during the continuance of such total disability not exceeding 500 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.

2. Temporary total disability. In case of temporary total disability, 66% per cent of the average weekly wages shall be paid to the employee during the continuance thereof, but not in excess of 300 weeks, except as otherwise provided in this act.

3. Permanent partial disability. In case of disability partial in character, but permanent in quality, the compensation shall be 66% per cent 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, 60 weeks.

First finger. For the loss of the first finger, commonly called the index finger, 35 weeks.

Second finger. For the loss of a second finger, 30 weeks.

Third finger. For the loss of a third finger, 20 weeks.

Fourth finger. For the loss of a fourth finger, commonly called the little finger, 15 weeks.

Phalange of thumb or finger. The loss of 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, 30 weeks.

Other toes. For the loss of one of the toes other than the great toe, 10 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, 200 weeks.

Arm. For the loss of an arm, 250 weeks.

Foot. For the loss of a foot, 150 weeks.

Leg. For the loss of a leg, 175 weeks.

Eye. For the loss of an eye, 100 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.

For the permanent partial loss of use of a member or sight of an eye, 66% per cent of the average weekly wage during that portion of the number of weeks in the foregoing schedule provided for the loss of such member or sight of an eye which the partial loss of use thereof bears to the total loss of use of such member or sight of an eye.

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 ankle shall be considered as 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 compensation except the benefits provided in section 7283.

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 \$3,000: *Provided*, That compensation for 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.

Hernia. In the case of an injury resulting in hernia, compensation for eight weeks and the cost of the operation shall be payable: *Provided*, That if the hernia results in a total permanent disability, then the commission may so determine said fact and award the claimant compensation for a total permanent disability.

Other cases. In this class of disabilities the compensation shall be 66% per cent of the difference between his average weekly wages and his wage-earning capacity thereafter in the same employment or otherwise payable during the continuance of such partial disability; not to exceed 300 weeks, but subject to reconsideration of the degree of such impairment by the commission on its own motion or upon the application of any party in interest.

4. Temporary partial disability. In case of temporary partial disability, except the particular cases mentioned in subdivision 3 of this section, an injured employee shall receive 66% per cent 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 the continuance of such partial disability, but not in excess of 300 weeks, except as otherwise provided in this act.

5. Limitation. The compensation payments under the provisions of this act shall not exceed the sum of \$18 per week, or be less than \$8 per week: *Provided, however*, That if the employee's wages at the time of injury are less than \$8 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.

6. Previous disability. The fact that an employee has suffered previous disability or received compensation therefor shall not preclude him from compen-

sation 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.

Sec. 7291. *Nonresident aliens.*—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.

Secs. 7292, 7293, 7294 (as amended, 1923, ch. 61), **7295, 7296, 7297** (as amended, 1923, ch. 61), **7298, 7299, 7300** (as amended, 1923, ch. 61), **7301. *Procedure.***—[Notice of injury must be given to the commission and the employer within 30 days either by the claimant or by someone in his behalf. This must be in writing and may be sent by mail to the commission by registered letter, and may be delivered to the employer in person or sent by registered letter. Failure to give notice unless excused by the commission on the ground that for sufficient reason the notice could not have been given or because the insurance carrier or employer was not prejudiced, is a bar to any claim. The injured workman must submit to medical examination from time to time if requested by the commission. If the employee or the insurance carrier desire, a physician of his own selection may be present to participate in the examination. Refusal to submit suspends and bars compensation for the period. Claim for compensation may be submitted after the expiration of the first five days of disability. If the employer and the employee have agreed, a memorandum of the agreement in a prescribed form signed by both parties may be filed with the commission, and if approved by it, the agreement, in the absence of fraud, is binding upon both parties. The commission has full power and authority to determine all questions relating to the payment of claims for compensation, and may make such investigations as it deems necessary, and on application of either party, order a hearing. As soon as practicable decisions must be filed with a statement of the conclusions of fact and law. An arbitration committee may be resorted to, one member representing the employees, one the employers, the third to be either a member of the commission or someone deputized by it. The decision of the commission is final as to questions of fact and, except as provided herein, as to question of law as well. It will be presumed in the absence of substantial evidence to the contrary that the claim falls within the provisions of the act, that sufficient notice was given, that the injury was not due to the willful intention of the employee or to his intoxication.

Review of an award may be had at any time on the motion of the commission or on the application of any party in interest and changes made therein according to any change found in conditions. Past payments are not affected.

Awards are final unless within 30 days action is commenced in the supreme court for review. The court has original jurisdiction over all such cases and proceeds in a summary manner, such cases having precedence over all other civil cases except preferred corporation commission appeals. The industrial commission is to be represented by the attorney general. If the judgment sustains an award made, the commission shall add interest at the legal rate from the date of its award from which the appeal was taken. If it appears that any proceedings have not been brought on a reasonable ground, the whole cost thereof will be assessed against the party who brought them. Claims for legal and medical services are not enforceable unless approved by the commission; if approved they become a lien on the compensation to be paid in the manner fixed by the commission.

Compensation is to be paid as wages, but the commission may, if deemed advisable, fix other periods, or may commute periodical payments to one or more lump-sum payments if in the interest of justice. Employers and insurers are permitted, and if necessary for the protection of the beneficiary, may be required to make deposits with the commission to secure the prompt and convenient payment of awards. Enforcement of payments is by recourse to the courts of the county by filing a certified copy of the commission's award whereupon a writ of execution will issue in the event of delay, on which costs may be taxed as provided by the code of civil procedure. Insurance carriers intentionally, knowingly, or willfully violating the provisions of the act shall have their license revoked by the insurance commissioner on the request of the commission. Claims are forever barred unless filed within one year after the injury.]

SEC. 7302. Injuries by third parties.—[Where a third party is liable for an injury to a workman he may elect between compensation and an action at law. If he elects to take compensation, the cost of action against the third party is assigned to the insurance carrier liable for the payment of compensation; but if the injured man proceeds at law, the insurance carrier will be liable only for the deficiency between the amount of the recovery and the compensation provided for by the act. Compromise for a less amount than the compensation award may be made only with the written approval of the commission and of the person or insurance carrier liable to pay the same.]

SECS. 7302-7306, 7307 (as amended, 1923, ch. 61). Miscellaneous provisions.—[Benefits, savings, or insurance of the injured employee are not to be considered in determining benefits under the act; nor may any agreement be made by which the employee contributes to the cost of insurance thereunder. Waivers of an employee's right are void, and claims and benefits may not be assigned, released, or commuted except as provided by the act, and are exempt from all claims of creditors or legal process. Payments may be made only to the employee. Rights and claims have the same preference as wage debts.]

ARTICLE III

SECTIONS 7308-7310, 7311 (as amended 1923, ch. 61). Insurance.—[Payments to employees must be secured by insurance in a stock or mutual company or by contracts of indemnity or interinsurance, under reasonable regulations prescribed by the commission; or by obtaining and keeping in force guaranty insurance with an authorized company; or by the establishment of a benefit scheme or insurance system in lieu of the compensation provided by the act, providing not less than the benefits therein fixed, with added benefits, if the employees contribute; or by furnishing satisfactory proof of financial ability as self-insurers, in which case the commission may require a deposit of securities or indemnity bond. Failure to comply with this section entails liability of \$1 for each employee for each day during which the failure continues, though the commission may remit the penalty for good cause shown if the employer secures compensation as provided. Employers complying with the above requirements must maintain a notice conspicuously posted in and about their places of employment stating the fact. Failure to secure the payment enables the commission to proceed on behalf of the injured employee as provided in section 7286, besides recovery of the penalty.]

Policies of insurance must contain provisions setting forth the right of the commission to enforce the same for the benefit of the person entitled, also that notice or knowledge and jurisdiction affecting the employer are binding on the carrier, as are awards and decisions rendered against him. It must also be provided that the insolvency or bankruptcy of the employer does not relieve as to injuries sustained during the life of the policy. Every contract or agreement indemnifying an employer from loss or damage on account of injuries to employees is void unless it covers the liability for payment of the compensation provided by this act. Policies may not be canceled within the time limited for their expiration without 10 days' notice to the commission and the employer.]

ARTICLE IV

SECTIONS 7312, 7313 (as amended 1923, ch. 61), 7314-7318. Industrial commission.—[An industrial commission of three members is appointed by the governor for terms of six years each. Salaries are \$3,000 each. Members select a chairman, may employ a secretary, actuary, and other assistants as deemed necessary, and shall maintain an office at the capitol. Sessions are continuous and open to the public, and may be held anywhere in the State. A majority of the commission constitutes a quorum. Investigations and hearings may be had by or before any commissioner, and his award when approved by the commission and filed in its office becomes the award or order of the commission. Commissioners have power to administer oaths, certify to official acts, take depositions, compel the attendance of witnesses, and the production of books, papers, documents, and testimony. The secretary is to keep a full and true record of all proceedings, may administer oaths, and have general charge of the office. The commission may adopt reasonable rules as to notices and their service, the nature and extent of proofs and evidence, forms of claims, the methods of making investigations and physical examinations, the time for making

adjudications and awards, the conduct of hearings and in general the carrying into effect of the act.]

SECS. 7319-7324, 7325 (as amended 1923, ch. 61), 7326, 7327. *Powers; procedure, etc.*—[The commission or a commissioner or inspector conducting investigations or hearings must keep complete record of all evidence, objections to be considered and passed on and preserved in the records. Disobedience to subpoenas is a misdemeanor, and on application of a member of the commission or its representative, a county judge shall proceed by attachment proceedings as for contempt to enforce obedience to the subpoenas issued. Mileage and witness fees are provided as in cases of civil procedure. Depositions may be taken within or without the State as prescribed in civil actions in courts of record.]

The power and jurisdiction of the commission over each case is continuing and awards may be modified as in its opinion may be justified. On the petition of a party in interest the commission will decide whether or not a final settlement may be had between the parties. The commission has power to consider such petition and the same may be dismissed if the commission is of the opinion that the case should not be set for hearing. Expenses will be paid by the employer or insurance carrier and may be included in the final award. After final award is thus made the commission has no jurisdiction over any claim for the same injury or any results arising from it. If the commission decided that the case should not be finally settled at the time of hearing the petition for such hearing will be dismissed without prejudice to either party. Appeal lies as in other cases before the commission. Annual reports as to awards made and accident data are to be made to the governor, and suitable blanks are to be prepared and distributed, employers to keep constantly a supply of application blanks on hand.]

ARTICLE V

SECTION 7328. *Penalties.*—[Penalties collected are applicable to the expenses of the commission.]

SECS. 7329-7331. *Employers' records; reports of accidents.*—[Employers are required to keep records of all injuries, fatal or otherwise, to their employees and report the same within 10 days or a reasonable time thereafter, after the occurrence of an accident. Any information required by the commission to carry out the provisions of the act must also be supplied. All books, records, and pay rolls showing or affecting wage expenditures of employers are to be open for inspection by the commission or its representatives; nor may any person be excused from testifying or producing books or papers if ordered by the commission on the ground that such evidence would tend to incriminate him or subject him to penalty or forfeiture, but no person will be prosecuted or subject to penalty on account of any transaction concerning which he has under oath testified to or produced documentary evidence of; however, there is no exemption from prosecution or punishment for perjury.]

SECS. 7332-7336. *Miscellaneous provisions.*—[False statements or representation willfully made to secure benefits for oneself or others constitutes a misdemeanor. No limitation of time runs against a minor or one mentally incompetent until a guardian or next friend is provided.]

The commissioner of labor is to render such assistance as in his judgment does not interfere with the conduct of his office.

The invalidity of any portion of this act is not to affect the validity of the whole.]

SEC. 7337. *Actions not affected.*—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.

ARTICLE VI

SECTION 7338. *Injuries causing death.*—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.

SEC. 7339. *Suits abolished.*—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 7286 and section 7336 [7337], 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 7286 and section 7336 [7337], is hereby abolished. Section 7286 is hereby abrogated, and all jurisdiction of the courts of this State over such cause, except as to the cause reserved to the State industrial commission for the benefit of injured employees in section 7286, is hereby abolished.

SEC. 7340. *Date effective.*—This act shall take effect July 1, 1915: *Provided*, That the application of this act as between employers and employees and the payment of compensation for injuries to employees shall take effect September 1, 1915.

OREGON

LAWS—1920

Workmen's Compensation Law

CHAPTER I

SECTIONS 6605-6613. *Industrial accident commission.*—[The enactment is introduced by a declaration of policy to remove the "great and unnecessary cost now incurred in litigation," and provide for the distribution of the burden of industrial injuries more fairly, "in so far as may be consistent with the rights and obligations of the people of the State."

An industrial commission is created consisting of three members appointed by the governor, not more than two to belong to the same political party. Terms are four years, but one term expiring in any year. Salaries are \$3,600 per annum. The commission organizes itself by selecting one of its members as a chairman, a majority constitutes a quorum and the commission may employ and discharge such assistants, experts and clerks as may be required in the administration of the act. The expenses of the commission for any fiscal year may not exceed 10 per cent of the receipts to the industrial accident fund for that period.

The commission may sue and be sued, has a seal, has power to hold sessions at any place within the State, administer oaths, issue subpoenas for the attendance of witnesses, the production of books, papers, etc., provide for the taking of testimony and the recording of proceedings, and in general to carry out the provisions of this act. Circuit courts or their judges are to compel obedience to the subpoenas of the commission on its application. Records of information acquired from employers of employees pursuant to the provisions of the act are not open to public inspection. Rules and regulations are to be made as to reports of accidents, payments of benefits, the use of pay-roll forms, and the attendance and testimony of employers and their representatives. Quarterly reports are to be made to the governor with full statistical information covering the acts of the commission and the receipt and disbursement of money.]

SECS. 6614 (as amended 1921, ch. 311), 6615. *Application of law.*—[All employers in the hazardous occupations named in the act are subject to its provisions unless they file written notice of an election not to be subject thereto. If an employer is engaged in hazardous occupations and another or others not so defined, he is not subject to the act as to the latter, nor are his workmen wholly engaged therein, except by an election as authorized by section 6636; but if the occupation is partly hazardous and partly nonhazardous the act applies as if it were wholly hazardous. Railroad companies operating as common carriers, including street railways, if engaged in one or more of the hazardous occupations defined in the act other than the maintenance and operation of a railroad may elect to be subject to the act as to all such hazardous occupations other than railway service, and not subject thereto as to the latter.]

Employers of employees subject to the act are also subject thereto in the absence of written notice to the employer. This option is to be exercised personally by any workman of the age of 16 years and upward; if under 16, election is to be made by a parent or guardian. The act does not apply to minors unlawfully employed.]

SEC. 6616 (as amended 1925, ch. 133). *Benefits payable, when; third party liability.*—[Workmen subject to the act sustaining personal injury by accident arising out of and in the course of employment are entitled to compensation from the industrial accident fund for any subsequent disability or death. The right to receive such compensation is in lieu of all claims against the employer for such injury or death except as specifically provided in the act. If the injury occurred away from the plant of the employer and was due to the negligence or

wrong of a third party, the workman or his dependents may elect whether to take under the act or to seek a remedy against such third party, the election to be made in advance of any suit. If compensation is elected, the cost of action against the third party is assigned to the State industrial accident commission for the benefit of the accident fund. If the proceedings are taken against the third party, the accident fund is responsible only for the deficiency, if any, between the recovery actually collected and the compensation provided or estimated by the act. If action is brought against the third party, and the commission has expended any moneys for compensation, first aid or otherwise, on behalf of the injured workman, it shall join as party plaintiff in the action, and if the recovery exceeds the benefit under the act, the commission shall be repaid the amount so expended from the judgment award. Where compensation has been paid, and the commission brings action against the third party, any excess recovery over costs and expenditures by the commission goes to the workman or his dependents. The commission may compromise such action, but any compromise which would leave a deficiency to be made good out of the accident fund may be made only with the written approval of the commission.]

Sec. 6617 (as amended 1925, ch. 40). *Hazardous occupations*.—The hazardous occupations to which this act is applicable are as follows:

- (a) Factories, mills, and workshops where power-driven machinery is used.
- (b) Printing, electrotyping, photo-engraving, and stereotyping plants where power-driven machinery is used.
- (c) Foundries, blast furnaces, mines, wells, gas works, waterworks, irrigation works, where power-driven machinery is used; reduction works, breweries, wharves, docks, dredges, 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, motor boats operated for commercial or industrial purposes.
- (j) Gravel, sand, and coal bunkers.
- (k) Flour, feed, and chop mills.
- (l) Grain elevators, grain warehouses where power-driven machinery is used, creosoting or wood-treating works, garbage works, wood saws, stevedoring, longshoring, stone crushing, stockyards and tanneries, and all occupations for which rates are expressly established by section 6624 hereof.

(m) The work performed by salaried peace officers of the State and the counties and municipal corporations of the State. The State and such counties and municipal corporations shall be deemed employers under the terms of this act and shall pay to the accident fund the payments required of employers by this act: *Provided, however*, That if any such municipal corporation has provided by municipal ordinance or by its charter for the compensation of such peace officers injured in the course of their employment, such officers so protected shall not be entitled to the benefits of this act.

Sec. 6618. *Agriculture*.—Farming and all work incidental thereto except the construction of dwelling houses, hop driers, fruit driers, stock and hay barns, are nonhazardous occupations and are subject to the provisions of this act only through compliance with section 6636.

Sec. 6619 (as amended, 1925, ch. 133). *Definitions*.—In the sense of this act words employed mean as here stated, to wit:

“Factories” mean undertakings in which the business of working at commodities is carried on with power-driven machinery, either in manufacture, repair, or change, and shall include the premises, yard, and plant of the concern.

“Workshop” means any plant, yard, premises, room, or place wherein power-driven machinery is employed and manual labor is exercised by way of trade for gain or otherwise in or incidental to the process of making, altering, repairing, printing or ornamenting, finishing, or adapting, for sale or otherwise, any article or part of any article, machine, or thing over which premises, room, or place the employer of the person working therein has the right of access or control.

"Mill" means any plant, premises, room, or place where machinery is used for any process of manufacturing, 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 any open cut from which coal is mined, or clay, ore mineral, gypsum, sand, gravel, or rock is cut or taken for manufacturing, building, or construction.

"Engineering work" means any work of construction, improvement, or alteration or repair of buildings, structures, streets, highways, sewers, street railways, railroads not then engaged in interstate commerce, logging roads, inter-urban railroads not then engaged in interstate commerce, harbors, docks, canals, electric, steam, or water power plants, telegraph and telephone plants and lines, electric light or power lines, and includes any other works of construction, alteration, or repair or other 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 who 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: *Provided*, That for the purposes of this act only, when workmen, either associating themselves together under a partnership agreement or as individuals, enter into a contract, the principal purpose of which is the performance of the labor on a particular piece of work, such work to be performed by themselves or with the assistance of other workmen employed by them, all such workmen shall be deemed employees of the persons having such work done, and not independent contractors, and in event their average daily wages are not otherwise ascertainable, they shall be deemed to be employed at the average daily wage prevailing for similar work in the community where they are employed.

"Farming" means the cultivating of land, dairying, horticultural or viticultural labor, stock or poultry raising, and operations incidental thereto; also, when incidental thereto, threshing, 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, the person operating it, or by any other person.

Any individual employer or any member of any firm subject to this act as employer may make written application to the commission to become entitled as a workman to the compensation benefit 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 accident fund at the rate and upon the wage so fixed, and thereupon shall be subject to the provisions and entitled to the benefits of this act. Any individual employer or member of a firm becoming entitled to the benefits of this act, as in this section provided, with respect to injuries sustained, 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 6624, 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.

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" 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 16 years, viz: Invalid child over the age of 16 years, daughter between 16 and 18 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 and 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 a livelihood.

The word "child," as used in this act, includes a posthumous child, a child legally adopted prior to the inquiry, an illegitimate child, 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 6624, 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.

Sec. 6620. *Election not to contribute.*—[Any employer engaged in any of the hazardous occupations named in the act may elect in writing not to contribute to the fund, whereupon he will be relieved from the obligation so to contribute, and will be liable in actions for injuries due to negligence, default, or wrongful act without the common-law defenses. Employers so electing must post notices in a conspicuous manner in a sufficient number of places reasonably to inform their workmen of the fact.]

Sec. 6621. *Status continuing.*—[Employers who do not give notice as above are subject to the provisions of the act for each succeeding year from the 30th of June unless before May 1 in some year written notice of a purpose to cease contributing to the fund is given, whereupon the status will be changed on the 1st of July next following.]

Sec. 6622 (as amended, 1921, ch. 311; 1925, ch. 133). *Recall of election; permission to engage in hazardous occupation.*—[An employer rejecting the act may at any time recall such election by filing notice with the commission and posting conspicuously notices properly dated, effective five days from the date of the filing of such notice.]

No person other than contributors to the industrial fund may engage in the hazardous occupations and until they have filed with the industrial accident commission a statement of the occupation in which it is proposed to engage, with the required data, and to engage in any such occupation until the prescribed statements have been filed is a misdemeanor, each day's violation constituting a separate offense. The persons so engaged in violation of this section are not entitled to the benefits or protection of the act, and injured employees or their dependents may elect to take under the act or seek a remedy in an action at law as provided in the section relative to recovery against a third party.]

Sec. 6623. *Rejection by employees.*—[Any workman entering employment may give notice of his intention not to be subject to the act; and if employed by an employer who has recalled his own rejection, the workman may likewise give notice not to accept the act; and if the employer has failed to give the legal notice by posting notices of an acceptance, the workman has five days after such posting in which to reject the act. If injured within such period of five days he has the option of accepting benefits or suing. Workmen so electing not to be subject to the act may at any time give notice to employers under the act recalling such election, and after 10 days such workman becomes and continues to be subject thereto. Elections are for terms of one year ending June 30, the status continuing in the absence of notice before June 1 of his purpose no longer to be subject to the act. Any coercion or restraint of employees to induce them to elect not to become subject to the act is a misdemeanor.]

Sec. 6624 (as amended, 1921, ch. 311; 1925, ch. 133). *Premium rates.*—Every employer engaged in any of the hazardous occupations enumerated in section 6617 who shall not have served notice of his election not to contribute hereunder, as in this act provided, shall, except as hereinafter provided, pay to the commission on or before the 15th day of each month a percentage of his total pay roll for the preceding calendar month of workmen subject to this act according to and at the rates hereinafter set forth, to wit:

Construction work

Subaqueous work; fire escapes, house moving; house wrecking, steeples, metal smokestacks; metal chimneys; iron or steel frame structures or parts of structures-----	\$0. 080
Tunnels; trestles; bridges; pile driving; jetties; breakwaters-----	. 065
Sewers; shaft sinking; ditches and canals, other than irrigation without blasting; erection of tanks; towers, not metal framed; windmills, not metal framed; roof work; freight and passenger elevators-----	. 060
Electric light or power plants or systems, telegraph or telephone systems; steam or electric railroads, with rock work or blasting; 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 metal work or metal ceilings in buildings; carpenter work, not otherwise specified; ship or boat rigging; ship or mill wrighting; grain elevator, not metal framed-----	. 040
Street railways without blasting; installation of steam boilers or engines; installation of dynamos; installation of automatic sprinklers; installation of machinery not otherwise specified; drilling wells-----	. 035
Street or other grading; road making; concrete foundations; asphalt laying; covering steam pipes or boilers; construction work not otherwise specified; street paving-----	. 030
Lathing; plastering-----	. 025
Plumbing; house heating or ventilating systems; inside wiring, installation of electrical apparatus or fire-alarm systems in buildings; marble, stone, or tile setting, inside work; mantle setting; glass setting; paper hanging, decorating, or painting, inside work; concrete or composition walks-----	. 020

Operation (including repair work) of—

(All combinations of materials take the higher rate when not otherwise specified.)

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; garage works; gas works; water works; steam-heating or power plants; grain elevators or grain warehouses; flour, grain, chop, and feed mills; gravel, sand, and coal bunkers; operations not otherwise specified-----	. 020

Factories using power-driven machinery

Stamping tin or metal-----	. 050
Sawmills; shingle mills; lath mills-----	. 035
Furniture, staves, veneer, box, packing cases; sash, door, or blinds; keg, pall, barrel, basket, tub, woodenware or wooden fiber ware-----	. 0275
Boiler works; paper or pulp mills-----	. 025
Foundries-----	. 0225
Canneries of fish or meat; cement manufacturing; soap tallow and grease; briquets; machine shops not otherwise specified; iron, steel, copper, zinc, brass, or lead articles or ware not otherwise specified; hardware, marble, stone, or granite works (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.....	\$0. 016
Condensed milk; creameries.....	. 0075
Printing, electrotyping; photo-engraving; engraving; lithographing....	. 005

Miscellaneous work

Operation 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 fertilizers; 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 such of his workmen subject to this act the sum of 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.

If only a part of an employer's workmen are engaged in any of the hazardous employments above specified the workmen of such employer not so engaged shall not be subject to this act nor entitled to the benefits thereof. If an employer and his workmen are engaged in two or more of such hazardous employments for which different rates of contribution are prescribed, the employer shall contribute according to the several rates applicable to the various employments in which his workmen are so engaged and according to his pay roll for each of such employments. Any workman engaged for the same employer in two or more hazardous employments shall for the purpose of determining the rate of contribution hereunder be deemed engaged solely in the employment taking the higher rate.

Every employer who is hereby required to make such payments to the commission shall, on or before the 15th day of each month, forward to the commission a signed statement showing the total pay roll of such employer for the preceding calendar month, the kind of work performed, the number of men, and the number of days worked. Failure on the part of any such employer to send such statement within 30 days after receipt of notice by the commission shall be a misdemeanor.

When during the first fiscal year any employer is a contributor to the industrial accident fund the total amount paid out of the industrial accident fund or set apart therefrom as hereinafter provided on account of injuries sustained by his workmen shall be less than 50 per cent of the amount contributed to said fund by such employer during such period, not including, however, moneys retained from the workmen's wages, the rate of contribution of such employer during the following year shall be reduced by 20 per cent of the amount heretofore prescribed; where the total amount paid out or set aside is more than 50 per cent and not more than 60 per cent of the amount contributed, the rate shall be reduced by 15 per cent; where the total amount paid out or set aside is more than 60 per cent and not more than 70 per cent of the amount contributed, the rate shall be reduced by 10 per cent. Where an employer continues as a contributor to the industrial accident fund, the rate of contribution for each succeeding fiscal year shall be determined in like manner by combining the amounts paid out and set aside on account of injuries sustained by the workmen of such employer during the entire period such employer has been subject to the act, but not more than the preceding five years, and combining, also, the amounts contributed by such employer to the accident fund during each period: *And provided further*, That no employer shall be entitled to any such reduction if the commission shall find that during the preceding fiscal year he has willfully failed to install or maintain any safety appliance, device, or safeguard required by statute. If during any fiscal year the contribution of any employer is less than \$20, the provisions of this paragraph shall not apply and rate of contribution for the ensuing year for such employer shall be base rate.

For the purpose of determining the rate as in this section provided, the amount paid out or set aside on account of an accident resulting in the fatal injury or permanent total disability of a workman shall be deemed to be the average amount paid out and set aside on account of all such injuries during the preceding fiscal year.

It shall be the duty of the commission to establish standards or rules designed to promote organization and educational work in accident prevention, and every employer subject to the act shall be entitled to a reduction, or a further reduction, in rate of 5 per cent upon compliance with such standards or rules during any fiscal year: *Provided, however,* Such employer shall file with the commission a written notice of his intention to comply with such rules, and such reduction in rate shall not become effective prior to the filing of such notice.

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 preexisting 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.

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 \$300,000, 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 \$20 or more to the fund during the preceding 12 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 contribution of all employers paid into the accident fund for the preceding 12 months.

There is hereby created a fund to be known as the "catastrophe fund." The State treasurer shall transfer \$50,000 from the industrial-accident fund to the catastrophe fund, and there shall be transferred to such fund monthly 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 a single accident causing the death or permanent total disability of more than one workman. For the purpose of determining the rate of contributors to the fund, as in this section provided, the total amount paid out and set aside in the event of a catastrophe shall be deemed to be the average amount paid out and set aside in each case of fatal injury and permanent total disability during the preceding year. The commission shall 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.

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 1, 1920, and annually thereafter, to readjust, increase, or decrease the rates of contribution contained in section 6624. Any such readjustment, increase, or decrease shall be based on the hazard of each occupation or industry as compared to the hazards of 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 6624 hereof.

The words "fiscal year" employed in this section mean the period of time commencing on July 1 and ending on the succeeding June 30.

SEC. 6625 (as amended 1921, ch. 311; 1923, ch. 256; 1925, ch. 300). *Industrial-accident fund.*—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 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, 1925, except for the period between June 30, 1925, and June 30, 1927, out of any moneys in the State treasury not otherwise appropriated, a sum equal to one-half of the total administrative expenditures of the commission, exclusive of

expenditures for physiotherapy and vocational rehabilitation, 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. 6626 (as amended 1921, ch. 311). *Compensation to be paid; schedule.*—If any workman while he is subject to this act and in the service of an employer who is thus bound to contribute to the industrial-accident fund shall sustain a personal injury by accident arising out of and in the course of his employment caused by violent or external means, he or his beneficiaries or dependents, if the injury result in death, shall receive compensation according to the following schedule:

(a) Where death results from the injury the expense of burial shall be paid in all cases, not to exceed \$100 in any case; and

(1) If the workman leave a widow or invalid widower, a monthly payment of \$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 \$8 per month for each child or dependent stepchild of the deceased under the age of 16 years at the time of the occurrence of the injury until such minor shall reach the age of 16 years. 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 \$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 16 years, a monthly payment of \$15 shall be made to each child until such child shall reach the age of 16 years: *Provided, however,* That if any child is under the age of 16 years and over the age of 15 years he shall be entitled to recover such payments for a period of one year.

(3) If the workman leaves no widow or widower or child under the age of 16 years, but leaves a dependent or dependents, a monthly payment shall be made to each dependent equal to 50 per cent of the average monthly support actually received by such dependent from the workman during the 12 months next preceding the occurrence of the injury, but the total payments to all dependents in any case shall not exceed \$30 per month. If any dependent is under the age of 16 years at the time of the occurrence of the injury, the payment to such dependent shall cease when such dependent shall reach the age of 16 years, excepting a daughter, the payment to whom shall cease when she shall have reached the age of 18 years: *Provided, however,* That if any child is under the age of 16 and over the age of 15 years, he shall be entitled to recover such payments for a period of one year. The payment to any dependent shall cease if, 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 21 years and unmarried at the time of his death, the parents or parent of the workman shall receive \$25 per month for each month after his death until the time at which he would have arrived at the age of 21 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 (of) a surviving spouse receiving monthly payments shall die, leaving a child or children under the age of 16 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 16 years, be paid to the child, increased to \$15 per month: *Provided, however,* That if any such child is under the age of 16 years and over the age of 15 years he shall be entitled to recover such payments for a period of one year. 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 hands, or one foot and one hand, total loss of eyesight, or such paralysis or other condition permanently incapacitating the workman from performing any work at any gainful occupation.

When permanent total disability results from the injury, the workman shall receive monthly during the period of such disability:

(1) If unmarried at the time of the injury, the sum of \$30.

(2) If the workman have a wife or invalid husband, but no child under the age of 16 years, the sum of \$35. If the husband is not an invalid, the monthly payment of \$35 shall be reduced to \$30.

(3) If the workman have a wife or husband and a child or children under the age of 16 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 \$8 for each such child until such child shall arrive at the age of 16 years.

(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 16 years, the surviving widow or invalid widower shall receive \$30 per month until death or remarriage, to be increased \$8 a month for each child under the age of 16 years until such child shall arrive at the age of 16 years; but if such child is or shall be without father or mother, such child shall receive \$15 per month until arriving at the age of 16 years: *Provided, however*, That if any child is under the age of 16 years, and over the age of 15 years, he shall be entitled to recover such payment for the period of one year.

Upon remarriage the payments on account of a child or children shall continue as before to the child or children.

(d) When the total disability is only temporary, the workman shall receive during the period of such total disability:

1. If unmarried at the time of the injury, or, if married, having a husband not an invalid, compensation equal to 40 per cent of wages, but not more than \$55 per month.

2. If the workman have a wife or invalid husband, but no child under the age of 16 years, compensation equal to 48 per cent of wages, but not more than \$65 per month.

3. If the workman have a wife or invalid husband and a child under the age of 16 years, 53 per cent of wages, but not more than \$73 per month.

4. If the workman have a wife or invalid husband and two children under the age of 16 years, 58 per cent of wages, but not more than \$81 per month.

5. If the workman have a wife or invalid husband and three children under the age of 16 years, 63 per cent of wages, but not more than \$89 per month.

6. If the workman have a wife or invalid husband and four or more children under the age of 16 years, two-thirds of wages, but not more than \$97 per month.

7. If the workman be a widow or widower and have one or more children under the age of 16 years, 40 per cent of wages, but not more than \$55 per month, and, on behalf of said children, 5 per cent of wages, but not more than \$8 per month additional for each child under 16 years of age.

8. In no event shall the rate of compensation for temporary total disability be less than \$30 per month for an unmarried workman, and \$40 per month for a workman having a wife or invalid husband, unless the actual wages be less than these amounts, in which event compensation equal to wages shall be paid.

9. For the purposes of this act the monthly wage of workmen shall be ascertained by multiplying by 26 the daily wage the workman was receiving at the time of his injury, or, in case the workman was regularly employed seven days a week, by multiplying by 30 the daily wage the workman was receiving at the time of his injury.

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 the 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 42 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.

(e) When the disability is or becomes partial only and is temporary in character, the workman shall receive for a period not exceeding two years that proportion of the payments provided for total disability which his earning power at any kind of work bears to that existing at the time of the occurrence of the injury.

(f) Permanent partial disability means the loss of either one arm, one hand, one leg, one foot, loss of hearing in one or both ears, loss of one eye, one or more fingers, any dislocation where ligaments are severed, or any other injury

known in surgery to be permanent partial disability. Where permanent partial disability shall result from any injury, the workman shall receive the sum of \$25 a month for the period stated against such injury, respectively, as follows:

In case of 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, 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, 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, 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, 64 months.

The permanent and complete loss of hearing in both ears, 96 months.

The permanent and complete loss of hearing in one ear, 36 months.

The permanent and complete loss of the sight of one eye, 40 months.

The loss by separation of a thumb, 24 months.

The loss by separation of a first finger, 16 months; a second finger, 9 months; a third finger, 8 months; a fourth finger, 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, 10 months; any other toe, 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, 96 months.

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.

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.

(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 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 4 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 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 fund or from the segregated fund to the accident fund.

(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.

(i) If aggravation, diminution or termination of a 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.

(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.

(k) If a beneficiary shall re-side 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 \$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 4 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. In all cases where the period of payments for permanent partial disability does not exceed 24 months, the commission may, in its discretion, pay to the injured workman in a lump sum an amount equal to the present worth of the monthly installments payable to such injured workman.

The provisions of the amendments contained in this section shall apply only to accidents and disabilities occurring on and after July 1, 1921.

Sec. 6627 (as amended 1921, ch. 311). *Willful intent*.—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.

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.

In the event that an employer subject to this act shall have in good faith employed a minor under the age permitted by law, believing him to be of lawful age, and such minor shall sustain an injury or suffer death in such employment, such minor shall be conclusively presumed to have accepted the provisions of this act and the State industrial accident commission shall have authority to determine conclusively the good faith of such employer unless the employer shall have in his possession at the time of the accident resulting

in such injury or death a certificate from some duly constituted authority of the State of Oregon, authorizing the employment of such minor in the work in which he shall be then engaged, and such certificate shall be conclusive evidence of the good faith of such employer. If such employer shall hold no such certificate and said commission shall find that such employer did not employ such minor in good faith, such minor shall be entitled to the benefits of this act, but the employer shall pay to the industrial accident fund by way of penalty a sum equal to 25 per cent of the amount paid out or set apart under this act on account of the injury or death of such minor, but such sum payable as penalty shall not exceed \$500.

Sec. 6628 (as amended 1921, ch. 311). *Medical, etc., aid.*—The commission shall have authority to provide, under uniform rules and regulations, first aid to workmen who are entitled to benefits hereunder, together with transportation, medical and surgical attendance and hospital accommodations for injured workmen 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, and may, for the purpose of experience rating only, charge to the account of such employers the average cost of such services as shown by the experience of employers in a similar industry or occupation who do not come under the provisions of this section: *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 \$100 for hospital accommodations, \$100 for surgical and medical service, and \$50 for transportation, medicine, 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 the 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.

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.

Sec. 6629 (as amended 1921, ch. 311). *Contribution; default.*—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 1 per cent per month or fraction thereof shall be added to the amount of such payment from and after the 1st 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 10 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.

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.

Every employer in default in the payment of any contributions required by this act, and who shall have received from the commission a formal notice of default for payment, is hereby required to display such notice of default by posting same in a place accessible to his workmen in such manner as to inform his workmen of such default. Failure on the part of such employer to post notice of default, as herein provided, shall be a misdemeanor.

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 any time due from such employer to the commission on account of labor performed by the workmen of such employer together with such interest and penalty upon such real property or any structure or improvement erected or made thereon, and the commission shall also have a lien on all saw logs, spars, piles, ties, or other timber, and also a lien upon all lumber while the same remains at the yard wherein manufactured, in a sum equal to the amount at any time due from any employer required to make payments hereunder on account of labor performed by the workmen of such employer, together with such interest and penalty upon such saw logs, spars, piles, ties, or other timber, and also upon such manufactured lumber. The lien hereby created shall attach from the date of the commencement of such labor upon such property and shall be prior to all other liens and encumbrances except labor liens. In order to avail itself of the lien hereby created the commission shall, within 60 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.

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.

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 defense withdrawn by section 6620 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.

SEC. 6630. *Safety laws.*—[It is the duty of the industrial accident commission to investigate cases of failure to install or maintain safety appliances and report facts of any violations of law to the prosecuting attorney for the district.]

SEC. 6631. Assignments, etc.; payments to aliens.—[Benefits under the act are exempt from assignment prior to their receipt, and may not pass by operation of the law. No money paid or payable is liable for execution, attachment, or garnishment.]

Payments to nonresident alien beneficiaries may be made to the consul general of the alien government whose receipt is a release.]

SECS. 6632 (as amended 1925, ch. 133). **6633, 6634** (as amended 1921, ch. 311), **6635. Procedure; records.**—[Claims must be filed for compensation, the attending physician to furnish a certificate on a blank furnished by the commission. If the injury is fatal, proof of death and proof of relationship must be submitted. Compensation may be readjusted on grounds of aggravation of disability subsequent to the award on application made within one year from the date of the first award of compensation. The power and jurisdiction of the commission is continuing, and it may on its own motion modify former findings or awards, but no appeal from or review of such proceedings shall be had.]

Claims in nonfatal cases must be filed within three months from the date of the injury and in fatal cases within one year. The commission may in its discretion allow one year for the filing of nonfatal claims. Willfully making false statements or representations for the purpose of obtaining benefits for oneself or another is a felony.

Workmen entitled to compensation under the act must, if requested by the commission, submit to medical examinations at times and places reasonably convenient as may be provided by the rules of the commission. Refusal suspends and bars compensation for the period thereof. If the workman commits unsanitary or injurious practices judged by the commission to tend to imperil or retard recovery, or if he refuses reasonable medical or surgical treatment, the right to compensation must be suspended and no payment made for such period, and the commission may reduce the compensation period to such an extent as they shall determine the disability to have been increased by such refusal.

An injured workman must at once report his accident, stating time, cause, and nature and other matters prescribed by the rules and regulations of the commission. Books, records, and pay rolls of the employer pertinent to the administration of the act are to be open to inspection by the commission or its agent. Employers subject to the act must keep true and accurate records of their employees, the wages paid, the occupations and the number of days worked. Willful misrepresentation entails liability in a sum equal to ten times the difference between computed contributions and that which would have been due on the correct computation. Failure or refusal to report accidents or to submit books, etc., for inspection is a misdemeanor.]

SEC. 6636 (as amended 1925, ch. 133). **Public employees; nonhazardous employments.**—[The State and its departments, subdivisions, and agencies engaged in any occupation, whether hazardous or nonhazardous, and any employer engaged in occupations other than those defined in section 6617 of the act, may make written application to the commission to fix a rate of contribution based on the hazard of the occupation and may file notice in writing of an election to contribute. Notice of the fact must be conspicuously posted, and workmen are entitled to give notice of rejection. In the absence of rejection the act applies to the employer and his employees and he or it must pay the rate of compensation fixed and is entitled to a reduction of such rate in the manner provided by section 6624 and shall retain and pay to the commission the proportion of his workmen's wages prescribed by that section.]

SEC. 6636-1 (added 1925, ch. 133), **6637** (as amended 1921, ch. 311; 1925, ch. 133). **Appeals.**—[The commission has full power and authority to hear and determine all questions within its jurisdiction. Any claimant aggrieved by its order or decision must, before he appeals to the courts, file an application for a rehearing within 60 days from the date when a copy of the order, decision or award of the commission was mailed to him. Applications shall set forth the grounds of complaint and the commission may deny the rehearing and confirm its previous decision or award, or if the evidence sustains the contention, it may allow the relief asked; otherwise it shall order a rehearing to decide the issues raised. On the rehearing all facts shall be considered, including new evidence. Within 30 days after the final order or application for rehearing or after rehearing is denied; the claimant may appeal to the circuit court on issues of law. The commission shall file a certified copy of

the documents in the case, and the court passes on the construction of law and facts rendering its decision of confirmation, reversal, or modification: If trial of fact by jury is had the court is bound by any decision of the jury as to question of fact submitted. If an award is modified or reversed it may be referred back to the commission with directions to fix the compensation according to the findings made by the court. Costs are to be taxed against the unsuccessful party.

Appeals may be taken from the judgment of the circuit court as in other cases. The attorney general is the legal adviser of the commission and he, or the district attorney of any county under his direction, must, on the request of the commission, institute or prosecute proceedings for the enforcement of the provisions of the act. The commission may employ an attorney to represent it in collecting delinquent contributions to the fund and interest and penalties accruing and to conduct actions in its behalf.]

SEC. 6638 (as amended 1921, ch. 311; 1925, ch. 133). *Disbursements.*—[Disbursements from the various funds may be made only on warrants drawn by the secretary of state on approved vouchers transmitted to him by the commission. An initial appropriation was made establishing an emergency fund. The State treasurer is custodian of the funds.]

SECS. 6639, 6640 (transitory), 6641. *Construction.*—[The act is to be liberally construed for the purpose of carrying out its intent.]

CHAPTER II

SECTION 6642. *Who are employers.*—An employer under the terms of this act shall be taken to mean all persons, firms, companies, corporations, or associations of persons, not including employers engaged in interstate commerce, doing business within this State who have been withholding or who may hereafter withhold or accept any portion of the wages of their employees for medical, surgical, or hospital care and attention.

Wherever the word "contractor" is used in this act, it shall be understood to include any individual, firm, association, or company which may contract with any employer for the medical, surgical, or hospital care and attention of his employees.

SEC. 6643. *Deductions for expenses, etc.*—On or after July 1, 1917, it shall be unlawful for any employer to deduct, withhold, or accept any portion of the wages of any employee for medical, surgical, or hospital care and attention, or to expend any portion of the wages deducted or accepted for such purpose, except as provided in this act.

SEC. 6644. *Deductions must be reasonable.*—It shall be lawful for an employer to collect or deduct a portion of the wages of his employees for medical, surgical, or hospital care and attention in such an amount and in such a manner as may be reasonable: *Provided*, That if any employee shall complain to the industrial accident commission as to the amount or manner of said deduction, then it shall be unlawful, after notice by said commission, for any employer to deduct or accept any portion of the wages of his employees, except in the manner and amounts approved by the said industrial accident commission: *Provided*, That it shall be unlawful for any employer to directly or indirectly retain any portion of the said fund, so collected, for his own use or benefit, it being the intention of this act that the money so collected by the employer shall be a trust fund and shall be kept in separate accounts and promptly paid over for the purpose for which it is so collected, and shall in no event become a part of the assets of any such employer.

SEC. 6645. *Contracts with physicians.*—It shall be lawful for employers to make contracts with contractors with regard to the funds of his employees collected under the provisions of section 6644: *Provided*, That the industrial accident commission shall have power and authority to cancel any such contract whenever it shall deem that the physician selected to give service is not reasonably competent or the service furnished is not reasonably efficient: *Provided further*, That no contract shall be valid or effective between an employer and any contractor which shall extend over a period of more than one year, except that the contractor may make a valid contract for two years with the previous consent of the commission.

SEC. 6646. *Statements of contractors.*—Each contractor shall, on the 1st day of July and the 1st day of January of each year, make a statement to the industrial accident commission showing the amount of funds received from each employer during the preceding six months.

Sec. 6647. *Supervision by commission.*—The supervision given to the industrial accident commission, under the provisions of this act, shall be exercised for the best interests of the employees, and any complaint made by any employee to said industrial accident commission hereunder shall be made in writing and subscribed and sworn to.

Sec. 6648. *Reports by employers.*—The industrial accident commission is hereby authorized to demand from the employer such sworn statements and reports as may be reasonably deemed necessary in the administration of this act.

Sec. 6649. *Violations.*—Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$100 nor more than \$500.

CHAPTER III

SECTION 6650. *Reports of accidents.*—Every railroad (as defined in section 6829) and every public utility (as defined in section 6030) and every other person, firm, association, or corporation, including receivers appointed by any court, who employs more than three persons at the same time, or is subject to the provisions of Chapter I of Title XXVII shall report to the State industrial accident commission any and all accidents happening to any person upon the premises of such railroad, public utility, or employer, or to any workman or employee. Such report shall be made within five days from the occurrence of such accident and shall state:

1. The time, place, cause, and nature of the accident and injuries, the name, sex, age, and particular relationship between the person injured and the person so reporting, 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, or out of any relationship as passenger or patron of the railroad or public utility.

3. Any other matters which by its rules and regulations the State industrial accident commission may prescribe.

Sec. 6651. *Report; how used.*—The State industrial accident commission shall preserve such reports as a public record available for the use of any other department or agency of the State government, and shall publish a summary thereof in its reports to the governor.

Sec. 6652. *Notice of accidents.*—Every railroad and public utility shall, in addition to the reports required by section 6650 hereof, give immediate notice by telegraph, telephone, or personally, to the railroad commission of Oregon whenever any accident occurs within this State upon its premises, line of railroad, depot grounds or yards, or directly or indirectly arises from or connected with its maintenance or operation, which accident is attended by loss of human life or limb, or serious injury to property. The railroad commission of Oregon may, if it deem the public interest requires it, investigate such accident forthwith, after seasonably notifying the railroad or public utility of the time and place of the investigation.

Sec. 6653. *Reports not to be used, when.*—No report or any part thereof required by this act shall be used as evidence or used for any purpose against the railroad, public utility, or other employer in any suit or action for damages growing out of any matter mentioned in said report.

Sec. 6654. *Penalty.*—Any person, firm, association, or corporation, subject to the provisions of this act, which shall fail, neglect, omit, or refuse to make any report herein required, shall be guilty of a misdemeanor, and upon conviction thereof shall be liable to a fine of not less than \$5 nor more than \$100, or to imprisonment in the county jail for not more than 30 days, or both, in the discretion of the court.

CHAPTER IV

SECTION 6655. *Rehabilitation fund.*—There is hereby created a fund to be known as the rehabilitation fund. The State treasurer shall transfer \$100,000 from the industrial-accident fund to the rehabilitation fund, and there shall also be transferred to such fund monthly $2\frac{1}{2}$ per cent of the total monthly receipts of the State industrial accident commission from all sources. Whenever the unexpended balance of the rehabilitation fund is greater than \$75,000 the commission shall temporarily either reduce the percentage of total monthly

receipts to be transferred to said fund or suspend such transfer. The said fund shall be invested in the same manner as the money in the segregated accident fund is invested. All interest earnings of the rehabilitation fund shall be credited to the industrial accident fund.

Sec. 6656. Rules.—The said commission is hereby authorized to provide, under uniform rules and regulations, for the vocational rehabilitation of men and women injured by accident arising out of and in the course of their employment while working under the protection of the workmen's compensation law.

Sec. 6657. Expenditures.—The said commission is hereby authorized to expend as much of the said rehabilitation fund as may be necessary to accomplish the vocational rehabilitation of men and women injured as aforesaid: *Provided, however,* That nothing in this act shall be construed to amend or repeal the authority of the said commission under section 6628, to expend from the industrial accident fund money for the rent of buildings, the purchase of equipment and supplies, the payment of such doctors and nurses as may be necessary for the purpose of physical rehabilitation of injured workmen under said section 6628.

Sec. 6658. Duty of school boards.—Every school board of every school district maintaining vocational instructors or departments of any kind, shall upon application of the State industrial accident commission, and when its facilities will permit, furnish, to any person or persons designated by said commission, such vocational instruction as is provided for the pupils of said district and said commission shall cause to be paid to said district the actual cost of such instruction as nearly as may be estimated by said school board.

Sec. 6659. Who provided for.—Upon application of the State industrial accident commission, the State board of control shall provide, for any person or persons designated by said commission, such vocational instruction at the Oregon State schools for the blind and the deaf as is furnished to the other pupils of said school, and said commission shall cause to be paid therefor to the State board of control such tuition charges as may be fixed by said board, which amount may be expended by said board for the support and maintenance of said school.

ACTS OF 1921

CHAPTER 401.—*Actions for injuries*

[This chapter provides that if any employer covered by the act is subjected to an action for damages by an employee on account of an injury arising out of and in the course of his employment, the State industrial accident commission shall defend, being represented by the attorney general, the expense to be met from the industrial-accident fund.]

PENNSYLVANIA

CONSTITUTION

ARTICLE 3

SECTION 21 (as amended 1915). *Legislature authorized to pass compensation laws.*—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*

SECTION 1. Title and scope of act.—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.

SEC. 102. Numbers and genders.—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.

SEC. 103. Employer.—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.

SEC. 104. Employee.—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.

SEC. 105. Contractor.—The term "contractor" as used in article 2, section 203, and article 3, section 302 (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.

SEC. 100. Public authorities.—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. Definitions.—The term "bureau" when used in this act shall mean the bureau of workmen's compensation of the department of labor and industry.

The term "board" when used in this act shall mean the workmen's compensation board of the bureau.

ARTICLE II.—*Damages by action at law*

SECTIONS 201-204. *Suits for damages.*—[In actions at law to recover damages for injuries to employees, the employer may not plead the common law defenses, and is liable for the negligence of all the employees while acting within the scope of their employment, including employees licensed by the State or other Governmental authority if the employer is allowed by law the right of free selection of such employees from the class of persons licensed. An employer who permits a laborer or assistant hired by another employee or contractor to enter his premises for the performance of a part of the employer's regular business, is liable to such employee to the same extent as to his own.

Agreements or waivers are void as against the public policy of a State; nor will the receipt of benefits from any association, system or fund bar recovery of damages by action at law nor of compensation under Article III of this act and any release executed in consideration of such benefits is void.]

ARTICLE III.—*Elective compensation*

SECTION 301. *Act applies, when.*—When employer and employees 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 300 and 307 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.

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 300 weeks after the 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.

SECS. 302-304. *Presumptions of acceptance.*—[All contracts of hiring raise a conclusive presumption that the parties have accepted the provisions of Article III in the absence of an express statement in writing by either party to the other, also filed with the bureau within 10 days, declares that the provisions of the article are not intended to apply. In the employment of minors the presumption exists in the absence of written notice by the parent or guardian. No official or agent of the State or its subdivisions may give such notice of rejection. The presumption of the employer's acceptance extends to employees of contractors unless the employer has posted conspicuously a notice of his intention not to pay such compensation, filing the same with the bureau as above; and the employees themselves are presumed to have accepted the act in the absence of notice.

The remedy provided is exclusive when accepted and operates as a surrender of all other forms of recovery, binding personal representatives and next of kin. Election or rejection may be changed prior to any accident on 60 days' notice in writing filed with the bureau.]

SEC. 305 (as amended 1921. No. 67). *Insurance.*—[Employers under the act must insure the payment of compensation in the State workmen's insurance fund, or in any authorized insurance company, unless the employer is exempt from insurance on a satisfactory showing of financial ability. In the latter case further statements of such ability may be required and the right may

be revoked, whereupon the employer must immediately insure in the State fund or otherwise. Failure to insure subjects the employer to a penalty of \$1 per day for each employee for the period, but a second notice with a bill for fines incurred must be sent by registered mail within 30 days after the employer's fines begin to run.]

Sec. 306 (as amended 1919, No. 277; 1921, No. 342; 1923, No. 29). *Schedule; medical, etc., aid.*—The following schedule of compensation is hereby established for injuries resulting in total disability:

(a) For the first 500 weeks after the tenth day of total disability, 60 per cent of the wages of the injured employee, as defined in section 309; but the compensation shall not be more than \$12 per week nor less than \$6 per week, and shall not exceed in aggregate the sum of \$5,000: *Provided*, That, if at the time of injury the employee receives wages of less than \$6 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 500 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.

(b) For disability partial in character (except the particular cases mentioned in clause (c)), 60 per cent of the difference between the wages of the injured employee, as defined in section 309, and the earning power of the employee thereafter; but such compensation shall not be more than \$12 per week. This compensation shall be paid during the period of such partial disability; not, however, beyond 300 weeks after the tenth day of such partial disability. Should total disability be followed by partial disability, the period of 300 weeks mentioned in this clause shall be reduced by the number of weeks during which compensation was paid for such total disability.

(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, 60 per cent of wages during 175 weeks.

For the loss of an arm, 60 per cent of wages during 215 weeks.

For the loss of a foot, 60 per cent of wages during 150 weeks.

For the loss of a leg, 60 per cent of wages during 215 weeks.

For the loss of an eye, 60 per cent of wages during 125 weeks.

For the loss of a thumb, 60 per cent of wages during 60 weeks.

For the loss of a first finger, commonly called index finger, 60 per cent of wages during 35 weeks.

For the loss of a second finger, 60 per cent of wages during 30 weeks.

For the loss of a third finger, 60 per cent of wages during 20 weeks.

For the loss of a fourth finger, commonly called little finger, 60 per cent of wages during 15 weeks.

The loss of the first phalange of the thumb, or of any finger, shall be considered equivalent to the loss of one-half of such thumb or finger.

The loss of more than one phalange of a thumb or finger shall be considered equivalent to the loss of the entire thumb or finger.

For the loss of any two or more of such members, or the permanent loss of the use of the hand, arm, foot, leg, or eye, as hereinbefore provided, not constituting total disability, 60 per cent of wages during the aggregate of the periods specified for each.

For serious and permanent disfigurement of the head or face of such a character as to produce an unsightly appearance, and such as is not usually incident to the employment, 60 per cent of the wages, not to exceed 150 weeks.

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 \$12 per week nor less than \$6 per week: *Provided*, That, if at the time of injury the employee receives wages of less than \$6 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 10 days after disability begins, except as hereinafter provided in clause (c) of this section.

(e) During the first 30 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 \$100. 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 30 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 307 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.

Sec. 307 (amended 1919, No. 277; 1923, No. 432). *Compensation for death.*—In case of death, compensation shall be computed on the following basis, and distributed to the following persons:

1. To the child or children, if there be no widow nor widower entitled to compensation, 30 per cent of wages of deceased, with 10 per cent additional for each child in excess of two, with a maximum of 60 per cent, to be paid to their guardian.

2. To the widow or widower, if there be no children, 40 per cent of wages.

3. To the widow or widower, if there be one child, 50 per cent of wages.

4. To the widow or widower, if there be two or more children, 60 per cent 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 at the time of the accident, 20 per cent 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 40 per cent 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, 15 per cent of wages for one brother or sister, and 5 per cent additional for each additional brother or sister, with a maximum of 25 per cent, such compensation to be paid to their guardian.

7. Whether or not there be dependents as aforesaid, the reasonable expense of burial, not exceeding \$100, which shall be paid by the employer or insurer directly to the undertaker (without deduction of any amounts theretofore paid for compensation or for medical 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 16. 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 step-children 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 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 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 100 weeks, calculated in accordance with the provisions of section 316 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 \$20 per week, nor be less than \$10 per week.

This compensation shall be paid during 300 weeks, and, in the case of children entitled to compensation under this section, the compensation of each child shall continue after said period of 300 weeks until such child reaches the age of 16, at the rate of 15 per cent of wages, if there be but one child, with 10 per cent additional for each additional child, with a maximum of 50 per cent. 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.

Sec. 308. Installments.—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.

Sec. 300 (amended 1919, No. 277). Computing wages.—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 50 cents per day, and board together with lodging shall be rated at \$1 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 other 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. *Nonresident aliens.*—[Alien dependent widows and children not residents of the United States receive two-thirds the amount of benefits provided for residents, and all future payments may be commuted to a lump sum as provided in section 316. Alien widowers, parents, brothers, and sisters not residents of the United States are entitled to no compensation. Nonresident alien dependents may be officially represented by the consuls of their nations.]

SECS. 311-313. *Notice.*—[Unless the employer has actual knowledge of the occurrence of the injury, or the injured person or his dependents or some one in their behalf gives notice of the accident within 14 days, no compensation will be due until notice is given or knowledge obtained. Failure may be excused on grounds of mistake, ignorance, inability, fraud, or other reasonable cause unless the employer shows that he did not know and that by reasonable diligence could not have learned of the accident and was prejudiced thereby, in which case he will be relieved to the extent of such prejudice. A suggested form of notice is given, but variations do not invalidate. Service may be personal or by registered mail. Knowledge of the president, vice president, secretary, or treasurer of the corporation is knowledge of the employer.]

SEC. 314. *Medical examinations.*—[Standard provisions as to submission to examination, the presence of the employee's physician, and the effect of refusal to submit are enacted. Refusal to submit deprives of the right to compensation. After the first examination refusal to submit either before or after an agreement bars the payment of benefits for the period of such refusal.]

SEC. 315. *Claims.*—[Compensation is barred unless within one year the parties have agreed on the compensation payable, or one of them has filed a petition as provided in Article IV. The period of limitation begins in fatal cases with the date of the death; but if payments of compensation have been made in any case, the limitation runs from the time of the making of the last payment.]

SEC. 316. *Lump sums.*—The compensation contemplated by this article may at any time be commuted by the board, at its then value when discounted at 5 per cent 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 appears 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 310 hereof, and in this section, no commutation of compensation shall be made.

SEC. 317. *Deposits.*—[At any time after an agreement has been approved or an award made a sum equal to future installments where the nature of the injury renders the amount certain, may be deposited with the approval of the bureau with an approved depository to be held in trust and paid as compensation, the employer being thereby released. Any balance remaining when the obligations are discharged must be repaid to the employer.]

SEC. 318. *Preferences.*—[Compensation granted by this article has the same preference without limit as to amount as allowed for unpaid wages, but is not to have priority over recorded judgments, mortgages, or conveyances of land. Claims are not assignable and are exempt from claims of creditors, levy, execution, or attachment excepting as provided in section 501.]

SEC. 319. *Subrogation.*—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. Definitions.—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 1 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.

SECS. 402–434. Procedure.—[Proceedings before the board or any referee and all appeals to be made are instituted by petitions in writing addressed to the board, mailed or delivered to the bureau. The bureau records and docket all agreements and proceedings, and on receiving from the board any approval or disapproval of agreement or disallowance of compensation, it is to serve a copy thereof on all parties in interest, keeping careful record of the date of mailing.

Agreements may be made after the tenth day after any accident, to be in writing signed by the parties in interest. The board is to examine the agreement or duplicate thereof and determine its conformity to the provisions of the act and notify the parties as to their conclusions; but payments made prior to any notice of invalidity discharge the employer making such payments to that extent. All agreements may be modified, suspended, reinstated, or terminated by approved supplemental agreements based on the change of physical condition or status of the injured employee or the status of any dependent. If the parties fail to agree as to the facts or the amount payable, a petition may be submitted to the board stating the agreed facts, whereupon the board shall fix a time for hearing, notifying the parties in interest. Petitions for commutation are to be likewise submitted to the board. Hearings may be by the board directly or by a referee. The board or its referee may at any time review, modify, or set aside an original or supplemental agreement or petition, if it appears that the agreement was procured by fraud, coercion, or other improper conduct, or was founded upon a mistake of law or of fact. Changes may also be made on the basis of change in physical condition of the workman or the status of his dependents; such modifications date from the period of such change. Details of procedure direct prompt action, set forth the power of the board or its referee to subpoena witnesses, and order the production of books and other writings, hear evidence, and make findings of fact and conclusions of law, the former to be final unless a rehearing or a hearing de novo is granted. Special reference may be made for findings on questions of fact. An impartial physician or surgeon may be appointed to examine and report all injuries, and other experts may be called in as necessary to ascertain the facts, the expenses to be paid out of the departmental funds and taxed as costs of the proceedings as the board may direct. All hearings are to be public. The board and its referees are not bound by technical rules of evidence. Provision is made for the taking of depositions and the use of the records of hospitals, though the latter are not conclusive proof but only visible as evidence.

Within 10 days after a referee’s decision an appeal may be taken to the board on contentions that the decision does not conform to the terms of the act, or that the referee committed some other error of law; that the evidence does not sustain the decision, or that it was procured by fraud, coercion, or other improper conduct. The board may thereupon examine the testimony and substitute its own conclusions. Appeals must be allowed if based on alleged error of law; if based on claim or fraud, coercion, etc., the board may, in its discretion, grant a hearing de novo before itself, or assign the petition to any referee designated by it, or sustain the referee’s decision. Provision is also made for appeals to the court of common pleas of the county within 10 days after any action of the board on matters of law; appeal also lies to the supreme or superior court from a judgment of the court of common pleas within 30 days after the entry of said judgment.

Approved agreements or awards may be filed with the prothonotary of the court of common pleas of the county who shall enter the same, whereupon it has the effect of a judgment enforceable by lien against the property of the employer or other party liable under the agreement or award. Provision is made for disapprovals or disallowances, modifications, etc.; also for the presentation of receipts of payments made, whereupon a certificate shall be given setting forth the extent to which the judgment on the agreement or

award has been reduced, or, if fully satisfied, a certificate to that effect. Final receipts given by an employee or dependent are prima facie evidence of the employer's liability, but may be set aside on petition if found to have been procured by fraud, coercion, or founded on a mistake of law or of fact.]

ARTICLE V.—*General provisions*

SECTION 501. Fees.—[Fees for legal services are an enforceable lien against the amount recovered as damages under Article II only as approved by the judge of the local court. Claims for legal services in connection with procuring compensation must be approved by the board, and if the employer is then notified in writing, constitute a lien against the sums payable. The board must fix the proportion of periodical installments that may be paid on account of legal services.]

SECS. 502-505. Miscellaneous provisions.—[The unconstitutionality of part of the act is not to affect other parts, except that Articles II and III are inseparable. Prior rights of action are not affected, inconsistent laws are repealed, and the act is to be effective January 1, 1916.]

ACT No. 340.—*Workmen's compensation insurance board—State fund*

SECTION 1. Use of terms.—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.

SEC. 2. Board created.—The State workmen's insurance board is hereby created, consisting of the commissioner of labor and industry, the insurance commissioner, and the State treasurer.

SECS. 3-7, 8 (as amended 1917, No. 395), 9, 10, 11 (as amended 1917, No. 395), 12-14. State fund.—[A State fund is to be made up of premiums paid by employers, to be administered by the board without liability on the part of the State, except as herein provided by the amount of such payments. The State treasurer is custodian and has authority to make deposits, as in the case of other State funds and investments as authorized for savings banks. Schedules of premiums are to be prepared and published by the board, the rates to be in accordance with the probable risk of the employees in the various employments or industries. The condition of the particular establishment may be considered and premiums may be increased in the case of any subscriber neglecting to provide safety devices required by law or disobeying the rules or regulations made by the board. Insurance is effective only after full payment of the premiums as fixed and determined for any subscriber. The board must file with the bureau a notice setting forth the names and places of business of employers who are subscribers to the fund.

Expenses are to be met out of the moneys paid in as premiums by subscribers after an initial appropriation made for setting the fund into operation. Subscribers are to be classified according to the nature of their business and the risk of injury; subdivisions may be made if the risks are substantially different. A surplus fund is to be set up by an appropriation of 5 per cent of the premiums until \$100,000 is accumulated, when such percentage not exceeding 5 per cent may be added until an accumulation sufficiently large to cover the catastrophe hazard is made. Separate accounts of premiums are to be made, dividends declared after adequate reserves have been provided for, and settlements made with subscribers who have ceased to belong to the fund.

The board has power to make contracts for necessary medical, hospital, and surgical services as provided for in the compensation act, and may reinsure any risk which they deem necessary.]

SEC. 15. Inspections.—[The board may inspect any plant or premises of a subscriber, examine books, records, and pay rolls, establish rules and regulations for the prevention of injuries, and refuse or terminate insurance where violations of safety regulations are found or examinations are denied.]

SECS. 16-20. Subscribing to fund.—[Employers desiring to become subscribers to the State fund apply in writing, stating the nature of their business, the number of employees by classes, the amount of wages, location of the business, and of the employer's office, whereupon the board investigates and issues a certificate accordingly, fixing the amount of premium payable

for the year. No insurance is issued for a longer period than a single calendar year. All premiums are payable to the State treasurer, whose receipt is evidence that the applicant is a subscriber to the fund and insured therein. Within one month after the subscription has terminated subscribers must report actual employment and wage expenditure for the period, whereupon adjustments will be made on proof of statements submitted. If further amounts are due from employers, they are payable forthwith, and if unpaid are collectible as State taxes with interest at 12 per cent per annum commencing 30 days after service of notice by registered mail. False statements by any subscriber are a misdemeanor, and failure to file the report of actual wage expenditure entails a liability of a penalty of \$10 for each day of neglect or refusal.

Subscribers who notify the board within seven days of any accident to an employee in the course of his employment causing injury or death are discharged from all liability therefor, the compensation provided under the act of 1915 is to be paid out of the fund, but this does not relieve the employer of his duty as to medical and surgical aid required by section 306 of said act, but any subscriber who has supplied such services, medicines, and supplies shall be reimbursed from the fund.]

SECS. 21-25. *Claims against fund.*—[The fund is entitled to the same defenses against claims on it as are open to any employer and is subrogated to all his rights against an employee, his dependents, or third parties. The board may, if it deems necessary, cause an investigation to be made of any accident reported to it by a subscriber. The board may execute the agreement provided for in the workmen's compensation act and appoint agents and make such rules as may be deemed necessary for this purpose. Such agreements may be filed, modified, or terminated as provided in the workmen's compensation act. Payments to employees, dependents, physicians, attorneys, and others entitled to be paid out of the fund are to be made by the State treasurer on a warrant of the board. Information acquired by the fund, its officers and employees, from employers and others is not open to public inspection.]

Act No. 343.—*Workmen's compensation—Exemptions*

SECTION 1. *Domestic and farm labor.*—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.

ACTS OF 1917

No. 359.—*Contractors for public works—Acceptance of provisions of compensation law*

SECTION 1. *Application of law.*—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 workingmen's compensation act of 1915, and any supplements or amendments thereto which may hereafter be passed, and that the said contractor will insure his liability thereunder, or file with the Commonwealth, or the municipal corporation or board with whom the contract is made, a certificate of exemption from insurance from the bureau of workingmen's compensation of the department of labor and industry.

SEC. 2. *Duty of officers, etc.*—Every officer of the Commonwealth of Pennsylvania, or any bureau or department thereof, or of any municipality, or any bureau or department thereof, or any municipal division or subdivision of this Commonwealth, who shall sign, on behalf of the said Commonwealth or any municipality thereof, or any municipal division or subdivision thereof, any contract requiring in its performance the employment of labor, shall require, before the said contract shall be signed, proof that the said contractor with whom the contract is made shall have accepted the workingmen's compensation

act of 1915, and any supplements or amendments thereto which may be hereafter passed, and proof that the said contractor has insured his liability thereunder in accordance with the terms of the said act, or that the said contractor has had issued to him a certificate of exemption from insurance from the bureau of workmen's compensation of the department of labor and industry.

SEC. 3. *Contracts void.*—Any contract executed in violation of the provisions of this act shall be null and void.

ACTS OF 1919

ACT No. 441.—*Bureau of workmen's compensation—Board*

SECTION 1. *Designations.*—The bureau of workmen's compensation of the department of labor and industry is hereafter called bureau.

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. *Bureau created.*—The bureau of workmen's compensation of the department of labor and industry is hereby created.

SEC. 3. *Board.*—A board is hereby created, to be known as the workmen's compensation 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 3, 4, and 5 years, respectively, from the 1st day of June, 1919, 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.

SECS. 4-7. [Repealed.]

SEC. 8. *Districts.*—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.

SECS. 9-15. [Repealed.]

SEC. 16. *Duties.*—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.

SEC. 17. [Repealed.]

SECS. 18-24. *Investigations.*—[Referees are to hear such claims as are assigned them, and with the board have power to conduct any investigations necessary to ascertain facts, may administer oaths, subpoena witnesses, procure punishments for contempt on application to the court of common pleas in cases of refusal of witnesses to obey subpoenas. Witnesses receive the prescribed fees, physicians to be allowed \$5 for each day's attendance plus mileage.]

PHILIPPINE ISLANDS

ACTS OF UNITED STATES PHILIPPINE COMMISSION—1907

ACT No. 1698.—*Compensation for injuries of employees of the Insular Government, etc.*

* * * * *

SECTION 25 (as amended by act No. 2120).

* * * * *

(2) *Period of payment during disability; fatal injuries.*—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 24 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.

PORTO RICO

ACTS OF 1918

Act No. 10.—*Compensation of workmen for injuries—Insurance fund*

SECTION 1 (as amended 1925, No. 102). *Title.*—This act shall be known as the law relative to labor accidents and occupational diseases or death resulting from occupations.

SEC. 2 (as amended 1919, No. 62; 1921, No. 61; 1925, No. 102). *Scope.*—The provisions of this act shall apply to laborers injured or disabled or who lose their lives from accidents occurring because of any act or function inherent in their work or employment and while engaged therein and as a consequence thereof, or from occupational diseases or death due to such occupation, as hereinafter specified: *Provided*, That the provisions of this act shall be applicable to members of municipal fire corps, for which purpose each municipality shall include salaried firemen in its report on employees, made as an employer.

Domestic servants and employees engaged in clerical work, in offices of any kind and commercial establishments where machinery is not used, are excepted.

This act shall apply to every employer who employs any laborer or employee whose wages do not exceed the sum of \$1,500 computed annually: *Provided*, That pursuant to the provisions of this act, compensation shall be paid to injured laborers who become disabled or who lose their lives through accidents originating from any act or function inherent in their work or employment and occurring during the course of their employment as a consequence thereof or from occupational diseases or death due to such occupation contracted in any work performed by administration under the direction of the Insular Government, payable from the Government trust fund.

The sums so paid need not be reimbursed to the people of Porto Rico out of the fund created by this act.

The commissioner of the interior is hereby authorized to make advances on account of their compensation, to workmen injured on public works, which advances shall be reimbursed to said official, if justified, out of the compensation fund, upon settlement of the compensation to workmen injured on public works.

SEC. 3 (as amended 1919, No. 62; 1921, No. 61; 1925, No. 102). *Benefits.*—Any laborer who may be injured or who is taken sick within the provisions of this act, shall be entitled to—

A. In case of accident—

1. Medical attendance and such medicines and sustenance as may be prescribed, including hospital services when necessary.

2. If the injury be of a temporary nature, to compensation equal to one-half of the wages received by him the day of the accident, which compensation shall run during such time as he may be under medical treatment. The period of such payments shall in no case exceed 104 weeks: *Provided*, That in no case shall there be paid more than \$15 nor less than \$3 per week: *Provided, further*, That no compensation shall be allowed for the first seven days following the date of the accident.

3. Permanent partial disability shall be considered to be the loss of one foot or leg, one hand, one arm, one eye, one or more fingers or toes, and any ankylosis, fracture, or dislocation where ligaments have been torn and where restora-

tion is not complete. For permanent partial disability, as specified below, the injured laborer shall receive the following additional compensation :

For the loss of one leg so close to the hip that an artificial limb can not be used	\$2,000
Loss of one leg at or above the knee, permitting the use of an artificial limb	1,800
Loss of one leg below the knee.....	1,160
Loss of an arm at or above the elbow.....	1,880
Loss of the right hand at the wrist.....	1,520
Loss of the left hand at the wrist.....	1,100
Loss of an eye by enucleation.....	1,040
Loss of sight in one eye.....	680
Total loss of hearing in both ears.....	1,880
Loss of hearing in one ear.....	200
Loss of one foot at the ankle.....	1,160
Loss of the big toe of one foot at the joint of the metatarsus and phalanx	140
Loss of the big toe between the second and third phalanges.....	105
Loss of the big toe at the second joint.....	70
Total loss of any other toe.....	91
Loss of the forearm at either the upper or lower end (right arm).....	1,700
Loss of the forearm at either the upper or lower end (left arm).....	1,300
Loss of a thumb with the metacarpal bone.....	300
Loss of the first phalanx of the thumb.....	112
Loss of the first and second phalanges of the thumb.....	112
Total loss of the index finger.....	200
Loss of the index finger at the second phalanx.....	150
Loss of the index finger at the third phalanx.....	105
Total loss of the middle finger.....	150
Loss of the middle finger at the second phalanx.....	140
Loss of the middle finger at the third phalanx.....	70
Loss of the ring finger.....	150
Loss of the ring finger at the second phalanx.....	140
Loss of the ring finger at the third phalanx.....	70
Total loss of the little finger.....	105
Loss of the little finger at the second phalanx.....	70
Loss of the little finger at the third phalanx.....	35
Ankylosed ankle.....	300
Ankylosed knee.....	500

Provided, however, That if any permanent partial disability specified above does not result in amputation or does not make the same necessary, not more than three-fourths of the respective amounts shall be paid.

Compensation for any other permanent partial disability not herein specified shall be graded according to such disability as most resembles the corresponding disability established in the foregoing table: *Provided,* That such compensation shall never exceed \$2,000.

4. If the laborer is totally disabled for work, he shall receive a compensation of \$2,000 as a minimum and \$4,000 as a maximum. The compensation shall be graded in proportion to the rate of wages that the laborer earned, consideration being given to the earning capacity of the injured laborer and his probabilities of life, and the importance of the injury suffered.

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 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, widower, or widow and legitimate children and grandchildren, and in the proper case, the illegitimate children, whether natural or not, of the deceased laborer, all of whom were reasonably dependent on his earnings for their support, shall receive a compensation of from \$2,000 to \$4,000 as a maximum, which shall be graded according to the earning capacity of the deceased laborer, to the number of persons entitled to receive compensation, and to their conditions and necessities, which compensation shall

be distributed in equal parts among the persons entitled thereto. In default of the aforesaid persons, the foster father or mother, or the nearest relative reasonably dependent on the earnings of the decedent, shall receive a compensation of from \$1,000 to \$2,000 as a maximum, and should there be several near relatives entitled to compensation, such compensation shall be distributed among them in equal parts.

6. In the 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 may grant said compensation in the form of pensions for a determined period: *Provided*, That if the commission pays said compensation in full, it shall exercise its good offices by reasonable suggestions, so that the sum granted shall be invested in a manner advantageous to the welfare of the laborer or his relatives, in such form as to produce the best possible means of subsistence: *Provided, further*, That if the laborer or his heirs, pursuant to this act, are minors or incapacitated persons, the said commission shall pay the amount granted in the form of a pension for a determined period, or it may pay 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: *Provided*, That in these cases the district attorney shall represent said minors or incapacitated persons, the case to be heard by summary proceedings.

B. In case of sickness originating from the employment, the laborer shall be entitled—

1. To medical attendance and such medicines and subsistence as may be prescribed, including hospital service when necessary.

2. If the disease is of temporary character, to compensation equal to one-half the wages received by him when taken sick, for such time as he may be under medical treatment, but such payments shall not extend over a period greater than 104 weeks. In no case shall there be paid more than \$15, or less than \$8 a week: *Provided*, That no compensation shall be allowed for the first seven days following the date of the accident.

3. If by reason of the disease contracted, the laborer should be partially and permanently disabled for work, he shall receive such additional compensation as the commission may determine according to the seriousness of the disability of the person injured, and as far as possible, according to the accident schedule provided in this act.

4. If by reason of the disease contracted, the laborer should be totally disabled for work, he shall be entitled to compensation of not less than \$2,000 nor more than \$4,000.

All the provisions of paragraphs 3, 4, and 5 of subhead A of this section shall be applicable to subhead B.

The following diseases shall be considered as occupational diseases when contracted by a laborer or employee in the course of his employment, at any time within the twelve months prior to the date of his disability and when due to the nature of any process described below:

Name of disease	Description of process
1. Anthrax	Handling of wool, hair bristles, hides and skins.
2. Glanders	Care of any equine animal suffering from glanders; handling carcasses of such animal.
3. Lead poisoning	Any industrial process involving the use of lead or its preparations or compounds.
4. Mercury poisoning	Any industrial process involving the use of mercury or its preparations or compounds.
5. Phosphorus poisoning	Any industrial process involving the use of phosphorus or its preparations or compounds.
6. Arsenic poisoning	Any industrial process involving the use of arsenic or its preparations or compounds.
7. Poisoning by benzol or by nitro and amido-derivatives of benzol (dinitro-benzol, anilin and others).	Any industrial process involving the use of benzol or a nitro- or amido-derivative of benzol or its preparations or compounds.

Name of disease	Description of process
8. Poisoning by gasoline, benzene, naphtha, or other volatile petroleum products.	Any industrial process involving the use of gasoline, benzene, naphtha or other volatile petroleum products.
9. Poisoning by carbon bisulphide.	Any industrial process involving the use of carbon bisulphide or its preparations or compounds.
10. Poisoning by wood alcohol.	Any industrial process involving the use of wood alcohol or its preparations.
11. Infection or inflammation of the skin on contact with compound cutting oils or lubricants, dust, liquids, fumes, gases or vapors.	Any industrial process involving the handling or use of compound cutting oils or lubricants, or involving contact with liquids, fumes, gases or vapors.
12. Ulceration of the skin or of the corneal surface of the eye due to carbon, pitch, tar, or tarry compounds.	Handling or industrial use of carbon, pitch or tarry compounds.
13. Compressed air illness.	Any industrial process carried on in compressed air.
14. Carbon dioxide poisoning.	Any process involving the evolution or resulting in the escape of carbon dioxide.
15. Brass or zinc poisoning.	Any process involving the manufacture, founding or refining of brass or the melting or smelting of zinc.

Provided, That in case special conditions exist warranting an increase or a decrease of the sum to be paid, said modifications may be made by the commission, but in such case the matter shall be made of record by the commission with a full statement of the reasons for such action.

SEC. 4 (as amended 1921, No. 61). *Injuries not covered*.—Accidents occurring under the following circumstances are not labor accidents and, therefore, shall not entitle the laborer or his heirs under this act, to compensation:

1. When the laborer attempts to commit a crime, or to injure his employer or any other person, or when he voluntarily causes himself injury.
2. When the laborer is intoxicated, provided such intoxication is the cause of the accident.
3. When the injury is caused to the laborer by the criminal act of a third person.
4. When the gross negligence of the laborer is the sole cause of the injury.

SEC. 5 (as amended 1910, No. 62; 1925, No. 102). *Medical examinations*.—[During the period of an injured workman's disability he must submit to examination and treatment by a competent physician or surgeon designated by the commission. The commission is authorized to enter into contracts with municipal and private physicians and with hospitals. If an injured workman is a resident of the municipality in whose hospital he is being treated, the commission is liable for not more than half the minimum rate of charges. Employer and workman may each have a physician present to witness an examination, but without resisting the right of the commission's physician to visit the injured man at all reasonable times. Refusal, without just cause, to submit to examination or treatment deprives the injured man of right to compensation.

Physicians or surgeons must report occupational diseases or injury due to labor accidents to the commission within 48 hours.]

SEC. 6 (as amended 1910, No. 62; 1920, No. 1; 1921, No. 61; 1925, No. 102). *Workmen's relief commission*.—[A commission of six members is created, three appointed by the governor, with the advice and consent of the senate, for terms of four years, while the others are elected, one from each of the three political parties polling the highest number of votes at the preceding general election. Of the first group one is chairman at \$4,000 salary, one vice chairman at \$3,000, the other, known as permanent commissioner, at the same salary; the three elected commissioners receive \$10 for each regular or special meeting of the commission that they attend.

The three appointed commissioners are a permanent committee with sole power for deciding questions of temporary disability and permanent partial disability. The full commission may reconsider on petition within 30 days

any decision rendered. The permanent committee may not deny any application for compensation without first having reported to the commission in full, which shall meet at least once a week. Single members may conduct any investigation or hearing, and their orders are orders of the commission when so decided thereby.

The commission has an official seal and records its proceedings, the permanent commissioner being secretary, and may adopt such rules and regulations as are necessary to carry out the provisions of the act.]

SECS. 7 (as amended 1920, No. 1; 1925, No. 102), 8 (as amended 1919, No. 62; 1921, No. 61; 1925, No. 102), 9 (as amended 1921, No. 61; 1925, No. 102). *Procedure.*—[Employers must report all accidents as soon as possible, and within five days from their date on printed blanks furnished by the commission on request, but such reports shall not be evidence against the employer in any proceeding under this or any other act. The commission may direct such investigation as is necessary to establish the facts in connection with the injury and file a report such as will enable the commission to pass judgment on the claim when presented. The commission, its members and agents, are authorized to subpoena witnesses, administer oaths, examine books and documents, inspect buildings and machinery, or any accidents that may have occurred. If the employer was uninsured, in violation of law, the commission may determine the proper compensation, plus expenses incurred by it, and report the same to the Attorney General to institute action, but both parties are entitled to opportunity to be heard and to defend themselves.

Claimants under the act including legal heirs reasonably dependent on the workman's wages for support may present a claim at any time within 90 days from the date of injury or death of the workman, stating the essential facts, whereupon the commission shall refer the petition to the Attorney General for proceedings in the proper district court. In cases where questions of heirship are involved, if the claimants are found to be heirs, the application will be investigated and a decision rendered within 60 days after the treatment of the injured workman has finally ceased or within 90 days after the law has been complied with as regards declaration of heirs, evidence of dependence, etc. If no application is made within the time set the commission must investigate the reason why the persons concerned did not make application, and if ignorance or reasons not under the control of the parties are found to be the cause, an additional 30 days will be allowed for filing claims. Claims are barred after one year from the date of the accident or death of the laborer if no application has been filed.

Certified copies of the commission's decision must be served on the applicant and on the employer within 10 days after rendition. Appeals may then be taken to the district court within 30 days, and to the supreme court from the district court in accordance with the provision of the code relative to appeals in several cases. Such suits take precedence and are to be decided promptly.]

SECS. 10 (as amended 1921, No. 61; 1925, No. 102), 11, 12 (both as amended 1925, No. 102). *Premiums.*—[Annual classifications of occupations of workmen under the act, based on the probability or liability of injury, occupational diseases, or death, or other conditions, are to be made by the commission, which shall fix rates of insurance to be paid by the employers of workmen in these groups. The pay roll of the previous fiscal year may be used if adjusted to form a fair basis. Otherwise the deposits in advance may be required. Rates are to be as low as compatible with the minimum of a solvent permanent exclusive State fund and the creation and maintenance of a surplus. The maximum rate shall be 4½ per cent except in extraordinary perilous cases, where the maximum may be 10 per cent. As many groups and subgroups may be established as are deemed necessary. If experience shows any establishment to be extraordinarily dangerous the classification of risk and the premium rate may be proportionately advanced. Notice to employers that they may appear and make allegation in furtherance of their rights under the act is to be published in the newspapers of largest circulation prior to June 1 of each year.

Premiums are to be assessed and collected semiannually in advance, subject to revision on a determination of the actual pay roll for the period. Assessments in default more than 30 days are subject to levy and collection as in the case of the collection of property taxes, with surcharges at the rate of 1 per cent per month. Employers ceasing to be subject to the act may be excused from subsequent payments on notice of the fact. Collections are made for an entire

semester, but reimbursement may be allowed on any part during which an employer is not subject to the act. Readjustments of premium payments are to be made at the end of each fiscal year.]

SEC. 13 (as amended 1919, No. 62; 1921, No. 61; 1925, No. 102). *Statements by employers.*—[Employers must annually or before the 15th day of July file duplicate statements under oath as to their pay roll, on which premiums will be assessed. If the estimated payment is less than the amount actually due collection of such additional premiums has preference over any other obligations of the employers, and premiums are liable on his property if unpaid on service of notice. If the statement is not filed within 30 days after the date specified the employer is guilty of misdemeanor.]

Insurance becomes effective immediately after the employer has filed his pay roll accompanied by a current premium. Employers under the act must keep a complete register in accordance with regulations of the commission, showing the name, age, and sex of each laborer, nature of work, and the wages paid. Failure is a misdemeanor. Books and records are open to inspection, and any knowing falsification of information subjects to a penalty as for failure to file a statement, and also liability for three times the difference between the premium paid and what should have been paid.]

SEC. 14. *Payment of premiums by employees.*—No agreement by any 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.

SEC. 15 (as amended 1921, No. 61; 1925, No. 102). *Expenses of administration.*—[Annual estimates must be submitted of the expenses of administration for the next fiscal year subject to the approval of the governor, also of additional employees whose services have become necessary. The expenses are chargeable to the workmen's relief trust fund, but may not exceed 20 per cent of the total paid by the commission during the previous fiscal year.]

SECS. 16, 17 (as amended 1925, No. 102). *Investments; accounts.*—[The commission may invest any of the surplus or reserve funds, the treasurer of the island being the custodian. Payments are made on warrants or vouchers signed by the president and secretary of the commission, approved by the auditor and countersigned by the governor. Separate accounts are to be kept of the premiums for each of the several groups and expenses of administering the fund, the disbursements on account of injuries and deaths in each group, also of receipts and expenditures for each employer.]

SEC. 18. *Disclosures.*—[Information acquired from employers according to section 13 is confidential, and disclosure is a misdemeanor.]

SEC. 19. *Assignments of insurance.*—[Employers transferring their business during the term of any insurance may, on written notice and with the consent of both parties, assign to their successors all rights, credits, and obligations of the original employer for the balance of the period of such insurance.]

SEC. 20 (as amended 1925, No. 102). *Noncomplying employers.*—[If an employer subject to the provisions of this act has failed to comply therewith the workmen's relief commission may charge him with the amount of compensation due any of his injured workmen, plus expenses in the case. If a laborer or his heirs sues an employer willfully negligent (sec. 21), or the commission proceeds against a negligent third party (sec. 22), the common-law defenses are not available, neither can it be pleaded that the injury was due to the negligence of a contractor or subcontractor, unless he was insured in accordance with the provisions of this act.]

SEC. 21. *Willful, etc., acts.*—[This act does not deprive any injured employee or his heirs in case of death of their right to proceed in an action for damages against an employer when injury was due to his illegal act or gross negligence; but only in case of waiver shall the employee or his heirs have the right to institute an action for damages against the employer.]

SEC. 22. *Liability of third parties.*—[Where the injury was caused by a third party, or by the illegal or gross negligence of the employer, or by defects in machinery or implements the commission is subrogated to the rights of the injured workman or his heirs and may prosecute an action and recover damages, such recovery to be placed in the workmen's relief trust fund for the benefit of the particular group in which the injured workman's occupation was classified.]

SEC. 23. Assignments, etc.—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.

SEC. 24. Fines.—All fines collected for violations of any of the provisions of this act shall be deposited in the workmen's relief trust fund.

SEC. 25. Attorney's fees.—[Contracts or agreements of payments with an attorney for contingent fees are void and without effect unless in writing and approved by the Judge of the court where the suit is instituted. The maximum allowance is 25 per cent and receipt of any excess amount is illegal and void, punishable by suspension or disbarment.]

SEC. 26 (as amended 1921, No. 61). Contractors' employees.—In reporting their annual pay rolls all employers shall include all workmen who are working either on piecework or under a person with whom the employer contracted 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 insured as an employer in accordance with the provisions of this act.

SEC. 27 (as amended 1925, No. 102), 28 (as amended 1919, No. 01; 1925, No. 102), 29, Trust fund.—[Under the act of 1916 amounts in the existing trust fund are reappropriated for such a fund under this act, to which employers are obliged to contribute as herein provided. Application may be made to the district court for a writ to review a decision of the commission levying assessments, if made within 30 days. The legality of any premium fixed may likewise be reviewed. Rates are to be reduced if at the end of any fiscal year the trust fund has a considerable surplus after meeting its obligations, and a suitable reserve fund has been provided for.]

SEC. 30 (as amended 1925, No. 102). Definitions.—For the purposes of this act "laborer" or "employee" shall be understood to be any person at the service of any individual, partnership, or corporation regularly employing one or more persons under any express or implied service contract, whether verbal or written, and whether such person is man, woman, or child: *Provided*, That such laborers or employees working for employers not included in the insurance established in this act and those whose labor is of a merely accidental character are expressly excluded.

The word "laborer" or "employee" includes all workmen employed in any manufacturing or agricultural establishment or occupation by any natural or artificial person, for compensation: and by the insular government or any of its dependencies, according to the purposes of this act.

SEC. 31. Who may not be attorneys.—[No member or employee of the commission may represent any claimant or have any interest in any claim in the jurisdiction of the commission.]

RHODE ISLAND

GENERAL LAWS—1923

CHAPTER 831.—*Compensation of workmen for injuries*

ARTICLE I.—*Abrogation of remedies and defenses*

(1205) SECTION 1. *Defenses abrogated.*—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.

(1206) SEC. 2 (as amended 1926, ch. 764¹). *Exempt employers.*—The provisions of this chapter shall not apply to employers who employ five or less workmen or operatives regularly in the same business or to employers of employees engaged in domestic service or agriculture, but such employers may, by complying with the provisions of section 5 of this article, become subject to the provisions of this chapter.

(1207) SEC. 3. *Effect of election by employers.*—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 4 of this article, nor to any such action brought against a town or city by an employee thereof.

(1208) SEC. 4, (1209) SEC. 5. *Election.*—[Election is made by an employer by filing with the commissioner of labor a written statement of acceptance of the act. This is effective for the term of one year and thereafter for like terms without further act unless at least 60 days prior to the expiration of any year notice of withdrawal is filed and reasonable notice thereof given to the employees. Blank forms of election and withdrawal are to be furnished by the commission.]

An employee of an employer accepting the act is deemed to have waived his right of action at common law to sue for damages if he does not at the time of his contract give his employer notice in writing that he claims such right to sue, a copy to be filed with the commissioner of labor within 10 days. Terms of election are for periods of one year as in the case of employers. Minors legally employed are sui juris for the purposes of this chapter, but a parent or guardian may give the notices as herein provided.]

(1210) SEC. 6. *Remedy exclusive.*—The right to compensation for an injury, and the remedy therefor granted by this chapter, 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 chapter while it is in effect.

ARTICLE II.—*Payments*

(1212) SECTION 1. *Payments due, when.*—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 5 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 chapter.

(1213) SEC. 2. *Willful injuries or intoxication.*—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

¹ Original section 2 of this article is repealed by this act and subsequent sections renumbered.

Injury or death of himself or of another, or that the same resulted from his intoxication while on duty.

(1214) **Sec. 3. *Attorney's fees.***—Contingent fees of attorneys for services under this chapter shall be subject to the approval of the superior court.

(1215) **Sec. 4. *Waiting time.***—No compensation except as provided by section 12 of this article shall be paid under this chapter for any injury which does not incapacitate the employee for a period of at least one week from earning full wages, but, if such incapacity extends beyond the period of one week, compensation shall begin on the eighth day from the date of the injury: *Provided*, That if such incapacity extends beyond the period of four weeks, compensation shall begin from the date of the injury.

(1216) **Sec. 5 (as amended 1926, ch. 764). *Medical, etc., aid.***—During the first eight weeks after the injury the employer shall furnish reasonable medical and hospital services and medicines when they are needed: *Provided, however*, That the charge for medical services and medicines, exclusive of hospital services, shall not exceed the sum of \$100 in the case of an injured employee not receiving hospital treatment or receiving hospital treatment for not more than 14 days, and shall not exceed the sum of \$150 in the case of an employee receiving hospital treatment for more than 14 days: *And provided further*, That the charge for hospital services shall not exceed \$3 per day and such laboratory fees and such fees for X-rays and anesthetics as are customarily charged by the hospital. The employee shall have the right to select the physician by whom, or the hospital in which, he desires to be treated, and the employer shall become liable to such physician or hospital for the reasonable fees for such treatment: *Provided, however*, That the employer shall not become liable to the employee or to such physician or hospital for their charges, unless such 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 in writing present their claim to the employer for the payment of such services within three months after the conclusion thereof. In case of any disagreement as to the amount of any charge for medical or hospital services or medicines, the amount shall be determined by the superior court.

(1217) **Sec. 6 (as amended 1926, ch. 764). *Compensation for death.***—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 \$10 nor less than \$6 a week for a period of 300 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 whom are dependent one or two children of the deceased employee, including adopted and stepchildren under the age of 18 years or over said age but physically or mentally incapacitated from earning, the employer shall pay such widow not more than \$12 a week; and if there are dependent upon such widow three or more such children, the employer shall pay such widow not more than \$14 a week. Upon the death of any such widow the compensation thereafter payable under this chapter shall be paid to such child or children dependent upon the widow at the time of her death, and in case there is more than one such child, the compensation shall be divided equally among them. Upon the remarriage of the widow of a deceased employee, the compensation theretofore payable to such widow shall cease and determine. 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 300 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 300 weeks from the date of the injury: *And provided further*, That if the deceased leaves no dependents at the time of the injury the employer shall not be liable to pay compensation under this chapter except as specifically provided in section 9 of this article.

(1218) **SEC. 7. Dependents.**—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 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 18 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.

(1219) **SEC. 8. Persons not dependent.**—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.

(1220) **SEC. 9. Persons without dependents.**—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 chapter, the reasonable expense of his last sickness and burial, which shall not exceed \$200.

(1221) **SEC. 10. Total disability.**—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 \$16 nor less than \$7 a week; and in no case shall the period covered by such compensation be greater than 500 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 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, 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.

(1222) **SEC. 11. Partial disability.**—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 \$10 a week; and in no case shall the period covered by such compensation be greater than 300 weeks from the date of the injury.

(1223) **SEC. 12 (as amended 1926, ch. 764). Specific injuries.**—In case of the following specified injuries there shall be paid in addition to all other compensation provided for in this chapter a weekly payment equal to one-half of the average weekly earnings of the injured employee but in no case more than \$10 nor less than \$4 a week:

(a) For the loss by severance of both hands at or above the wrist, or both feet at or about the ankle, or of one hand and one foot, or the entire and irrecoverable loss of the sight of both eyes, or the reduction to one-tenth or less of normal vision with glasses, for a period of 150 weeks.

(b) For the loss by severance of either arm at or above the elbow, or of either leg at or above the knee, for a period of 100 weeks.

(c) 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 irrevocable loss of the sight of either eye, or the reduction to one-tenth or less of normal vision with glasses, for a period of 75 weeks.

(d) For the loss by severance at or above the second joint of two or more fingers or toes, for a period of 35 weeks.

(e) For the loss by severance at or above the second joint of a thumb, for a period of 25 weeks.

(f) For the loss by severance of one phalange of a thumb or of two or more phalanges of an index finger, for a period of 18 weeks.

(g) For the loss by severance of one phalange of an index finger, or of at least one phalange of any other finger or toe, for a period of 12 weeks for each such finger or toe.

(1224) **SEC. 13. Computing wages; second injuries.**—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 26 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 26 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.

(1225) **SEC. 14. Insurance, etc., not to be considered.**—[No savings or insurance of the injured employee may be considered in determining compensation payable hereunder. Refusing or delaying payments on account of the receipt of savings, insurance, or benefits from another source is a misdemeanor.]

(1226) **SEC. 15—(1231) SEC. 20. Payment; notice; claim.**—[Payments are to be made in case of death to the legal representatives of the injured employee, or if none, to his dependents, or if none, to the person to whom expenses for burial and last sickness are due. The legal representative must make payments to dependents or other persons entitled thereto. All payments to an injured workman cease on his death from a cause other than the injury for which he is receiving compensation. Payments on behalf of mentally incompetent persons or minors are to be made to a conservator or guardian or next friend, and no limitation of time runs until a conservator or guardian is provided.]

Notices of injury must be given the employer within 30 days and claims within one year; this limitation runs from the death or the removal of physical

or mental incapacity. Notice is to be in writing stating the facts in ordinary language and signed by the claimant or someone in his behalf. Service may be by delivery in person or by leaving notice at the last known residence or place of business or by registered letter. Inaccuracies do not invalidate unless there is intention to mislead and the employer was in fact misled. Want of notice is not a bar to proceedings if it is shown that the employer or his agent had knowledge, or that the failure was due to accident, mistake, or unforeseen cause.]

(1232) SEC. 21. *Medical examinations.*—[An injured employee must at reasonable times submit to medical examination by the employer's physician, with the right to have his own physician present. A justice of the superior court may appoint a competent and impartial physician on petition of either party to act as medical examiner, who shall file a report to be produced as evidence in any hearing to determine the amount of compensation due. Refusal to submit to an examination or obstructing the same suspends right to compensation for the period, and it may be forfeited for such time.]

(1233) SEC. 22—(1237) SEC. 26. *Waivers; lump sums.*—[No agreement of waiver is valid, and no claims may be assigned, attached, or made in any way liable for debt. Benefits have a preference over unsecured debts in the same amount as wages for labor are now preferred, but nothing herein is to be construed as impairing any lien which the employee may have acquired. Where payments have continued not less than six months, future payments may be commuted to a lump sum on petition to the superior court and notice to the other party on a finding that it will be for the best interest of the beneficiary, or that the making of weekly payments entails undue expenses or hardship on the employer, or that the beneficiary has removed from the United States. Present worth capitalized on the basis of interest calculated at 5 per cent per annum with annual rests is to be allowed, payment discharging the employer from further liability.

In fixing the amount of compensation under this chapter allowance may be made for any sums which the employer may have paid to the injured workman or his dependents except for medical, surgical, or hospital services.]

ARTICLE III.—*Procedure*

(1238) SECTION 1 (as amended 1926, ch. 764)—(1258) SEC. 21.—*Agreements; awards; appeals.*—[If the employer and the employee reach an agreement, a memorandum of the same is to be filed in the office of the commissioner of labor. If approved by him, it is enforceable by suitable action at law, including executions against property and proceedings for contempt or willful failure or neglect to comply. If the payments aggregate not more than \$50, the attorney general must, at the request of the commissioner, prosecute suitable action to compel the compliance. No appeal lies from such agreement except on grounds of fraud or coercion. Any modification of the agreement made by the superior court is to be modified to the commissioner. In case of death leaving dependents and there is dispute as to persons or amount, the agreement relates only to those matters.

In case of failure to agree, or if the commissioner of labor fails to approve an agreement, any person in interest may file in the office of the clerk of the superior court a petition in the nature of a petition in equity setting forth the facts. A copy of the same is to be served on the other party within 4 days, answer within 10 days, and an early assignment for hearing, such cases having preference on the calendar. The decision of a justice is to be filed and is enforceable by any suitable process, being conclusive as to findings of fact in the absence of fraud. Costs or a part thereof may be awarded as the court deems best, not including counsel fees. Appeals lie to the supreme court. The claim of appeal suspends operation of the decree appealed from, but in case of default in taking the required procedure such suspension shall cease. The supreme court may affirm, reverse, or modify a decree, and may itself take or cause the superior court to take such further proceedings as shall seem just. The superior court may certify questions of law to the supreme court, staying further proceedings except such as are necessary to preserve the rights of the parties.

Agreements and decrees may be reviewed at any time before the expiration of two years from the date of their approval or entry on the ground of a change of conditions, with modifications according to the findings. Proceeding

is to be speedy, efficient, and inexpensive, the general laws relating to practice not being binding. Proceedings do not abate because of the death of a petitioner, and may be prosecuted by a legal representative or a dependent.

Claims are barred unless an agreement or petition has been filed within two years after the occurrence of the injury or death of the employee or of the removal of any physical or mental incapacity.

In case of the beneficiary's leaving the State, payments may be ordered made monthly or quarterly instead of weekly, on the application of either party, having regard to the welfare of the employee and the convenience of the employer. All questions settled by agreement must, except as otherwise provided, be determined by the superior court.

If a third party is legally liable for damages, proceedings may be taken against such party and also against the person liable to pay compensation, but both shall not be recovered, and if the employee has been paid compensation, the person by whom it was paid is entitled to indemnity from the third party, and to the extent of such indemnity is subrogated to the rights of the injured workman for damages. Provision is made for recording proceedings in all cases under this chapter.]

ARTICLE IV.—*Alternative schemes permitted*

(1250) SECTION 1—(1261) SEC. 3. *Substitute schemes*.—[Employers may agree with their employees for a system of compensation, benefit, or insurance, in lieu of the provisions of this chapter, subject to the approval of the superior court. Equivalent benefits must be provided, or if the employee contributes, proportional additional benefits. Provisions must be made for the equitable distribution of funds after due provision has been made to discharge the liabilities already incurred if and when the scheme is terminated. Such scheme may be dissolved if found to be not fairly administered or for other valid and substantial reason.]

ARTICLE V.—*Insurance*

(1262) SECTION 1—(1273) SEC. 12. *Security*.—[Employers coming under the act must secure payments by insuring in an authorized stock or mutual company or association, by furnishing proof of financial ability to make direct payments, by furnishing a security, indemnity, or bond guaranteeing the payment of compensation that may become due, or by a combination of the last two methods. Policies must provide that notice, knowledge, and jurisdiction of the employer affect the carrier, and must cover the entire liability of the employer and make him directly and primarily liable to the beneficiaries entitled to compensation, giving him a first lien on any amount which may become due on the policy. In case of the legal incapacity of the employer to receive and make payments, they are to go directly to the beneficiary, the employer's insolvency or bankruptcy not relieving the insurer for the period that the policy is in force or compensation remains owing. The employee retains his right to recover compensation directly from the employer, and also to enforce in his own name the liability of the insurer, but payment in whole or in part by one of the parties shall to that extent bar recovery against the other. Insurers assuming the liability of the employer are subrogated to all his rights and duties. All policies are deemed made subject to the provisions of this chapter and inconsistent provisions are void.

Employers failing to comply with the provisions of this article are liable to compensation or for damages at the option of the employee or his dependents, the same to be exercised in writing within 30 days, otherwise the employer liable only for compensation.

Policies insuring against liability for personal injuries other than payment of compensation under this chapter must contain similar provisions as to the direct liability of the insurer to the injured party, or, in case of death, to the party entitled to sue. The party entitled to sue may join the insurer with the insured as a defendant.

Insurance companies must report the writing of policies to the commissioner of labor and also their cancellation, must fill out blanks and answer all questions submitted by said commissioner relating to premiums and the amount of compensation paid which he may deem important either for the proper administration of the law or for statistical purposes. Refusal is a misdemeanor.]

ARTICLE VI.—*Reports of accidents*

(1274) SECTION 1—(1280) SEC. 7. *Accidents to be reported.*—[Employers must report to the commissioner of labor all personal injuries which prove fatal or incapacitate from earning full wages for a period of at least one week. Fatal injuries must be reported within 48 hours and others within one week. Supplementary report is to be made at the termination of the period of incapacity. Reports are to be made on blanks, and no other report of injuries may be required by any other department or officer of the State from employers to whom the provisions of this chapter apply. The commissioner of labor is to transmit to the factory inspector copies of reports received by him. Such reports are not open to the public and may not be in evidence or referred to in any judicial proceedings except in prosecution for the violation of this chapter.]

In so far as not inconsistent with other provisions of this chapter, the commissioner of labor has supervision of its operation and may furnish employers and employees such information as may assist them in an understanding of their rights and obligations thereunder. The provisions of this article do not apply to public utilities not required by law to make reports of accidents to the public utilities commission, but the latter must furnish the commissioner of labor with duplicate reports of all accidents otherwise reported to him under the provisions of this chapter.]

ARTICLE VII.—*Public employees*

(1281) SECTION 1—(1289) SEC. 9. *Acceptance by employees; procedure.*—[Acceptance of the provisions of this chapter by a town shall be by vote of its electors. Notices by employees are to be given to the attorney general if the employer is the State, and to the treasurer if the employer is a city or town. Officials named may appoint a physician to render the medical and hospital services prescribed, though in an emergency another physician may provide the necessary aid, but this is not to be construed to prevent the employee from selecting the physician and hospital as provided in section 5 of Article II hereof. The attorney general may act in agreements and settlements of claims against the State, the council of any city or town may appoint some person or persons, not exceeding three in number, to enter into and execute agreements in cases of claims against such city or town. Expenses are to be met out of the general funds of the State and its municipalities. Legal proceedings are to be brought in the same manner and with the same force and effect as in the case of any other employer and employee. The provisions requiring insurance do not apply to the State or any city or town.]

ARTICLE VIII.—*Miscellaneous provisions*

(1290) SECTION 1. *Definitions.*—In this chapter, unless the context otherwise requires—

(a) The word "employer" shall include any person, copartnership, corporation, or voluntary association, and the legal representative of a deceased employer, and on and after the first day of June, A. D. 1917, it shall include the State, and also each city and town therein that shall vote to accept the provisions of this act in the manner herein provided.

(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 \$3,000 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 heretofore defined, or to his legal representative, or, where he is a minor or incompetent, to his conservator or guardian.

(1291) SEC. 2. *Other statutes.*—Nothing in this act shall affect the liability of the employer to a fine or penalty under any other statute.

(1292) SEC. 3. *Provisions severable.*—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.

(1293) SEC. 4. *Action for death not allowed.*—In all cases where an employer and employee shall have elected to become subject to the provisions of this chapter the provisions of section fourteen of chapter three hundred and thirty-three of the general laws [giving a right to sue for damages for death by wrongful act] shall not apply while this chapter is in effect.

(1294) SEC. 5. *Title.*—This act may be cited as “workmen’s compensation act.”

SOUTH DAKOTA

COMPILED LAWS OF 1919

Compensation of workmen for injuries

SECTION 9436. Title.—This article shall be known as the South Dakota workmen's compensation law.

SECS. 9437, 9438. Election.—[Every employer and employee except as stated in this article is presumed to have accepted its provisions and is bound thereby except as otherwise provided. If rejection has been made it may be waived by notice. Notice of exemption or acceptance must be given 30 days prior to any accident resulting in injury or death unless it should be the first 30 days after the date of employment, when notice given at the time of the employment is sufficient. Employers must post notice conspicuously or serve personally upon the employee. Employees must serve personally or send notice by registered letter. A copy of such notice must be filed with the industrial commission.]

SEC. 9439 (as amended 1923, ch. 311). Insurance.—[Employers under the act must insure as provided, and shall then be liable only according to the terms of the act. The State and its municipalities are not required to give or furnish any bond or undertaking, but may protect their risks by bonds if desired.]

SEC. 9440. Remedy exclusive.—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.

SEC. 9441. Statutory duty.—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.

SEC. 9442 (as amended 1921, ch. 421). Willful, etc., acts.—No compensation shall be allowed for any injury or death due to the employee's willful misconduct, including intentional self-inflicted injury, intoxication, or willful failure or refusal to use a safety appliance furnished by the employer, or to perform a duty required by statute: *Provided*, That the burden of proof under this section shall be on the defendant employer.

SEC. 9443 (as amended 1919, ch. 364; 1923, ch. 312). Employments excluded.—This article shall not apply to an employee whose employment is not in the usual course of trade, business, profession, or occupation of the employer; to farm laborers; to domestic servants nor to the employers of such persons: *Provided*, That such employers may place themselves under the provisions of the workmen's compensation law by voluntarily insuring their risks under such law, and their employees shall have the right of rejection of such provision if they so desire.

SECS. 9444, 9445. Actions at law.—[Employers electing not to accept the act may not, in any action for damages, plead the common law defenses; but if the employer has accepted and the employee rejects, the defenses are available.]

SEC. 9446 (as amended 1921, ch. 416). Liability of third parties.—[Where a legal liability to pay damages lies against a third party the injured employee may either claim compensation or bring action, or he may proceed against both but shall not collect from both. If compensation is awarded the employer may collect in his own name or that of the injured employee the amount of the liability of the third party, holding the same for the benefit of the injured employee or his personal representative, if deceased, less the amount of compensation paid and necessary and reasonable expenses of collecting damages.]

SEC. 9447. Contractors.—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 of 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.

SEC. 9448. *Waivers*.—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.

SEC. 9449. *Preference of claims*.—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.

SEC. 9450. *Assignments, etc.*—No claim for compensation under this article shall be assignable, and all compensation and claims therefor shall be exempt from all claims of creditors.

SEC. 9451. *Public employees*.—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.

SEC. 9452. *Interstate commerce*.—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.

SEC. 9453. *Accident without State*.—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.

SEC. 9454. *Prior accidents*.—The provisions of this article shall not apply to injuries, deaths, or accidents which occurred prior to the 1st day of July, 1917.

SECS. 9455-9457. *Notice; claim*.—[Injured employees or their representatives must immediately, or as soon as practicable, give written notice to the employer of any injury, until which the employee will not be entitled to a physician's fee nor to compensation unless it can be shown that the employer or his agent or representative had knowledge of the injury or death, or that notice was prevented by reason of physical or mental incapacity, fraud or deceit of some third person or other equally good reason. In any case, notice must be given within 30 days unless reasonable excuse is made. Ordinary language may be used, and no inaccuracy will bar compensation unless the employer is prejudiced thereby, and then only to the extent of such prejudice. Service may be personal or by registered letter. Claims are barred unless filed within one year after the injury or death.]

SEC. 9458 (as amended 1919, ch. 303; 1921, chs. 418, 420). *Compensation for death*.—The amount of compensation which shall be paid for an injury to the employee resulting in death shall be:

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 \$1,650, and not more in any event than \$3,000. 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 \$1,650 and not more in any event than \$3,000. 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 \$150 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. With the consent and approval of the industrial commissioner, the employer may pay to the surviving widow of a deceased the compensation payable to such widow and the minor children of the deceased without the necessity of the appointment of a guardian for such minor children and payment of such compensation by the employer shall relieve him of all obligation as to the distribution of such compensation so paid. Except in those cases where a lump-sum settlement has been made, such approval by the industrial commissioner may be at any time revoked or modified for cause.

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.

8. No compensation shall be payable under this act to a widow or dependent unless such widow or dependent was a resident of the United States at the time of the death of the deceased.

Sec. 9459 (as amended 1919, ch. 363; 1921, ch. 419; 1923, ch. 310). *Compensation for injury; how computed and paid; notice.*—The amount of compensation which shall be paid to the employee for an injury not resulting in death shall be:

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 12 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.

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 10th day, compensation shall begin the 11th 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 shall be equal to 55 per cent of the earnings, but not to exceed \$15 per week and not less than \$7.50 per week, except that when the amount earned is less than \$7.50 per week, in which case the amount of compensation 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 11th 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 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 such 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 9482 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.

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 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.

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 18 months after he returns to such employment, and the commissioner shall immediately send to the employer by registered mail a copy of such notice.

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 9450, compensation for a further period, subject to the limitations as to time and amounts fixed in subdivision (2) and (8) of said section 9450, for the specific loss mentioned herein 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 cent of the average weekly wage during 50 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 cent of the average weekly wage during 35 weeks.

(c) For the loss of a second finger, or the permanent and complete loss of its use, 55 per cent of the average weekly wage during 30 weeks.

(d) For the loss of a third finger or the permanent and complete loss of its use, 55 per cent of the average weekly wage during 20 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 cent of the average weekly wage during 15 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 cent of the average weekly wage during 30 weeks.

(i) For the loss of one or more of the toes other than the great toe, 55 per cent of the average weekly wage during 10 weeks, and for the additional loss of one or more toes other than the great toe, 55 per cent of the average weekly wage during an additional 10 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 cent of the average weekly wage during 150 weeks.

(m) For the loss of an arm, or the permanent and complete loss of its use, 55 per cent of the average weekly wage during 200 weeks.

(n) For the loss of a foot, or the permanent and complete loss of its use, 55 per cent of the average weekly wage during 125 weeks.

(o) For the loss of a leg, or the permanent and complete loss of its use, 55 per cent of the average weekly wage during 160 weeks.

(p) For the loss of the sight of an eye, 55 per cent of the average weekly wage during 100 weeks.

(q) In all cases in the above schedule under this paragraph, where the loss of use is partial and permanent, the compensation shall bear such relation to the maximum amount for complete and permanent loss of use as defined in this paragraph as the partial loss of use bears to complete loss of use.

(r) The loss of both hands or both arms, or both feet, or both legs, or both eyes, or of 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.

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 \$7.50 nor more than \$15 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 \$500.

8. In no event shall the compensation to be paid exceed 55 per cent of the average weekly wage or exceed \$15 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 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 had been competent and had claimed or exercised said right or privileges; and no limitations of time by this act provided shall run so long as said incompetent employee is without a guardian.

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 employee were paid at the time of the injury, or if this shall not be feasible, then the installments shall be paid weekly.

Sec. 9460. *Lump sums.*—[An employer, employee, or beneficiary may petition the industrial commissioner for commutation of unpaid benefits, or any part thereof, and if it appears to the best interests of the parties, commutation will be allowed, representing the present value upon the basis of interest calculated at 5 per cent per annum with annual rests. In cases indicating complete disability no petition will be considered until after the expiration of six months from the date of the injury. A guardian or administrator may be appointed for persons under disability entitled to compensation, who may act for the beneficiary, and if there be no legal representative, the employer may petition for his appointment. Either party may reject an award of a lump-sum payment, except an award under section 9458 or paragraph 5 of section 9459, or for injuries therein defined as total and permanent.]

Sec. 9461. *Basis of computation.*—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 300 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 200.

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.

Sec. 9462. *Remedy exclusive.*—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. *Medical examinations.*—[Employees must submit to medical examinations on request of the employer as soon as practicable after the injury,

also one week after the first examination and thereafter at intervals not oftener than once every four weeks. The employer may have his physician present, and if he does not, the examining surgeon must, at the request of the injured employee or his representative, furnish a statement in writing of the condition and extent of the injury the same as reported to the employer. Refusal to submit to examination or obstructing the same suspends the right to payments and no compensation shall be payable for such period. If an injured employee is likely to die, the surgeon treating him at the instance of the employer must call another surgeon designated and paid for by the injured employee or his beneficiary to make an examination before the death of the injured employee.]

SECS. 9464 (as amended 1925, ch. 302), 9465 (as amended 1919, ch. 364; 1921, ch. 422; 1925, ch. 302). *Industrial commissioner*.—[An industrial commissioner is appointed by the governor for a period of two years and until his successor is appointed and qualified. He may be removed from office by the governor and is charged with the authority of carrying out and enforcing the provisions of this article. Bond is required. A salary of \$2,400 is fixed and office is to be furnished at the State capitol, together with such clerical assistance as is necessary for the proper discharge of his duties.]

SECS. 9466-9469, 9470 (as amended 1919, ch. 364; 1925, ch. 304), 9471 (as amended 1921, ch. 417; 1925, ch. 305), 9472-9476. *Procedurc*.—[The commissioner may make rules and regulations for carrying out the provisions of this article, has power to subpoena witnesses, administer oaths, examine books and records relating to questions in dispute or under investigation. Attendance and testimony may be enforced by proceedings had in the circuit court. Annual reports are required. If the parties reach an agreement as to compensation a memorandum must be filed with the industrial commissioner, and unless disapproved within 20 days it shall stand and be enforceable for all purposes under the provisions of this article. If the parties fail to reach an agreement they may notify the commissioner, who shall thereupon call for the formation of a board of arbitration of three persons, one named by each party, the commissioner acting as chairman. If either party fails to appoint his representative within seven days after notice, the commissioner is to fill the vacancy and notify the parties unless good cause is shown for delay. The parties may waive hearing by a board, either by failure to make an appointment or by stipulation, and hearing shall then proceed before the commissioner or deputy commissioner. Such investigations shall be made as are deemed necessary, and hearings may be held at places convenient to the parties and witnesses. Records are to be kept and rulings and findings of fact are to be filed in the office of the industrial commissioner. Unless a claim for review is filed within 10 days from the date of the filing of the finding of the board in the office of the industrial commissioner, the decision is enforceable.

The commissioner may appoint an impartial physician to examine the injured employee and report. The fee is fixed at \$5, with traveling expenses, but additional reasonable amounts may be allowed in extraordinary cases. The physician may testify as to the result of his examination before the commissioner or any other person, commission, or court. Arbitrators' fees are \$5 per day for each except the industrial commissioner, who may allow additional reasonable amounts. The employer pays the fees but may deduct one-half the sum from any compensation found due the employee. Other costs are to be taxed on the losing party or an equitable apportionment made.

If a claim for review is filed, the commissioner shall hear the parties and all evidence and may revise the decision of the board of arbitration in whole or in part or refer the matter back to the board. The party is, as a matter of right, entitled to a second hearing upon any question of fact. A certified copy of any order or decision of the commission or board not appealed from may be filed in the circuit court of a county, whereupon a decree will issue with the same effect as though rendered in an action heard and determined by the court, except that there shall be no appeal on questions of fact nor where the decree is based on an award or decision of the commissioner which has not been presented to the court within 10 days after notice of the filing by the commissioner. The decree will be modified to conform to any variations in the award certified by the industrial commissioner. Payments under the article may be reversed by the industrial commissioner at the request of either party and modified according to his findings.]

SEC. 9477 (as amended 1919, ch. 264). *Fees*.—[Fees of attorneys and physicians are subject to the approval of the industrial commissioner unless otherwise provided in this article; but a claimant may, by written application, secure

the attorney of the county to appear for him in any and all hearings before the board of arbitration or an appeal to the courts, without cost to the claimant. This provision is not to abridge the right of the claimant to employ such counsel as he may desire.]

SECS. 9478, 9479. *Reports; records.*—[Employers must keep a record of all injuries sustained by employees, the same to be reported in writing to the industrial commissioner within 48 hours after knowledge thereof; Sundays and legal holidays are not counted. Supplementary reports are to be made on the termination of the disability, and within 60 days in any case, giving required data. Books, records, and pay rolls referring to wage expenditure must always be open for inspection, but the information obtained may be used for no other purpose than for the information of the commissioner or insurance company with reference to the duties imposed upon him. Refusing inspection incurs a penalty.]

SECS. 9480, 9481. *Commissioner.*—[No commissioner or deputy may be interested in any business enterprise affected by this article during his term of office; commissioners may be removed for incompetency, inefficiency, neglect of duty, or malfeasance, but only after hearing.]

SECS. 9482, 9483. *Insurance.*—[Insurance in an approved corporation or organization is required, and evidence thereof must be submitted on demand of the industrial commissioner or of the commissioner of insurance. Employers may exchange contracts of insurance through any medium named in their agreements, and a certificate of authority issued by the insurance company of any State, together with a financial statement showing its solvency, is evidence of compliance.]

SEC. 9484-9486. *Compensation plans.*—[Any employer or group of employers may enter into or continue an agreement with their workmen to provide a plan of compensation or insurance in lieu of that provided by this article. Certificates are issued when the plan is approved, whereupon it is legal to substitute such plan until and unless the plan is terminated on reasonable notice on grounds of latent defects or other substantial reason.]

SEC. 9487. *Commission.*—[Not more than 15 per cent of the premium charged may be charged, accepted, or paid as commission for placing or renewing insurance.]

SEC. 9488. *Self-insurers.*—[On proof of financial ability, or the deposit of satisfactory security, the insurance commissioner and industrial commissioner may approve self-insurance. A showing that the employer is a member of an association as provided in section 9483, submitting its financial statement showing its solvency, shall be considered satisfactory proof of the employer's financial ability.]

SEC. 9489 (as amended 1919, ch. 363). *Appeals.*—[Employers or employees may appeal to the circuit court of the county from any adverse decision of the commissioner of insurance or industrial commissioner arising under this article. The court may then remand the case for action required by its order, or may enter judgment.]

SEC. 9490. *Definitions.*—In this article, unless the context otherwise requires—

“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 52 weeks immediately preceding the date of injury, divided by 52; 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 52 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 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 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 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 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.

ACTS OF 1919

CHAPTER 362 (as amended 1921, ch. 423).—*Operation of threshing machines*

[The provisions of the workmen's compensation act are extended and apply to the occupation of operating threshing machines, including traction engines and separators, in the State of South Dakota and compliance with the act is required of all persons, firms, or corporations engaging in such operation. Policies of insurance may be written by any company authorized, and contracts for threshing grain without first procuring a policy are null and void. The act relates only to those operating threshing machines for profit, and not by owners or those not generally engaged in such operation for commercial purposes.]

TENNESSEE

ACTS OF 1919

CHAPTER 123.—*Compensation of workmen for injury*

SECTION 1. *Title.*—This act shall be known as the workmen's compensation act.

SEC. 2 (as amended 1923, ch. 84). *Definitions.*—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 five persons for pay. If the employer is insured it shall include his insurer, unless otherwise herein provided.

(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 52 weeks immediately preceding the date of the injury divided by 52; 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 52 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 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, 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 52 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.

SECS. 3, 4. *Election.*—[Employers and employees except as herein stated are presumed to have accepted the provisions of this act unless prior to any action notice to the contrary is given by an employer by posting a statement of the rejection, duplicate to be filed with the department of labor (formerly with the bureau of workshop and factory inspection) of the State or by the employee giving written or printed notice to his employer of like effect with proof of service on the employer attached together with an affidavit that such action was not advised, counseled, or encouraged by the employer or any one acting for him, the same to be similarly filed. Notice must be given 30 days prior to any accident unless occurring less than 30 days after the date of the employment.]

SEC. 5. *Relation to other acts.*—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.

SEC. 6 (as amended 1923, ch. 84). *Excluded occupations.*—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.

(d) In case where less than 10¹ 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 30 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 30 days before the happening of any accident or death, and may at any time withdraw the acceptance by giving like notice of the withdrawal.

SEC. 7. *What payment valid.*—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 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 18 years, or to a dependent child as defined in subsection 2 of section 30 over the age of 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.

SEC. 8. *Remedy exclusive.*—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. *Statutory duties.*—Nothing in this act shall be construed to relieve any employer or employee from penalty for failure or neglect to perform any statutory duty.

SEC. 10. *Willful, etc., acts.*—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.

SECS. 11-13. *Common-law defenses.*—[Employers rejecting the act if sued by an employee electing to accept it are not permitted to plead the common-law defenses: but if an employee rejects and an employer accepts, the employer may avail himself of such defenses in any action for damages. So, also, if both parties elect not to come under the act.]

SEC. 14. *Liability of third parties.*—[Where a third party is liable for the injury the employee may, at his option, claim compensation or proceed at law against the person liable, or proceed against both, but may not collect from both. If compensation has been paid or the employer becomes liable therefor, he may sue in his own name or that of the injured employee to recover from the other person liable the indemnity paid or payable to the injured employee.]

SEC. 15. *Employees of contractors.*—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.

¹ Probably should be 5; see sec. 2 (a), as amended.

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. *Waivers.*—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.

SEC. 17. *Preference.*—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.

SEC. 18. *Assignments, etc.*—No claim for compensation under this act shall be assignable, and all compensation and claims therefor shall be exempt from claims of creditors.

SEC. 19. *Injuries outside State.*—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.

SEC. 20. *Second injuries.*—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.

SEC. 21. *Prior injuries.*—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.

SECS. 22-24. *Notice, claim.*—[Immediate notice, or as soon as practicable, must be given an employer of the occurrence of an injury, the same to be in writing by the injured employee or his representative. No right to physician's fee or compensation accrues until 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 unless such written notice is given the employer within 30 days unless reasonable excuse for the failure is made. Notice is to be in simple language, stating the essential facts, signed by the claimant or someone in his behalf, and no defect or inaccuracy bars compensation unless prejudice is proved, and then only to the extent of such prejudice. Service may be personal on the employer or his agent. Claims are forever barred unless the notice is given as required and claim submitted within one year after the accident.]

SEC. 25. *Medical, etc., aid.*—During the 30 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 30 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 exceed \$100: *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 \$100. 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.

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.

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.

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.

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 \$100, 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.

Sec. 26 (as amended 1923, ch. 84). *Waiting time.*—No compensation shall be allowed for the first seven 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 eighth 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.

Sec. 27. *Agreements.*—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 \$2, shall be borne by the employer.

Sec. 28 (as amended 1923, ch. 84). *Compensation payments; schedule.*—The following is the schedule of compensation to be allowed employees under the provisions of this act:

(a) For injury producing temporary total disability, 50 per cent of the average weekly wages as defined in this act, subject to a maximum compensation of \$12 per week and a minimum of \$5 per week: *Provided,* That if the employee receives \$5 or more per week, then he 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 300 weeks. The compensation shall be paid at intervals when the wage was payable, as nearly as may be.

(b) In all cases of temporary partial disability the compensation shall be 50 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 300 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.

(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, 50 per cent of the average weekly wages during 60 weeks.

For the loss of a first finger, commonly called index finger, 50 per cent of average weekly wages during 35 weeks.

For the loss of a second finger, 50 per cent of average weekly wages during 30 weeks.

For the loss of a third finger, 50 per cent of average weekly wages during 20 weeks.

For the loss of a fourth finger, commonly called little finger, 50 per cent of average weekly wages during 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, 50 per cent of average weekly wages during 30 weeks.

For the loss of one of the toes other than the great toe, 50 per cent of the average weekly wages during 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, 50 per cent of average weekly wages during 150 weeks.

For the loss of an arm, 50 per cent of the average weekly wages during 200 weeks.

For the loss of a foot, 50 per cent of average weekly wages during 125 weeks.

For the loss of a leg, 50 per cent of average weekly wages during 175 weeks.

For the loss of an eye, 50 per cent of average weekly wages during 100 weeks.

For the complete permanent loss of hearing in both ears, 50 per cent of average weekly wages during 150 weeks.

For the loss of an eye and a leg, 50 per cent of average weekly wages during 350 weeks.

For the loss of an eye and an arm, 50 per cent of average weekly wages during 350 weeks.

For the loss of an eye and a hand, 50 per cent of average weekly wages during 325 weeks.

For the loss of an eye and a foot, 50 per cent of average weekly wages during 300 weeks.

For the loss of two arms, other than at the shoulder, 50 per cent of average weekly wages during 400 weeks.

For the loss of two hands, 50 per cent of average weekly wages during 400 weeks.

For the loss of two legs, 50 per cent of average weekly wages during 400 weeks.

For the loss of two feet, 50 per cent of average weekly wages during 400 weeks.

For the loss of one arm and the other hand, 50 per cent of the average weekly wages during 400 weeks.

For the loss of one hand and one foot, 50 per cent of the average weekly wages during 400 weeks.

For the loss of one leg and one hand, 50 per cent of the average weekly wages during 400 weeks.

For the loss of one arm and one foot, 50 per cent of the average weekly wages during 400 weeks.

For the loss of one arm and one leg, 50 per cent of the average weekly wages during 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 (c) 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.

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 (e) 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 stated in clause (a).

In all other cases of permanent partial disability not above enumerated the compensation shall be 50 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, subject to a maximum of \$11 per week. Compensation shall continue during disability, not, however, beyond 300 weeks.

(d) For permanent total disability as defined in subsection (e) below, 50 per cent of the wages received at the time of the injury, subject to a maximum compensation of \$12 per week and a minimum compensation of \$5 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.³ This compensation shall be paid during such permanent total disability, not exceeding 550 weeks, but in all such cases drawing more compensation than \$5 per week, the payments after the first 400 weeks shall be reduced to \$5 per week for the remainder of the 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 \$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 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.

(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.

(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

³ Chapter 84, Acts of 1923, declares \$12 the maximum, if no dependent; \$13 if one, \$14 if two, and \$15 if three. Held to be controlling.

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.

Sec. 29. Two or more employers.—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.

Sec. 30 (as amended 1923, ch. 84). Dependents; benefits, how computed.—For the purpose 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 16 years.

(2) Children between 16 and 18 years of age, or those over 18, 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.

(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 leaves a widow and no dependent child, there shall be paid to the widow 30 per cent 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, 40 per cent 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, 50 per cent 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 [dependence] 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 incapacitated from earning, and the dependence of such a child shall terminate with the age of 18.

(10) If the deceased employee leave a dependent orphan, there shall be paid 30 per cent of the monthly wages of deceased, with 10 per cent additional for each additional orphan, with a maximum of 50 per cent of such wages.

(11) If the deceased employee leave a dependent husband and no dependent child, there shall be paid to the husband 20 per cent 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, 25 per cent of the average weekly wages of the deceased to such

parent, and if both parents, 35 per cent 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, 20 per cent of the average weekly wages of the deceased, or if more than one, 25 per cent 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.

(16) The compensation payable in case of death to persons wholly dependent shall be subject to a maximum compensation of \$12 per week and a minimum of \$5 per week: *Provided*, That if at the time of the injury the employee receives wages of less than \$5 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 \$12 per week, and a minimum of \$5 per week: *Provided*, That if the income loss of said partial dependents by such death is less than \$5 per week, then the dependents shall receive the full amount of their income loss. This compensation shall be paid during dependency not exceeding 400 weeks, payments to be made at the intervals when the wage was payable as nearly as may be.

(17) In computing and paying compensation to orphans or other children, in all cases, only those under 18 years of age, or those over 18 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 18, the latter only for the time they are so incapacitated, within the period of 400 weeks.

(18) Actual dependents shall be entitled to take compensation in the order named in subsection (3) above until 50 per cent 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 \$12 per week.³

SECS. 31-33. Procedure.—[Actions or proceedings to recover compensation must be begun within one year after the occurrence of the injury if by the injured employee himself; if by his dependents, one year after the date of notice in writing given by the employer to the department of labor stating his willingness to pay compensation when it is shown that the death is one for which compensation is payable. If the deceased is an alien who has no known dependents within the United States, it is the duty of the department to give written notice of the death to the consul or other representative of such foreign country residing within the State. Proceedings to obtain judgment in case of defaulted payments for 30 days must be begun within one year. In case of physical or mental incapacity other than minority the limitation extends one year from the date when the incapacity ceases.

Disputes may be submitted to the judge or chairman of the county court by either party who is vested with jurisdiction to hear and determine matters in issue and enter judgment, and enforce the same as courts of record render and enforce judgment. Proceeding is by petition setting forth the facts on which the claim is based. Provision is made for answer and for appeals to the circuit court of the county, where the case will be heard by the circuit judge *de novo*. Writs lie to the supreme court in accordance with the practice governing other appeals in the nature of a writ of error in civil causes.

Attorneys' fees and physicians' fees and hospital charges are subject to the approval of the county judge or the court before which the matter is pending, but no attorney's fee may be in excess of 20 per cent of the recovery or award.]

SEC. 34. Alien beneficiaries.—[In case of nonresident beneficiaries, the circuit court has jurisdiction, payments to be made to the duly accredited consul or other representative of the county of which the beneficiaries are citizens. The

³ Chapter 84, Acts of 1923, declares that if there is one dependent, \$12 is the maximum, \$13 if two, \$14 if three, and \$15 if four or more. Held to be controlling.

distribution of benefits can be made only on the order of the circuit court, which may require bond to be given conditioned on the satisfactory accounting of the moneys received by such officer. A sworn statement must be submitted setting forth a list of the dependents with the name, age, residence, extent of dependency, and relationship to the deceased employee.]

SECS. 35-39. *Final settlement.*—[Periodical payments may be commuted to one or more lump sum amounts, but only with the consent of the circuit court. The present value calculated on a 6 per cent basis is provided for. Agreements and awards covering not more than six months' disability are final and not subject to any adjustment; so, also, are lump sum payments, but periodical payments for more than six months may be modified at any time by agreement of the parties, approved by the court, or on appeal to the court, if the parties do not agree, on claim of change of physical condition.]

At any time after the amount of an award has been agreed upon or found and ordered by the court, a sum equal to the present value calculated on a 6 per cent basis may, if the amount of payments is certain, be paid to a savings bank or trust company, by leave of the court, and are to be held in trust and disbursed for the benefit of the employee and his dependents who shall then have no further recourse against the employer.]

SECS. 40 (as amended 1923, ch. 84), 41-46. *Insurance.*—[Employers under the act must insure their liability in some authorized agency for insurance, or furnish satisfactory proof of financial ability to meet the obligations under the act. In the latter case the insurance commissioner may, in his discretion, require the deposit of an acceptable security or indemnity bond conditioned to run directly for the benefit of the employees affected, and enforceable by them in an action in their own name. This act does not apply to policies of insurance against loss from explosions or boilers or fly wheels or other similar single catastrophe hazards. Employers accepting the act must file evidence of compliance with the insurance requirements annually, which failing liability in actions at law without the common law defenses continues; but if the employee claims compensation it will be deemed as a waiver of the right to sue. No part of the insurance premium may be paid by the employee or deducted from his salary.]

Penalties lie for failure to file evidence of insurance, and a certificate issues to employers complying with the provisions of the act relating to insurance. This may be revoked after 30 days' notice and hearing but may be renewed at any time.

Policies must provide that notice, knowledge, and jurisdiction of the employer shall be deemed notice or knowledge on the part of the insurer, who is also bound by awards, orders, and judgments rendered against the employer. There must also be an agreement for prompt payment, and that the obligation is not affected by any default of the insured in the giving of notice required by the policy or otherwise. The policy may be enforced directly by the person entitled to compensation and the failure of the employer to comply with the provisions of the policy is not a defense unless it is shown that the injured employee or his representatives or dependents aided and abetted in seeking to mislead or defraud the insurer.

The insurance commissioner of the State is given power to enforce the provisions of the act relating to the insurance of the payments of awards. He may furnish forms, make rules and regulations, and supply literature and blanks deemed requisite to facilitate or promote the efficient administration of the act.]

SECS. 47, 48. *Construction.*—[The statute is to be equitably construed as a remedial act to the end that its purposes may be realized and attained. Its provisions are severable, the invalidity of any part not to affect the validity of the whole.]

SECS. 49-51. *Act in effect.*—[An initial appropriation for administering expenses is made, conflicting laws repealed except as to pending litigation, and the act declared effective on July 1, 1919.]

ACTS OF 1923

CHAPTER 84.—*Miners' insurance fund*

[This act amends the compensation law in various sections, modifying, as noted in sections 28 and 30, by increasing the weekly maximum allowance for disability and for death according to the number of dependents. The act also

provides for the establishment of a State insurance fund for coal operators only.

The provisions relative to the "Coal operators' protective fund" are as follows:]

SECTION 6. Scope—All the provisions of the said act known as the workmen's compensation act, shall hereafter apply to coal mine operators and to their employees, except as modified herein.

(a) Each operator of a coal mine may secure his liability under the said workmen's compensation act as provided in Section 41 of said act, or shall have the option of becoming a member of an association of such operators which association shall provide a fund in cash to be known as the "Coal operators protective fund." This fund shall be created by the payment to the fund by each such employer by an assessment from 1 cent to 3½ cents per ton produced in the preceding year, the amount of assessment to be determined by the commissioner of insurance and banking (within the above limits) as shall be sufficient to produce enough money to take care of the ordinary accidents and the catastrophe hazard; provided the employers entering into the association shall represent at least 75 per cent of the total tonnage produced in the State for the preceding year.

(b) The members of the association shall report and pay to the commissioner of insurance and banking, to be immediately turned into the State treasury on July 1, 1923, or on July 1, of any subsequent year, a payment of 3½ cents per ton on the production of his mine for the preceding month, and each month thereafter for 12 months, and shall continue to make a like payment for the three succeeding years, that is, from July 1, 1924, 1925, and 1926.

The ordinary claims shall be paid out of this fund, from year to year as they occur, up to and including the year beginning July 1, 1926, and ending June 30, 1927, or any subsequent year beginning on July 1 and ending July 30.

The balance of the fund shall be subject to payment of the catastrophe hazard. Should the fund be insufficient in any of the above years, to meet the payment of claims under a catastrophe, the commissioner of insurance and banking shall levy an assessment on each member up to 2 cents per ton, to be applied to the payment of any unpaid claims, and to restore the fund to a sufficient amount to secure the catastrophe hazard. Such assessment shall in no wise relieve the members from their annual payment of 3½ cents per ton as provided for above, but shall be in addition thereto. If the fund has been depleted by a catastrophe, the commissioner may extend the time above specified for the annual payment of 3½ cents per ton until the reserve for catastrophe hazard shall amount to \$250,000. When such reserve shall have reached this amount, it shall be transferred from the general fund to a "catastrophe reserve" against which no claims for accidents other than those arising from catastrophe, shall be charged.

Each member of the association shall then be assessed for so much per ton as shall raise enough to take care of the ordinary accidents, from year to year, which assessment shall be from 1 to 3½ cents per ton.

On the happening of any catastrophe, payment shall be made out of the "catastrophe reserve," and a special assessment shall be made, not to exceed 2 cents per ton per year, until the catastrophe reserve shall be restored to the sum of \$250,000.

(c) The entire amount of the said fund may be loaned to the State at 3 per cent per annum but shall be subject to the demands on the fund at any time, which interest shall be carried as a surplus account, apart from the catastrophe hazard, as may be distributed to the members, at the request of their duly authorized representatives, if in the opinion of the commissioner of insurance and banking the catastrophe reserve is sufficient to permit this to be done.

If any employer shall fail to pay his premium or assessment when due, notice shall be given of delinquency, and if such delinquency shall continue for 30 days after notice, he shall forfeit all the protection given him by the fund, and shall thereafter cover his risk in such manner as the commissioner of insurance and banking may require.

(d) Any employer may withdraw from the fund on giving written notice to the commissioner of insurance and banking within 30 days before July 1 of the year of his withdrawal; in which case he shall forfeit all claims to any part of the fund: *Provided*. That no member shall be permitted to withdraw who is in arrears in any assessment: *And provided further*, That he shall

give the commissioner of insurance and banking satisfactory security to take care of any unpaid claims against him.

(e) All accidents to an employee of the members of the association, shall be reported by the employer to the commissioner of labor or as now or hereafter provided by law; that the employer shall make settlement on all accidents with the approval of the commissioner of labor, as is now, or may hereafter be required by law: that in case of a catastrophe loss the commissioner of labor shall immediately make a report of the same to the commissioner of insurance and banking who, with the mine inspector furnished by the commissioner of labor, will ascertain the extent of the loss: and the State comptroller shall issue his warrant against the catastrophe reserve fund in the State treasury upon vouchers properly approved by both the commissioner of insurance and banking and the commissioner of labor, respectively.

All money paid as above to the insurance commissioner shall be sent through his office direct to the injured employee or his legal representatives.

(f) The fund herein created shall not be carried as a separate account for each employer contributing thereto but shall be one sum subject to be employed in taking care of all liability imposed under the workmen's compensation act on any member of the association and no additional assessment shall be made on any member who has suffered the loss except his pro rata of the amount necessary to restore the fund.

(g) If it be necessary, the commissioner of insurance and banking shall charge against the fund, a sum of \$100 per month for expenses incurred in handling and distributing this fund. And the State comptroller is authorized to issue his warrant for this sum each month.

(h) If, and when, the association shall become inoperative by withdrawals, or otherwise, the State treasurer shall dispose of such funds as directed by the duly constituted representatives of the members of this fund either by distributing it to the members in proportion to the amount contributed by them to the fund, or in such other manner as they may see fit.

(i) The manner of reporting accidents, or settlement of claim, and determination of liability, and amount to be paid shall be governed by the provision of the said workmen's compensation act.

Sec. 7. Purpose.—It is the intention of the general assembly of Tennessee to establish a method whereby the employers in coal mines shall be protected as other employers covered by the workmen's compensation act and to provide a method whereby the operators of coal mines may mutually assist each other in carrying full protection for their employees against catastrophe hazard, by means of a fund created by them, and controlled by the State. In all cases of injuries not covered by this act the employee shall have his action for damages at law which shall not be in any way affected by this act.

Sec. 8. Effective date.—This act takes effect from and after July 1, 1923, the public welfare requiring it.

Approved April 1, 1923

TEXAS

REVISED CIVIL STATUTES—1925

TITLE 130.—*Workmen's compensation*

ARTICLE 8306.—*Compensation*

SECTION 1. *Actions for injuries.*—[In actions for personal injuries to employees the employer may not plead the common-law defenses, but may defend on the ground that the injury was due to the willful intention of the employee to bring about the injury, or to his intoxication; in such actions against an employer who is not a subscriber negligence must be shown.]

Sec. 2. *Employees excluded.*—The provisions of this law 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, ranch laborers, nor to employees of any firm, person, or corporation having in his or their employ less than three 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.

Sec. 3. *Remedy exclusive.*—[The remedy provided by this act is exclusive as regards injuries to the employees of a subscriber, both the employee and his personal representatives and dependents being bound.

Compensation allowed is exempt from garnishment, attachment, and judgment, and is not assignable except as otherwise herein provided.]

Secs. 3a–3c. *Election by employees.*—[In the absence of notice in writing an employee is presumed to have accepted the provisions of the act, such notice to be given within five days of notice to him of his employer's acceptance of the act. Such rejection may be waived by notice effective in five days. Failure to give such notice is a waiver of all rights of action and entitles to benefits under the act. The above presumption becomes effective on receipt of notice by the industrial accident board that the employer is a subscriber under the law. If he ceases to be such subscriber he must, on or before the date of the expiration of his policy of insurance, post notices to that effect in three public places around his plant.]

Sec. 4. *Nonsubscribing employers.*—[Employees of employers not accepting the act are themselves not under the act, but may sue under the terms of section 1 of this law.]

Sec. 5. *Willful acts, etc.*—[This law is not to be taken as restricting the right of recovery of exemplary damages in case of the death of a husband, wife, or parent where death is due to the willful act, omission, or gross negligence of an employer. In a suit for exemplary damages trial is de novo, no presumption arising from the fact of awards, rulings, or findings of the industrial accident board.]

Sec. 6. *Waiting period.*—No compensation shall be paid under this law 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. The medical aid, hospital service, 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. If incapacity does not follow at once after the infliction of the injury, or within eight days thereof, but does result subsequently, 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 provided in this law.

SEC. 7. *Medical, etc., aid.*—During the first four 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 service, 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 supplies the same be entitled to recover of the association thereof, 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. 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 fourth 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 physician shall certify to the necessity for another week of hospital services, or so much thereof as may be needed. Such additional hospital services as are herein provided 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. *Change of physicians.*—If it be shown that the association is furnishing medical aid, hospital services, and medicine 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. 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.

SECS. 7b-7d. *Fees.*—[Medical and attorneys' fees are subject to approval of the board. Physicians' fees are limited to those chargeable for similar treatment of persons of like standard of living, where the costs are paid by himself or some one acting for him. Attorneys' fees may not exceed 15 per cent of the first \$1,000 or fraction thereof recovered, nor 10 per cent of any excess recovery. Attorneys' fees may be commuted to a lump sum or may be paid in periodical installments in proportions fixed by the board. If a case is carried to the courts, not more than one-third the amount recovered may be allowed for fees, the amount being fixed by the trial court.]

SEC. 8. *Death benefits.*—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 60 per cent of his average weekly wages, but not more than \$20 nor less than \$7 per week, for a period of 360 weeks from the date of the injury.

SEC. 8a. *Beneficiaries.*—The compensation provided for in the foregoing section of this law shall be for the sole and exclusive benefit of the surviving husband who has not for good cause and for a period of three years prior thereto abandoned his wife at the time of the injury, and 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, parents, and stepmother, without regard to the question of dependency, dependent grandparents, dependent children, and dependent brothers and sisters of the deceased employee; and the amount recovered thereunder shall not be liable for the debts of the deceased nor the debts of the beneficiary or beneficiaries and shall be distributed among the beneficiaries as may be entitled to the same as hereinbefore provided according to the laws of descent and distribution of this State; provided the right in such beneficiary or beneficiaries to recover compensation for death be determined by the facts that exist at the date of the death of the deceased and that said right be a complete, absolute, and vested one. 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 law shall be paid weekly to the beneficiaries herein named and specified, subject to the provisions of this law.

Sec. 8b. Death after disability.—In case death occurs as a result of the injury after a period of total or partial incapacity, for which compensation has been paid, the period of incapacity shall be deducted from the total period of compensation, and the benefits paid thereunder from the maximum allowed for the death.

Sec. 9. If no dependents.—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. 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.

Sec. 10. Total disability.—While the incapacity for work resulting from injury is total, the association shall pay the injured employee a weekly compensation equal to 60 per cent of his average weekly wages, but not more than \$20 nor less than \$7, and in no case shall the period covered by such compensation be greater than 401 weeks from the date of the injury.

Sec. 11. Partial disability.—While the incapacity for work resulting from the injury is partial, the association shall pay the injured employee a weekly compensation equal to 60 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 \$20 per week. The period covered by such compensation shall be in no case greater than 300 weeks: *Provided*, That in no case shall the period of compensation for total and partial incapacity exceed 401 weeks from the date of injury.

Sec. 11a. Permanent total disability presumed.—[This section appearing in the original law announced the conclusive presumption of total and permanent incapacity where there was complete loss of sight in both eyes, the loss of both feet at or above the ankle, of both hands at or above the wrist, the loss of one hand and one foot, or permanent and disabling injuries to the spine producing paralysis or to the skull resulting in incurable insanity or imbecility. This enumeration was not to be regarded as exclusive, but in all other cases the burden of proof would be on the claimant. This section is omitted from the Revised Statutes, with no information as to a reason therefor.]

Sec. 12. Partial disability schedule.—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 60 per cent of the average weekly wages of such employee, but not less than \$7 per week nor exceeding \$20 per week for the respective periods stated herein, to wit:

For the loss of a thumb, 60 per cent of the average weekly wages during 60 weeks.

For the loss of a first finger, commonly called the index finger, 60 per cent of the average weekly wages during 45 weeks.

For the loss of a second finger, 60 per cent of the average weekly wages during 30 weeks.

For the loss of a third finger, 60 per cent of the average weekly wages during 21 weeks.

For the loss of a fourth finger, commonly known as the little finger, 60 per cent of the average weekly wages during 15 weeks.

For 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*, 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 10 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 scars 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, 60 per cent of the average weekly wages during 150 weeks.

For the loss of an arm, at or above the elbow, 60 per cent of the average weekly wages during 200 weeks.

For the loss of one of the toes, other than the great toe, 60 per cent of the average weekly wages during 10 weeks.

For the loss of the great toe, 60 per cent of the average weekly wages during 30 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, 60 per cent of the average weekly wages during 125 weeks.

For the loss of a leg, at or above the knee, 60 per cent of the average weekly wages during 200 weeks.

For the total and permanent loss of the sight of one eye, 60 per cent of the average weekly wages during 100 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, 60 per cent of the weekly wages during 150 weeks.

For the loss of an eye and leg above the knee, 60 per cent of the average weekly wages during a period of 350 weeks.

For the loss of an eye and an arm above the elbow, 60 per cent of the average weekly wages during a period of 350 weeks.

For the loss of an eye and a hand, 60 per cent of the average weekly wages during a period of 325 weeks.

For the loss of an eye and a foot, 60 per cent of the average weekly wages during a period of 300 weeks.

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.

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.

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 60 per cent of the average weekly wages of the employee, but not to exceed \$20 per week, multiplied by the percentage of incapacity caused by the injury for such period as the board may determine, not exceeding 300 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.

Sec. 12a. *Refusing employment.*—If the injured employee refuses employment reasonably suited to his incapacity and physical conditions, 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 law.

Sec. 12b. Hernia.—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 law. 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 law, 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 26 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 law, the same as if such operation had not been had; other than in determining the 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. Second injuries.—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.

Sec. 12d. Review.—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 law, 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.

Sec. 12e. Beneficial surgical operations.—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 employer 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 law relating to hernia. If it be shown by the examination, reports 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 law. If the board shall unanimously find, and so state in writing, that said operation is advisable, it shall make its order to that effect, stating the time and place when and where such operation is to be performed, naming the physicians therein who shall perform said operation, and if the employee refuses to submit to such operation, the board may order or direct the association to suspend the whole or any part of his compensation during the time of said period of refusal. The results of such operation, the question as to whether the injured employee shall be required to submit thereto, and the benefits and liabilities arising therefrom shall attach, be treated, handled, and determined by the board in the same way as is provided in the case of hernia in this law.

Sec. 12f. Employers' physicians.—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 law, 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.

Sec. 12g. Employees not to contribute.—[No employer may directly or indirectly accept from his employees any portion of the premium due under this law for insurance. Violation gives the employee a separate right for action for damages against the employer.]

Sec. 12h. Agreements.—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 law. This section shall not apply to employers of labor who are not eligible under the terms hereof to become subscribers thereto, nor to employers whose employees have elected to reject the provisions of this law, nor to employers eligible to come under the terms of this law 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 law. 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 law, to write insurance substantially or in any material respect similar to the insurance provided for by this law, shall render such insurance void as provided for in this section.

Sec. 12. *Minor's wages.*—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.

Sec. 13. *Minors and incompetents.*—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 law, 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. *Waiters.*—No agreement by any employee to waive his rights to compensation under this law shall be valid.

Sec. 15. *Lump sums.*—In cases where death or total permanent 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. This section shall be construed as excluding any other character of lump-sum settlement except as herein specified. 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.

Sec. 15a. *Change in compensation payments.*—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 employee or 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 discount for present payment at legal rate of interest: *Provided*, That in no case shall the amount to which it is increased exceed the amount of the average weekly wages upon which the compensation is based, provided it is not intended hereby to prevent lump-sum settlements when approved by the board.

Sec. 16. *Survival of actions.*—In all cases of injury resulting in death, where such injury was sustained in the course of employment, cause of action shall survive.

Sec. 17. *Aliens.*—Nonresident alien beneficiaries and resident alien beneficiaries shall be entitled to compensation under this law. 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.

Sec. 18. *Payments.*—It is the purpose of this law 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. 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. If after such notice the association continues to willfully refuse and fail to meet these payments of compensation as provided for in this law, the board shall have the power to hold that such association is not complying with the provisions of this law and shall certify such fact to the commissioner of insurance,

and said certificate shall be sufficient cause to justify said commissioner 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.

Sec. 19. Extraterritoriality.—If an employee who has been hired in this State sustained injury in the course of his employment, he shall be entitled to compensation according to the law of this State, even though such injury was received outside of the State.

PART II

ARTICLE 8307.—*Industrial accident board*

SECTIONS 1-4. Board created; powers.—[An industrial accident board is to be appointed by the governor for terms of six years. Three members are provided for, the term of one expiring each two years. One member is to represent labor, one is to be an employer of labor, and the third a practicing attorney, to be chairman and legal adviser of the board. A secretary and other necessary assistants are provided for. The board may make rules, require employees to submit to medical examinations, refusal operating as a suspension and bar. Persistence in unsanitary or injurious practices authorizes a reduction or suspension of benefits after hearing. The medical examination is by employer's physician or one designated by the insurance association, the employee being entitled to have his own physician present.

Process and procedure are to be summary. The board or any member has power to subpoena witnesses, administer oaths, and examine books and records.]

SECS. 4a-5a. Claims; disputes.—[Notice must be rendered within 30 days and claims within 6 months after an injury, death, or termination of physical or mental incapacity. Strict compliance may be waived in meritorious cases for good cause shown.

In cases not settled the board is to make a determination. Appeal from such decision may be made within 20 days by suit in the courts of the county or a trial de novo is to be had, the burden of proof resting upon the party claiming compensation. Recovery is limited to the maximum fixed by this law. Where a final award is made against the association and it fails or refuses to comply therewith or to bring legal action to set it aside the claimant may sue, and if the judgment sustains the award he shall be entitled to an additional sum of 12 per cent as damages, together with a reasonable attorney's fee. Where the association fails or refuses without justifiable cause to continue payments awarded as they mature, the beneficiary may sue for the total sum due, with a similar allowance of 12 per cent penalties and attorney's fees.]

Sec. 6. Subscriber liable, when.—If any subscriber to this law with the purpose and intention of avoiding any liability imposed by its terms 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 law 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 law.

Sec. 6a. Liability of third parties.—[Where a third party is liable for an injury to an employee the latter may at his option proceed in an action for damages or claim compensation, but may not take both remedies. If compensation is claimed, the association is subrogated to the rights of the injured employee to an action for damages either in its own name or in the name of the injured employee, and if a recovery is had greater than the amount of compensation paid, the excess, less a reasonable cost, is to be paid to the injured employee or his beneficiaries. The association may not compromise a claim against a third party without notice to the injured employee or his beneficiary and the approval of the board.]

Sec. 7. Records; reports.—[Employers subscribing to the act must keep a record of all injuries to their employees in the course of their employment and report to the board within 8 days on accidents resulting in injury causing

absence from work for more than 1 day. Supplemental reports must be made on recovery or within 60 days with subsequent reports, giving prescribed data.]

SECS. 8-11. *Miscellaneous provisions.*—[The board has a seal; a majority constitutes a quorum; investigations may be made by the board or any member thereof or an inspector or adjuster may settle claims or develop the facts relating to any claim. When the association suspends or discontinues compensation payments it must at once notify the board of the fact, giving details and the reason for such suspension or stoppage.]

SEC. 12. *Commutation.*—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

ARTICLE 8308.—*Employers' Insurance Association*

SECTIONS 1-23. [This article creates the "Texas Employers' Insurance Association," a body corporate, with a board of directors appointed by the governor authorized to conduct an insurance system for the employers of the State. The number of subscribers necessary for organization and continuance, methods of voting, classification of occupations, the maintenance of reserves, the payment of assessments, etc., are provided for.]

PART IV

ARTICLE 8309.—*Definitions and general provisions*

SECTION 1. *Definitions.*—The following words and phrases, as used in this law, 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 make 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 law. "Association" shall mean the "Texas Employers' Insurance Association," or any other insurance company authorized under this law 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, as provided for in section 12, Part III, of this law.

"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 immediate 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 part of the average annual wages.

The terms "injury" or "personal injury" 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 law, 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. *Officers.*—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 law shall not be deemed or held to be an employee within the meaning of that term as defined in the preceding section hereof, and this notwithstanding they may hold other offices in the corporation and may perform other duties and render other services for which they may receive a salary.

Sec. 2. *Insurance companies.*—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 1 of this law, 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 law, and when such company insures such payment of compensation it shall be subject to the provisions of parts 1, 2, and 4 and of sections 10, 17, 18a, and 21 of part 3 of this law. Such company may have and exercise all of the rights and powers conferred by this law 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 fifty subscribers who have not less than 2,000 employees.

Sec. 3. *Withdrawal.*—Any subscriber who has paid a premium as provided in section 1, part 4, of this law may upon application to the board and to the association and after a showing satisfactory to the board that he has notified all of his employees, in such manner as may be required by the board, cease to be a subscriber, and be entitled to a refund of the unearned portion of his premium, subject, however, to any rule approved by the commissioner of insurance as to the minimum premiums or short-rate cancellation.

Sec. 3a. *Misrepresentations.*—Any subscriber who shall willfully misrepresent the amount of his pay roll to the association writing his insurance upon which any premium under this law 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 cor-

rectly computed; and the liability to said association for such misrepresentation, if it was deceived thereby, may be enforced by suit therefor.

Sec. 3b. *Effect of amendments.*—[No amendment of the law is to affect rights and remedies accrued under the original law.]

Sec. 4. *Advance payments.*—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 law, 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.

Sec. 5. *Reports not evidence.*—The reports of accidents required by this law to be made by subscribers shall not be deemed 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 sought to be contradicted by the association or subscriber.

UTAH

COMPILED LAWS—1917

Compensation of workmen for injuries

SECTIONS 3061 (as amended 1919, ch. 63), 3062, 3063 (as amended 1919, ch. 63), 3064-3070. *Industrial commission*.—[A commission of three members is provided for, to be appointed by the governor, by and with the advice of the senate, not more than two members to belong to the same political party. Terms are six years, one expiring each two years. The governor may remove at any time for inefficiency, misfeasance, or other cause. Commissioners must have no occupation inconsistent with their duties, nor may they serve on any committee of any political party. Salaries are \$4,000 per annum, and a bond of \$10,000 is required, the premium to be paid out of the State treasury. Offices are to be maintained at the State capitol, but sessions may be held at any place within the State. An official seal is to be had, of which the courts shall take judicial notice. Sessions are to be open and records kept of all proceedings. The commission may employ a secretary and other assistants, including physicians, may adopt rules or procedure, which it may change from time to time in its discretion.]

[SECS. 3071-3093, inclusive, relate to safety provisions and inspection, and the powers and duties of the commission with reference thereto, and are reproduced in Bulletin No. 370, Labor Laws of the United States.]

SEC. 3094 (as amended 1919, ch. 63; 1921, ch. 67). *Employers' statements*.—[Employers are required to furnish the commission upon request all information necessary to carry out the provisions of this title. Annual reports are to be made of the number, classes, and wages of its employees, blanks for the desired information to be furnished by the commission on request therefor. The commission may require verification of statements under oath, and may examine any employer, or his officers, agents, or employees.]

SECS. 3095, 3096 (as amended 1923, ch. 44), 3097, 3098, 3099 (as amended 1919, ch. 63), 3100-3103, 3104 (as amended 1921, ch. 67), 3105-3107, 3108 (as amended 1921, ch. 67), 3109. *Insurance fund*.—[A State insurance fund is created, to be administered by the commission without liability on the part of the State beyond the amount of such fund. The commission has full authority to enforce any laws deemed necessary for the administration of the fund. An annual audit is to be made by the State auditor at the expense of the fund.]

Employments insured in the State fund are to be classified and separate accounts kept for convenience in determining equitable rates, but for the purpose of paying compensation the fund is to be deemed a unit. The hazards of the different classes and the relative rates of premiums are to be determined so as to establish the lowest rate consistent with the maintenance of a solvent fund and the creation of a surplus and reserve. The peculiar hazards of individual risks may be taken into consideration.

The commission may sue and be sued in its official name, may contract for insurance and make such other contracts relating to the fund as are authorized or permitted, and may reinsure any risk or any part thereof. Insurance may cover the entire liability of employers so as to protect not only compensation claims but all liability claims whatever by employees or their dependents or heirs including the cost of defense in the event of suit. Contracts may be made with physicians, surgeons, and hospitals and for the making of compensation payments through designated agencies, if employers insuring in the State fund receive a contract or policy of insurance in a form approved by the State commission. Premiums are to be paid semiannually. Provision is made for withdrawal from the fund on compliance with prescribed requirements.

Ten per cent of the money paid into the State fund is to be used for the creation of a surplus until this amounts to \$100,000, when 5 per cent shall be so applied until adequate provision is made for the catastrophe hazard and all

other unanticipated losses. Adequate reserves are also maintained, subject to the approval of the State commission. Annual readjustments of rates and credits are to be made, and an employer whose premium payments exceed the amount of disbursements on account of injuries to his employees is entitled to a credit on the next premium installment due from him.

The commission is to adopt rules and regulations with respect to the collection, maintenance, and disbursements of the fund, the State treasurer is custodian, and investments may be made of any surplus or reserve in designated securities. The treasurer is to give separate and additional surety bond in connection with his duties as custodian of the fund, the premium to be paid out of such fund.]

SEC. 3110 (as amended 1919, ch. 63). *Employers covered.*—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 the year. It means all employments in the usual course of the trade, business, profession, or occupation of an employer.

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 1919, ch. 63; 1925, ch. 73). *Employees.*—The terms "employee," "workman," and "operative" as used in this title shall be construed to mean:

(1) Every elective and appointive officer, and every other person in the service of the State and of every county, city, town, and school district within the State, serving the State or any county, city, town, or school district therein under any election or appointment, or under any contract of hire, express or implied, written or oral, including all officers and employees of the State institutions of learning.

(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.

SEC. 3112 (as amended 1919, ch. 63; 1921, ch. 67). *Definitions.*—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.

(8) The term "average weekly earnings" shall mean the average weekly earnings arrived at by rule provided in section 3142.

SEC. 3113 (as amended 1919, ch. 63). *Compensation to be paid.*—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.

SECS. 3114 (as amended 1919, ch. 63; 1921, ch. 67; 1923, ch. 64; 1925, ch. 80), 3115. *Security of payments.*—[Employers other than municipal bodies must secure compensation by insuring in the State fund; or with some authorized corporation or organization which must write and carry all risks for which application is made to it or permitted by law; or by furnishing satisfactory proof of financial ability to make direct payments. Stock and mutual associations are subject to the rules and regulations of the commission including a requirement as to uniform rates, though not necessarily uniform with the rates fixed for the State fund. If insurance is not with the State fund the employer must file a notice with the commission as to the insurance provided.]

SECS. 3116 (as amended 1921, ch. 67), 3117, 3118. *Insurance policies.*—[Policies must cover the liability of the employer for compensation and contain a provision setting forth the rights of employees to enforce in their own names the liability of the insurance carrier for the payment of compensation due and must also provide that notice, knowledge, or jurisdiction of the employer are applicable to the insurance carrier, and that the latter is bound by awards, decisions, etc., rendered against the employer, also that the insolvency or bankruptcy of the employer does not affect the liability of the insurer as to compensation for injury or death sustained by an employee during the life of the policy.]

SECS. 3119 (as amended 1921, ch. 67), 3120, 3121 (as amended 1921, ch. 67). *Public employes.*—[Counties, cities, townships, or school districts may insure in the State fund or pay compensation direct. The State fund contributes in proportion to its wage expenditure to provide compensation for its employes.]

SEC. 3122 (as amended 1919, ch. 63).—[Repeats the provisions of section 3113 in respect of employees insured in the State fund.]

SEC. 3123 (as amended 1919, ch. 63; 1921, ch. 67). *Premium payments.*—[Employers other than the State who are insured in the State fund must semi-annually furnish pay-roll expenditure reports and pay the premiums fixed by the commission for the occupations of the employees as classified. Failure entails

liability to a suit for recovery of the premium together with a reasonable attorney's fee for the prevailing party.]

SEC. 3124 (as amended 1921, ch. 67). *Substitute schemes.*—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 or other benefits in lieu of the compensation and other benefits 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 (as amended 1921, ch. 67). *Employers not insuring.*—Employers who under the terms of this act, or by authority of the commission, are authorized to pay compensation direct, and the State insurance fund, 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. *Injuries outside State.*—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, 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.

SEC. 3127 (as amended 1919, ch. 63). *Remedy exclusive.*—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 employees, wherever occurring.

SEC. 3128 (as amended 1921, ch. 67). *Notice to be posted.*—[Every employer providing insurance or acting as self-insurer must conspicuously post notices to the effect that he has complied with the provisions of this title and is authorized by the commission to make the payments involved.]

SEC. 3129. *Noncomplying employers.*—[Employers who fail to comply with the provisions as to providing insurance are liable in suits for damages in case of injuries caused by the negligence or default of the employers, the common-law defenses being abrogated. Proof of injury constitutes prima facie evidence of negligence.]

SECS. 3130 (as amended 1919, ch. 63), 3130x (added 1919, ch. 63). *Optional claim.*—[In lieu of suing for damages, an employee of a noninsuring employer, unless the injury was purposely self-inflicted, may apply for compensation according to provisions of this act and an award made may be filed in the office of the clerk of the district court becoming a lien on the real property of the employer situated in the county for a period of eight years unless previously satisfied. The commission may adopt and publish rules and regulations governing procedure in claims arising under this section.]

SEC. 3131. *Default in payments.*—[An employer in default in any payment to the State fund is subject to civil action for the amount, with interest at the rate of 12 per cent per annum, the employer's compliance with the provisions of the law dating from the time of the payment of the money so collected into the State insurance fund.]

SEC. 3132 (as amended 1921, ch. 67). *Remedy exclusive.*—The right to recover compensation pursuant to the provisions of this title for injuries sustained by an employee, whether resulting in death or otherwise, 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.

SEC. 3133 (as amended 1921, ch. 67). *Injuries by third parties.*—If an employee under this act be injured or killed while in the course of his employment by another not in the same employment, he or his dependents in case of death, shall be entitled to compensation and to no other remedy unless the employer be subject to the provisions of sections 3129 and 3130. No employee or the dependents in case of death shall be granted compensation in such case unless such employee or his dependents, as the case may be, shall assign any cause of action existing against the person responsible for or causing the injury or death to 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 such cause of action is by this section made assignable, whether it be for injury or death, and the dependents or the personal representative and not the heirs in such case shall have the right and power to make a full and exclusive assignment notwithstanding sections 6504 and 6505, Compiled Laws of Utah, 1917.

SEC. 3134. [Repealed.]

SEC. 3135. *Preference.*—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.

SEC. 3136 (as amended 1919, ch. 63). *Waiting time.*—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.

SEC. 3137 (as amended 1919, ch. 63; 1921, ch. 67). *Temporary disability.*—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: *Provided*, That where the wage earned at the time of injury is less than \$7 per week; then in such cases the amount of wages earned should be the amount of compensation to be paid; but in no case to continue for more than six years from the date of the injury, or to exceed \$5,000.

SEC. 3138 (as amended 1919, ch. 63). *Schedule*.—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—	Weeks
One arm at or near shoulder.....	200
One arm at the elbow.....	180
One arm between the wrist and the elbow.....	160
One hand.....	150
One thumb and the metacarpal bone thereof.....	60
One thumb at the proximal joint.....	30
One thumb at the second distal joint.....	20
One first finger and the metacarpal bone thereof.....	30
One first finger at the proximal joint.....	20
One first finger at the second joint.....	15
One first finger at the distal joint.....	10
One second finger and the metacarpal bone thereof.....	30
One second finger at the proximal joint.....	15
One second finger at the second joint.....	10
One second finger at the distal joint.....	5
One third finger and the metacarpal bone thereof.....	20
One third finger at the proximal joint.....	12
One third finger at the second joint.....	8
One third finger at the distal joint.....	4
One fourth finger and the metacarpal bone thereof.....	12
One fourth finger at the proximal joint.....	9
One fourth finger at the second joint.....	6
One fourth finger at the distal joint.....	3
One leg at or so near the hip joint as to preclude the 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 the great toe with the metatarsal bone thereof.....	12
One toe other than the great toe at proximal joint.....	6
One toe other than the great toe at second or distal joint.....	3
One eye by enucleation.....	120
Total blindness of one eye.....	100

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 200 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 1919, ch. 63). *Permanent total disability*.—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.

SEC. 3140 (as amended 1919, ch. 63; 1921, ch. 67). *Death*.—In case the injury causes death within the period of three years, the benefits shall be in the amounts and to the persons following:

(1) The employer or insurance carrier shall pay the burial expenses of the deceased as provided herein, and if there are no dependents, shall pay into the State treasury a sum equal to 20 per cent of the amount provided in subsection 2 of this section. Any claim for compensation must be filed with the commission within one year from the date of the death of the deceased; and if at the end of one year from the date of the death of the deceased, no claim for compensation shall have been filed with the commission, the payment of the sum equal to 20 per cent of the amount provided in subsection 2 of this section shall be paid at that time into the State treasury by the employer or the insurance carrier. Such payment shall be held in a special fund for the purposes provided in subsections 6 and 7 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 or 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, provided that the benefits provided for in this subsection shall be in keeping with the circumstances and conditions of dependency existing at the date of injury, and any amount awarded by the commission under this section must be consistent with the general provisions of this act.

(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:

(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 18 years and a male child or male children under the age of 16 years (or over such ages if physically or mentally incapacitated from earning), upon the parent with whom he is living at the time of the death of such parent.

In all other cases, the question of dependency, in whole or in part, shall be determined in accordance with the facts in each particular case existing at the time of the injury resulting in the death of such employee, but no person shall be considered as dependent unless a member of the family of the deceased employee, or bears to him the relation of husband or widow, lineal descendant, ancestor, or brother or sister. The word "child" as used in this title, shall include a posthumous child, and a child legally adopted prior to the injury. Half brothers and sisters shall be included in the words "brother or sister" as above used.

(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.

(7) If any wholly dependent persons, who have been receiving the benefits of this act, and who, at the termination of such benefits are yet in a dependent condition, and under all reasonable circumstances, should be entitled to additional benefits, the industrial commission may, at its discretion, extend indefinitely such benefits; but the liability of the employer or insurance carrier involved shall not be extended, but the additional benefits allowed shall be paid out of the special fund provided for in subdivision 1 of this section.

(8) When any alien dependent of the deceased resides outside of the United States of America or any of its dependencies, or Canada, such dependent shall be paid not to exceed one-half the amount provided herein.

SEC. 3141 (as amended 1921, ch. 67). *Payments*.—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. Payments 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 during the period covered by such weekly payments, the right of such dependent to compensation under this title shall cease, provided, should a widow who is the sole dependent of a deceased employee, and who is receiving the benefits of this act, remarry during the period covered by such weekly payments, she shall be entitled to receive in lump-sum payment, one-third of the benefits yet remaining unpaid at the time of such remarriage.

SEC. 3142 (as amended 1921, ch. 67). *Computing wages*.—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, and shall be arrived at and determined in the following manner, to wit: Employment shall mean pursuit in the usual trade, business, or profession of the employer. Five and one-half or six day employment shall mean pursuit in the usual trade, business, or profession, the usual operation of which is six days or less per week. Seven-day employment shall mean pursuit in the usual trade, business, or profession, the usual operation of which is seven days per week. The average weekly wage shall be determined as follows:

1. Determine the contract of hire existing at the time of the injury, whether upon annual, month, week, day, hour, or piece basis.

2. Determine whether the employment is operated on a five and one-half, six, or seven day basis.

3. Determine daily wage as follows:

(a) If the wage is on an annual basis, and the employment is seven days per week, divide the annual salary by 364 days. Result—daily wage. If the employment is five and one-half or six days per week, divide annual salary by 312 days. Result—daily wage.

(b) If wage is on monthly basis, multiply monthly salary by 12 and proceed as above (a) to determine daily wage.

(c) If the wage is on a daily basis, no rule is required.

(d) If the wage is on an hourly basis, multiply pay per hour by the number of hours said employment regularly operates, or if operation is not regular, use eight hours as a day.

(e) If the wage is on piece basis, use the average daily earnings for a reasonable period in which employment has been regular. Divide the amount earned by the number of days worked in such period. If the duration of employment has been too short to determine as above, then use the wage of an average employee, taking into consideration the experience of said employee, and determine as above (a).

(f) If the wage is on part-time basis, and the employment is regular, the wage shall be extended to full-time basis, or that wage the injured would earn if working full time in such employment, and determine as above (a).

4. To determine average weekly wage, if the employment is five and one-half or six days per week, multiply the daily wage, as determined by the foregoing method, by 300 and divide by 52. If the employment is seven days per week, multiply the daily wage, as determined above, by 332 days and divide by 52.

5. To determine weekly compensation, let D represent daily wage.
If five and one-half or six days of employment per week—

$$\frac{D \times 300 \times 60}{52} = \text{weekly compensation.}$$

If seven days of employment per week—

$$\frac{D \times 332 \times 60}{52} = \text{weekly compensation.}$$

6. To determine daily compensation, divide weekly compensation by seven.

Sec. 3143. *Learners*.—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.

Sec. 3144. *Revision of awards*.—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.

Sec. 3145. *Lump sums*.—The commission, under special circumstances, and when the same is deemed advisable, may commute periodical benefits to one or more lump-sum payments.

Sec. 3146. *Attachments, etc.*—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.

Sec. 3147 (as amended 1919, ch. 63; 1921, ch. 67). *Medical, etc., benefits*.—[In addition to compensation a reasonable sum must be furnished, not exceeding \$500, for medical, nurse, and hospital services, including artificial limbs and appliances. Additional amounts may be allowed in particular cases. A burial allowance not to exceed \$150 is provided for in fatal cases.]

Sec. 3148 (as amended 1919, ch. 63; 1921, ch. 67). *Appeals*.—[Within 30 days after a decision or rehearing, whether favorable or adverse, any party affected, including the State fund, may apply to the supreme court for a writ of review. Such review is limited to determination of whether the commission acted without or in excess of its powers or whether findings of fact made support the award. Findings of fact are themselves not subject to review. No court of the State except the supreme court has jurisdiction to review, reverse, or annul any award of the commission or to suspend or delay the operation or execution thereof; but a writ of mandamus lies from the supreme court in all proper cases.]

In cases before the commission in which attorneys have been employed, the commission has full power to regulate and fix fees.]

Sec. 3149. *Procedure*.—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.

Sec. 3150. *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 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.

Sec. 3151. *Waivers*.—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.

Sec. 3152. *Medical examinations, etc.*—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.

1. An injured employee who desires to leave the locality in which he or she has been employed during the treatment of his or her injury or desires to leave this State shall report to his or her attending physician for examination, notifying the commission in writing of such intention to leave, accompanying such notice with a certificate from the attending physician, setting forth the exact nature of the injury, the condition of the employee, together with a statement of the probable length of time disability will continue. After complying with the requirements herein set forth and upon written consent of the commission, the employee may leave the locality in which he or she has been employed; otherwise no compensation will be allowed during such absence from the locality in which he or she has been employed.

SECS. 3153, 3154. *Records to be open.*—[All books, records, and pay rolls indicating wage expenditure must always be open for inspection by the commission or its agents. Any misrepresentation by an employer as to the amount of the pay roll entails liability in ten times the amount of the difference in premium paid and the amount that should have been paid.]

SEC. 3155 (as amended 1919, ch. 63). *Commerce.*—[The provisions of this title apply to intrastate, interstate, and foreign commerce only to the extent that intrastate work is clearly separable from interstate or foreign commerce governed by a rule of liability fixed by Congress.]

SEC. 3156 (as amended 1919, ch. 63). *Reports of accidents.*—[Employers must keep records of all injuries to their employees, reporting the same in writing to the commission within a week, giving such information as the commission requires. Physicians and surgeons attending injured employees must comply with the rules and regulations of the commission, including its fee schedule, and must make reports as required by it.]

SEC. 3156x (added 1921, ch. 67). *Employee to give notice.*—[Failure to give notice to employers within 48 hours or to report for medical treatment within such time entails a reduction of 15 per cent of the amount of compensation payable; but if the employer had knowledge from any source, or knew of the statement of the injured employee as to his injury, affording an opportunity to the employer to make an investigation and provide medical treatment, such knowledge is equivalent to notice. Defects and inaccuracies do not affect the payment of such reduction if it appears that there was no intention to mislead or prejudice the employer, and if he was not in fact misled or prejudiced. If no notice is given within one year from the date of the accident the right to compensation is wholly barred.]

SECS. 3157, 3158, 3159 (as amended, 1921, ch. 67), 3160. *Miscellaneous provisions.*—[The commission is to be represented, on its request, by the attorney general of the State or any district or county attorney under his direction, in proceedings for the enforcement of the law or recovery of premiums or penalties; also in actions brought against the commission.]

The commission may make necessary expenditures to obtain statistical and other information provided for in the law. Biennial reports are to be made by the commission giving accident data, disbursements from the expense fund, status of the fund, and other information which the commission deems proper to call to the attention of the governor. The commission is to supply printed matter, including classification, rates, rules, and regulations and such general information as to its transactions as in its judgment may be useful.]

SEC. 3161 (as amended 1919, ch. 63). *Injunctions.*—[No injunction may suspend any order, award, classification, or rate adopted by the commission or any action of the State or county officers required to be taken under the provisions of this act.]

SEC. 3162. *Unconstitutionality.*—[The invalidity of any section or provision of the title is not to affect the remainder.]

SEC. 3163 (as amended 1921, ch. 67). *Appropriation.*—[An initial appropriation for the State fund is provided, the same to be returned at such times and in such amounts as the commission deems advisable, without impairing the solvency of the fund.]

SEC. 3164. *Act in effect.*—[This law became operative July 1, 1917.]

VERMONT
CONSTITUTION

Compensation for injuries to employees

ARTICLE 32. Legislation authorized.—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*

SECTIONS 5752-5756. Commissioner of industries.—[The governor appoints biennially, with the advice and consent of the senate, a commissioner of industries, who is charged with the general duty of enforcing the labor laws of the State.]

SEC. 5757. [Transitory.]

SEC. 5758. Definitions.—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 \$2,000 a year: *Provided, however,* That in all cases where the employee's wage exceeds the sum of \$2,000 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 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 5769, but not to include the employment of public officials who are elected by popular vote or who receive salaries exceeding \$2,000 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. *Same.*—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.

Secs. 5760, 5761 (as amended 1919, No. 158; 1923, No. 105), 5762. *Procedure.*—[Process and procedure are to be summary and simple as reasonably may be. The commissioner may subpoena witnesses, administer oaths, examine books and papers, and enforce attendance by application to a county court or superior judge. He is authorized to make rules, furnish blanks for the administration of the act, and conduct investigations and hearings in such manner as to ascertain the substantial rights of the parties. On the application of either party, with notice to the other, the commissioner may authorize a third party to take the testimony of a person residing without the State.

If questions arising under the act are not settled by agreement with the approval of the commissioner, they are to be determined by him, except as otherwise provided. Decisions are enforceable by the county court as provided in section 5809. An appeal may be taken, but shall not operate as a stay unless the commissioner or the court to which the appeal is taken so orders.]

Secs. 5763-5767. *Election.*—[The provisions of this chapter, except sections 5766, 5767, and 5826, are not applicable in the absence of election prior to any injury, either express or implied. Such election waives other remedies and is binding on personal representatives and next of kin. All contracts of hire are presumed to be subject to the provisions of this act, in the absence of express statement in writing to the contrary, prior to the accident, served on the adverse party with notice to the commissioner. Such agreement may be terminated on 60 days' notice in writing prior to any accident, to be served also on the commissioner. If an employee elects, and his employer rejects, an action for damages may be brought and the employer may not avail himself of the common-law defenses; but if the employer elects and the employee rejects, the defenses are available.]

Sec. 5768 (as amended 1923, No. 105). *Employments covered.*—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 10 employees or less: *Provided*, That an employer who employs 10 employees 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 10 employees. A charitable, religious, educational, or other corporation, institution, association, partnership, or individual engaged in a business, trade, or occupation which is not carried on for the sake of pecuniary gain, may voluntarily come within the provisions of this chapter by giving a similar notice. If a workman receives a 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.

Sec. 5769. *State and municipal bodies.*—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.

SEC. 5770. *Injuries outside State.*—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.

SEC. 5771. *Same.*—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.

SEC. 5772. *Interstate commerce.*—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.

SECS. 5773, 5774. *Application.*—[Injuries sustained prior to the inception of the act are not affected by it, but the rights and remedies provided are exclusive as to all other forms of recovery for injuries under the act. Employers hiring workmen within the State for employment outside may agree that the provisions of this chapter shall be exclusive as to accidents outside the State arising out of and in the course of such employment and such agreement is presumed.]

SEC. 5775. *Third party liability.*—[Where a third party is liable for the injury, the injured employee may at his option claim compensation or proceed in an action at law to recover damages. If compensation is claimed and awarded, the employer is subrogated to the rights of the injured employee; but excess recovery, after costs are met, goes to the injured employee.]

SEC. 5776. *Waivers.*—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.

SEC. 5777. *Death benefits.*—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 \$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 5790: *Provided,* That the total amounts payable on account of a single death shall not exceed the sum of \$3,500 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, 33 $\frac{1}{4}$ per cent;

II. To the dependent widow or widower, if there are one or two dependent children, 40 per cent; or if there are three or more dependent children, 45 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, 25 per cent, with 10 per cent additional for each child in excess of two, with a maximum of 40 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, 25 per cent, or if partially dependent, 15 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, 15 per cent for one such dependent and 5 per cent additional for each additional such dependent, with a maximum of 25 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.

SEC. 5778. Dependents.—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 18 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;

IV. A parent or grandparent only if actually dependent, wholly or partially, upon the deceased;

V. 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. 5779. The compensation provided for by the provisions of this chapter shall be payable during the following periods:

I. To a widow, until death or remarriage, but in no case to exceed 260 weeks;

II. To a widower, during disability or until remarriage, but in no case to exceed 260 weeks;

III. To or for a child, during dependency as hereinbefore defined, but in no case to exceed 260 weeks;

IV. To a parent or grandparent, during the continuation of a condition of actual dependency, but in no case to exceed 208 weeks; and

V. To or for a grandchild, brother, or sister, during dependency as hereinbefore defined, but in no case to exceed 208 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. Minimum basis.—In computing death benefits the average weekly wages of the deceased employee shall be considered to be not less than \$5.

SEC. 5781. Payment a discharge.—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.

SEC. 5782. Incompetents.—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 5779. The compensation of a person who is insane shall be paid to his guardian.

SEC. 5783 (as amended 1923, No. 105). Death during benefit period.—In case of the death of a person from any cause other than the accident during the period of payments for disability or for the permanent injury, the remaining payments for disability then due and/or for the permanent injury shall be made to his dependents according to the provisions of section 5779, or if there are none the remaining amount due, but not exceeding \$100, shall be paid in a lump sum to the proper person for funeral expenses.

SEC. 5784. Medical, etc., aid.—During the first 14 days of disability the employer shall furnish reasonable surgical, medical, and hospital services and supplies not exceeding the amount of \$100. 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.

SEC. 5785 (as amended 1921, No. 167). Total disability.—Where the injury causes total disability for work, the employer during such disability, not including the first 14 days thereof if said injury is received prior to the 1st day of July, 1918, 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 50 per cent of the average weekly wages, but not more than \$12.50, if said injury is received prior to the 1st day of July, 1921, and not more than \$15 if received on or after said last named day, nor less than \$6 a week in any event. Payments shall not continue after the disability ends, nor longer than 260 weeks, and 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 260 weeks. In case of an employee whose average weekly wages are less than \$6 a week, the compensation shall be the full amount of such average weekly wages.

SEC. 5786. Same.—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 \$4,000.

SEC. 5787. Partial disability.—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 1st, 1918, and on the eighth day thereof, if such injury occurred on or after said July 1, 1918, 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 \$10 a week. Payments shall not continue after the disability ends nor longer than 260 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 260 weeks.

SEC. 5788 (as amended 1919, No. 159; 1921, No. 168). Schedule.—In case of the following injuries, the compensation shall be paid during total disability, as provided in section 5785, and at the termination of the total disability occasioned by said injuries, the employer shall pay to said injured employee 50 per cent of the average weekly wages, computed as provided in section 5790, 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 260 weeks, which compensation shall be in lieu of all other benefits except those provided in section 5784.

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, 170 weeks.

II. The permanent and complete loss of hearing in both ears, 170 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, 170 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, 140 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, 120 weeks.

VI. The loss by separation of a thumb, 40 weeks.

VII. The loss by separation of a first finger, commonly called the index finger, 25 weeks.

VIII. The loss by separation of a second finger, 20 weeks.

IX. The loss by separation of a third finger, 15 weeks.

X. The loss by separation of a fourth finger, 10 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 specified, 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, 20 weeks.

XIV. The loss by separation of one of the toes other than a great toe, 8 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, 100 weeks.

XVIII. In all cases where the employee sustains any of the injuries enumerated in the preceding 17 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 260 weeks.

XIX. In all other cases in this class, or where the usefulness of a member of 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.

XX. In case of the following injuries, the compensation shall be 50 per cent of the average weekly wages, which compensation shall be in lieu of all other benefits except those provided in section 5784.

(a) The permanent and complete loss of hearing in one ear, 42½ weeks.

(b) Simple hernia, 4 weeks.

(c) Strangulated hernia, 8 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. *Willful intent*.—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.

Sec. 5790 (as amended 1910, No. 159). *Computation of wages*.—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 12 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 12 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 12 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 12 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.

Sec. 5791. *Voluntary payments*.—Payment made by an employer or his insurer to an injured workman during the period of his disability, or to his dependents, 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 5785 to 5788, both inclusive.

SEC. 5792. *Time of payments.*—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.

SECS. 5793, 5794. *Lump sums.*—[The commissioner may on application of either party, with due notice to the other, commute payments to a lump sum at present value discounted at 4 per cent simple interest if it appears to be for the best interest of the employee or his dependents, or that it will avoid undue expense or hardship to either party. Commutation may not be made for the purposes of satisfying a debt. Such lump sum may be paid to a bank or trustee to administer as directed by the commissioner, the expenses to be a charge on the compensation so deposited.]

SEC. 5795. *Medical examinations.*—[An injured workman must submit to a medical examination at the request of his employer or as ordered by the commissioner at reasonable times and places. He may have his own physician present. Refusal or obstruction suspends benefits, and compensation shall not be payable for the period during which it continues.]

SECS. 5796 (as amended 1919, No. 159), 5797, 5798, 5799 (as amended 1925, No. 101), 5800. *Notice and claim.*—[Notice of an injury must be given the employer as soon as practicable, and claim made within six months after the injury or death, in the latter case whether the employee himself has made a claim or not. If compensation is voluntarily paid, the making of claim within such period is not required. If actions to recover damages have been begun through mistake of law or fact, and final judgment is against the employee, the limitation does not begin to run until six months after the final decision.

Notice and claim must be in writing, in ordinary language, signed by the claimant or someone in his behalf. Notice and claim may be combined, and may be sent by registered letter. Inaccuracies do not invalidate unless actually misleading; nor do want of notice and claim or delay bar proceedings if it appears that the employer or his agent had knowledge, or that the employer was not prejudiced by such delay or want of notice. The limitation does not run against minors or incompetent persons so long as no guardian is provided.]

SECS. 5801 (as amended 1923, No. 105), 5802 (as amended 1919, No. 159), 5803, 5804 (as amended 1921, No. 169), 5805, 5806, 5807 (as amended 1923, No. 106), 5808 (as amended 1923, No. 106). *Procedure.*—[A memorandum of any agreement made between the parties may be filed with the commissioner, and if approved by him, becomes enforceable and subject to modification the same as an award. Compromise agreements may be approved if the commissioner is clearly of the opinion that the best interest of the employee or his dependents will be served thereby.

In the absence of agreement, either party may apply to the commissioner for hearing and award. A full trial is to be had and an award made within six months thereafter. The commissioner may appoint an impartial physician to make examination and report. A fee of \$5 is fixed, but additional reasonable amounts may be allowed in extraordinary cases. On the request of the commissioner such examination shall be made by the director of the State laboratory of hygiene or by a physician designated by him.

The commissioner may, on his own motion, or on the application of any party in interest, review an award, modifying it according to facts found. Such review does not affect money already paid. Awards are conclusive, in the absence of fraud, unless an appeal is taken within 10 days to the county court. Review is limited to questions of fact or of fact and law certified to the court by the commissioner. On findings certified to the commissioner he shall make a new order in accordance therewith which supersedes the previous award. If no appeal is taken to the county court within the time fixed, either party may within five days thereafter appeal to the supreme court on questions of law certified to it by the commissioner.

A party in interest may file a certified copy of any decision not appealed from in the county court whereupon the court shall render judgment as in an action duly heard and determined by the court, except there can be no appeal. The judgment will be modified in accordance with any modification of an award.

The commissioner may grant a new hearing on the ground of newly discovered evidence, but the decision as to granting or denying such hearing is final and conclusive.

If the commissioner or court finds that any proceedings was without reasonable basis it may assess the whole cost upon the party who brought, prosecuted, or defended such proceeding.

Sheriffs and witnesses receive the same fees as allowed in the county court. No cost will be taxed except for unreasonable or groundless actions.]

Secs. 5814, 5815. *Status of awards*.—[Compensation rights have the same preference as unpaid wages. Claims are not assignable and are exempt from claims of creditors except that approved claims of physicians and attorneys are enforceable against compensation awards as the commissioner may direct.]

Secs. 5816 (as amended 1919, No. 159), 5817-5825. *Insurance*.—[Employers other than the State or its municipalities must secure compensation by insuring with some authorized company or maintaining guaranty insurance, by depositing security, by satisfying the commissioner of financial responsibility to comply with the provisions of the chapter, or by depositing in a bank or trust company such sum of money as the commissioner may require to the joint credit of the commissioner and the employer to be held as security for payments to injured employees. Any insurance company authorized to write compensation insurance, and failing to comply with the rules of the commissioner, or to make prompt payments, may have its license suspended by the insurance commissioner after hearing. Self-insurers or those securing liability by deposits must comply with the reasonable rules of the commissioner and pay benefits promptly; otherwise the commissioner may revoke their permission to secure payment of compensation and compel insurance to be taken in an authorized company. Employers must file with the commissioner a notice of the insurance carried, together with a copy of the contract. Employers must post notices of their compliance with the insurance requirements, or after 30 days may be enjoined by a superior judge, on notice and hearing, from carrying on business until the act is complied with.

Policies must cover the entire liability of the employer and provide for enforcement directly in behalf of the employees, and that the notice, knowledge, and jurisdiction of the employer bind the carrier. The insolvency of the employer does not relieve the carrier from payment for injuries sustained during the life of the policy or contract; nor may the policy be canceled during its term without at least 10 days' notice to the commissioner and the employer. Municipalities may insure with authorized insurance carriers. Any agreement by which employees pay any portion of the cost of the insurance maintained by the employer to secure compensation is void.]

Sec. 5826. *Reports of accidents*.—[Employers under this chapter must keep a record of all injuries to their employees and report the same to the commissioner in writing within 72 hours, Sundays and legal holidays excluded. A supplemental report must be made on the termination of the disability, or within 60 days, with final report on recovery. Within 60 days after the disability the party liable to pay compensation must file with the commissioner a statement showing the total payments made or to be made for compensation and medical services.]

Secs. 5827-5831. *Miscellaneous provisions*.—[Employers of five or more men, doing business in the State, and every employer under the act, must annually file a certificate stating the number of employees and other statistical information as the commissioner may require. The commissioner is to report to the governor every two years statistical information as to the number and character of accidents for the period and such other information and recommendations as seem pertinent.

False statements or representations willfully made for the purpose of obtaining benefits for oneself or any other person entails a fine of not more than \$100 and forfeiture of compensation rights.

The act is to be liberally construed, to effect its general purposes, and the invalidity of any portion is not to affect the validity of the chapter as a whole.]

VIRGINIA

ACTS OF 1918

CHAPTER 400.—*Compensation of workmen for injuries—Industrial commission—Insurance fund*

SECTION 1. Title.—This act shall be known as the Virginia workmen's compensation act.

SEC. 2 (as amended 1922, ch. 425; 1923, ch. 22; 1926, ch. 534). *Definitions.*—In this act unless the context otherwise requires:

(a) "Employers" shall include the State and any municipal corporation within the State or any political division thereof, and any individual, firm, association, or corporation, or the receiver or trustee of the same, or the legal representative of a deceased employer, using the service of another for pay. If the employer is insured it shall include his insurer so far as applicable.

(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; and as relating to those so employed by the State the term "employee" shall include the officers and members of the National Guard, and all officers and employees of the State, except only such as are elected by the people, or by the general assembly, or appointed by the governor either with or without the confirmation of the senate: as relating to municipal corporations and political divisions of the State, the term "employee" shall include all officers and employees thereof, except such as are elected by the people or elected by the council, or other governing body of said municipal corporation or political division, who act in purely administrative capacities and to serve for a definite term of office. Policemen and firemen, except policemen and firemen in cities containing more than 170,000 inhabitants, shall be deemed to be employees of the respective cities, counties, or towns in which their services are employed and by whom their salaries are paid. Any reference to an employee who has been injured shall, when the employee is dead, include also his legal representative, dependents, and other persons to whom compensation may be payable. For the purpose of this act the average weekly wage of the noncommissioned officers and members of the National Guard shall be deemed to be \$30.

(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 the injury, divided by 52; 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 52 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 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 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 52 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 naturally and unavoidably 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 proved to the satisfaction of the industrial commission—

First, that there was an injury resulting in hernia; second, that the hernia appeared suddenly; third, that it was accompanied by pain; fourth, that the hernia immediately followed an accident; fifth, that the hernia did not exist prior to the accident for which compensation is claimed.

All hernia, inguinal, femoral, or otherwise, so proven to be the result of an injury by accident arising out of and in course of the employment, shall be treated in a surgical manner by radical operation. If death results from such operation, the death shall be considered as a result of the injury and compensation paid in accordance with the provisions of section 39. In non-fatal cases, time loss only shall be paid unless it is shown by special examination, as provided in section 28, 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 31 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 diseases, 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 31.

Sec. 3. *Pending litigation.*—The provisions of this act shall not affect pending litigation.

Secs. 4-8. *Election presumed.*—[Acceptance of the act by all employers and employees, except as herein stated, is presumed in the absence of prior notice. Rejection may be waived by similar notice. Notices must be given within 30 days prior to any accident unless occurring within 30 days after the date of employment, when notice at such date will be sufficient. The industrial commission is to prescribe forms to be posted by the employer or served personally upon employees. Employees must give notice to the employer personally or by registered letter. In both cases copies must be filed with the commission. Contracts of waiver, except as herein otherwise expressly provided, are void. Neither the State nor its subdivisions nor any employee of the same may reject the provisions of the act as to compensation.]

Sec. 9. *Railroads.*—[The act does not apply to common carriers by railroad in interstate commerce, nor does it affect State or Federal legislation on the subject.]

Sec. 10. *Prior injuries.*—[Prior injuries are not affected.]

Sec. 11. *Insurance.*—[Employers accepting the act must insure their liability thereunder.]

Sec. 12 (as amended 1920, ch. 176; 1924, ch. 318; 1926, ch. 7). *Remedies exclusive; third party liability.*—[The remedy provided under this act against an employer is exclusive of all other rights and remedies as against him; but if the injury is such as to create liability in another person than the employer action at law may be brought against such third party before an award is made, but either the acceptance of an award or the procurement of a judgment in an action at law bars further proceedings under the alternate remedy. If the employee was an infant employed knowingly and willfully in violation of law, the parents may maintain an action at law for loss of service against the employer or the third party and recover damages in addition to the compensation recoverable under the act. Illegal employment does not affect the compensation rights of a minor employee.]

Acceptance of an award operates as an assignment to the employer of any right of action against a third party, and if the person entitled to sue has made claim against the employer and has not proceeded against the third party, the employer may, to avoid bar of limitation, institute an action at law prior to the making of an award. The amount of compensation paid is not

admissible as evidence in an action for damages, but any excess recovery, less costs and fees, is to go for the benefit of the injured employee or other person entitled thereto. Compromise settlements made by the employer or insurance carrier require the approval of the industrial commission and the injured employee or his personal representative or dependents in case of death. If an insurance carrier has paid the compensation it is subrogated to the employer's rights.]

SEC. 13. Violation of statutes.—Nothing in this act shall be construed to relieve any employer or employee from penalty for failure or neglect to perform any statutory duty.

SEC. 14. Injuries exempt.—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.

SEC. 15. Excluded employments.—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 21, 1916, 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 14, 1912, nor to casual employees, farm laborers, and domestic servants, nor to employees of such persons, nor to any person, firm, or private corporation, including any public-service corporation, that has regularly in service less than 11 operatives in the same business within this State, unless such employees and their employers voluntarily elect in the manner hereinafter specified to be bound by this act.

SECS. 16-18. Actions at law.—[Employers rejecting the act may not, in any action for damages by the employee, plead the common-law defenses; but where the employer accepts and the employee rejects, they are available. If both parties have rejected the act the defenses stand abrogated.]

SEC. 19. Voluntary settlements.—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.

SEC. 20 (as amended 1924, ch. 318). Employers of contractors.—(a) Where any person (in this section referred to as "owner") undertakes to perform or execute any work which is a part of his trade, business, or occupation and contracts with any other person (in this section referred to as "subcontractor") for the execution or performance by or under such subcontractor of the whole or any part of the work undertaken by such owner, the owner 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 the workman had been immediately employed by him.

Where any person (in this section referred to as "contractor") contracts to perform or execute any work for another person which work or undertaking is not a part of the trade, business, or occupation of such other person and contracts with any other person (in this section referred to as "subcontractor") for the execution or performance by or under the subcontractor of the whole or any part of the work undertaken by such contractor, then the 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.

Where the subcontractor, as the term is hereinbefore used, in turn contracts with still another person (in this section also referred to as "subcontractor")

for the performance or execution by or under such last subcontractor of the whole or any part of the work undertaken by the first subcontractor, then the liability of the owner or contractor, as those terms are hereinbefore used, shall be the same as the liability imposed by the preceding paragraphs of this subsection.

Where compensation is claimed from or proceedings are taken against the owner or contractor, as those terms are hereinbefore used, then, in the application of this act reference to the owner or 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.

SEC. 21. *Preference of claims.*—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. 22. *Exemptions.*—No claim for compensation under this act shall be assignable, and all compensation and claims therefor shall be exempt from all claims of creditors.

SECS. 23-25. *Notice and claim.*—[Injured employees must give immediate notice, or as soon as practicable, of the action, and are not entitled to physicians' fees or compensation accrued 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 notice could not be given by reason of physical or mental incapacity or fraud or deceit of some third person. Compensation is barred, unless such written notice is given within 30 days, in the absence of reasonable excuse and a showing that the employer was not prejudiced thereby. Ordinary language may be used, defects or inaccuracies do not invalidate unless prejudicial, and then only to the extent of such prejudice, and service may be either personal or by registered letter. Claims must be filed within one year after the accident, or after death if the injury was fatal.]

SEC. 26 (as amended 1920, ch. 176). *Medical aid.*—For a period not exceeding 60 days after an accident 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 physician or the industrial commission.

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.

If in an emergency on account of the employer's failure to provide the medical care during the first 60 days, as herein specified, or for other good reasons, a physician other than provided by the employer is called to treat the injured employee during the first 60 days, the reasonable cost of such service shall be paid by the employer if ordered so to do by the industrial commission.

SEC. 27. *Cost of service.*—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.

SEC. 28. *Medical examinations.*—[So long as compensation is claimed the employee must, if requested by the employer or ordered by the industrial commission, submit to a medical examination at reasonable times and places. He may have his own physician present. Communications to such physicians are not privileged in so far as hearings under the act or actions at law against an accepting employer are concerned. Refusing or obstructing examination suspends benefits for the time, and no compensation therefor shall be paid unless in the opinion of the commission the circumstances justified such refusal or obstruction. An autopsy may be had in case of death at the expense of the party requesting the same.]

SEC. 29 (as amended 1920, ch. 176). *Waiting time.*—No compensation shall be allowed for the first 10 calendar days of incapacity resulting from an injury except the benefits provided for in section 26; but if incapacity extends beyond that period compensation shall commence with the 11th day of disability. If, however, such incapacity shall continue for a period of more than six weeks, then compensation shall be allowed from the first day of such incapacity.

SEC. 30 (as amended 1920, ch. 176; 1924, ch. 318). *Total disability.*—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 50 per cent of his average weekly wages, but not more than \$12 nor less than \$6 a week; and in no case shall the period covered by such compensation be greater than 500 weeks, nor shall the total amount of all compensation exceed \$4,500.

SEC. 31 (as amended 1920, ch. 176). *Partial disability.*—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 50 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 \$12 a week, and in no case shall the period covered by such compensation be greater than 300 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.

SEC. 32 (as amended 1920, ch. 176; 1924, ch. 318; 1926, ch. 7). *Schedule.*—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, 50 per cent of the average weekly wages during 60 weeks.

(b) For the loss of a first finger, commonly called the index finger, 50 per cent of the average weekly wages during 35 weeks.

(c) For the loss of a second finger, 50 per cent of average weekly wages during 30 weeks.

(d) For the loss of a third finger, 50 per cent of average weekly wages during 20 weeks.

(e) For the loss of a fourth finger, commonly called the little finger, 50 per cent of average weekly wages during 15 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, 50 per cent of the average weekly wages during 30 weeks.

(j) For the loss of one of the toes other than a great toe, 50 per cent of average weekly wages during 10 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, 50 per cent of the average weekly wages during 150 weeks.

(n) For the loss of an arm, 50 per cent of average weekly wages during 200 weeks.

(o) For the loss of a foot, 50 per cent of average weekly wages during 125 weeks.

(p) For the loss of a leg, 50 per cent of average weekly wages during 175 weeks.

(q) For the permanent total loss of the vision of an eye, 50 per cent of the average weekly wages during 100 weeks; and for the permanent partial loss of the vision of an eye, the percentage of 100 weeks equivalent to the percentage of the vision so permanently lost.

(r) For the permanent total loss of the hearing of an ear, 50 per cent of the average weekly wages during 50 weeks; and for the permanent partial loss of the hearing of an ear, the percentage of 50 weeks equivalent to the percentage of the hearing so permanently lost.

(s) The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or any two parts thereof, shall constitute total and permanent incapacity, to be compensated according to the provisions of section 30.

(t) For marked disfigurement of the head or face resulting from an injury not above mentioned in the section, which will impair the future usefulness or occupational opportunities of the injured employee, 50 per cent of the average weekly wages during 60 weeks.

The weekly compensation payments referred to in this section shall all be subject to the same limitations as to maximums and minimums as set out in section 30.

(u) In construing the foregoing section the permanent loss of the use of a member shall be held equivalent to the loss of such member, and for the permanent partial loss or loss of use of a member compensation may be proportionately awarded.

SEC. 33. *Refusing employment.*—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.

SEC. 34. *Second injuries.*—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 other than that in which he received a subsequent permanent injury by accident, such as specified in section 32, he shall be entitled to compensation only for the degree of incapacity which would have resulted from the later accident if the earlier disability or injury had not existed.

SEC. 35 (as amended 1924, ch. 318). *No double benefits.*—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, but if he is, at the time of the second injury, receiving compensation under the provisions of section 32, payments of compensation thereunder shall be suspended during the period compensation is paid on account of the second injury, and after the termination of payments of compensation for the second injury, payments on account of the first injury shall be resumed and continued until the entire amount originally awarded has been paid. But if, at the time of the second injury, he is receiving compensation under the provisions of section 31, then no compensation shall be payable on account of the first injury, during the period he received compensation for the second injury.

SEC. 36. *Second injury in same employment.*—If an employee receives a permanent injury as specified in section 32, 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 500 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.

SEC. 37. Injuries outside State.—(a) Where an accident happens while the employee is employed elsewhere than in this State, which would entitle him or his dependents to compensation if it had happened in this State, the employee or his dependents shall be entitled to compensation, if the contract of employment was made in this State; if the employer's place of business is in this State; and if the residence of the employee is in this State; provided his contract of employment was not expressly for service exclusively outside of the State.

(b) *Provided, however,* If an employee shall receive compensation or damages under the laws of any other State, nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided for in this act.

SEC. 38 (as amended 1920, ch. 176). Death from other cause.—When an employee receives or is entitled to compensation under this act, for an injury covered by section 32, 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 statutory distributees, dependent upon him for support, in lieu of the compensation the employee would have been entitled to had he lived: *Provided, however,* That if the death is due to a cause that is compensable under this act and the dependents of such employee are awarded compensation therefor, all right to unpaid compensation provided by this section shall cease and determine.

SEC. 39 (as amended 1920, ch. 176; 1922, ch. 427; 1924, ch. 318). Death.—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 dependent of the employee wholly dependent upon his earnings for support at the time of accident a weekly payment equal to 50 per cent of his average weekly wages, but not more than \$12 nor less than \$6 a week for a period of 300 weeks from the date of the injury and burial expenses not exceeding \$100. If the employee leave 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 extent of partial dependency bears to total dependency. 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 300 weeks from the date of the injury. If the employee does not leave dependent, citizens of and residing at the time of the accident in the United States or Dominion of Canada, the amount of compensation shall not in any case exceed \$1,000.

SEC. 40 (as amended 1924, ch. 318). Dependents.—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 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 18 or a girl under the age of 18, 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 step-parents 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.

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 18 years of age, or upon earlier marriage of a female child.

Sec. 41 (as amended 1924, ch. 318). *Burial expenses.*—If the deceased employee leaves no dependents, the employer shall pay the burial expenses of the deceased, not to exceed \$150.

Sec. 42 (as amended 1920, ch. 176). *Maximum benefits.*—The total compensation payable under this act shall in no case exceed \$4,500.

Sec. 43. *Advance payments.*—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. *Times of payments.*—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.

Secs. 45, 46 (both as amended 1922, ch. 425). *Lump sums.*—[When any weekly payment has continued for not less than six weeks commutation may be made to the value of future installments in unusual cases where the parties agree and the industrial commission determines it to be for the best interest of the employee or his dependents, or where it will prevent undue hardship on the employer or insurance carrier without prejudicing the interests of the beneficiaries. The commission may, in its discretion, at any time commute to a lump sum in whole or in part payments to a minor permanently disabled, either partially or wholly. Such lump sums may be paid to a suitable person or corporation as trustee to be administered as provided by the commission.]

Sec. 47. *Review of awards.*—[On its own motion before a judicial determination, or on the application of any party in interest, awards may be reviewed on the ground of a change in conditions at any time.]

Sec. 48 (as amended 1920, ch. 176). *Receipts.*—(a) Whenever payment of compensation is made to a widow or widower for her or his use, or for her or his use and the use of the child or children, the written receipt thereof of such widow or widower shall acquit the employer.

(b) Whenever payment is made to any person 18 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 18 years shall be entitled to receive a sum amounting to not more than \$300 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 any payment of over \$300 is made to a minor under 18 years of age, or to a dependent child over the age of 18 years, the same shall be made to some suitable person or corporation appointed by the circuit or corporation court or the judge thereof in vacation as a trustee, and the receipt of such trustee shall acquit the employer.

(d) Payment of death benefits by an employer in good faith to a dependent subsequent in right to another or other dependents shall protect and discharge the employer unless and until such dependent or dependents prior in right shall have given him notice of his or their claim. In case the employer is in doubt as to the respective rights of rival claimants, he may apply to the industrial commission to decide between them.

Sec. 49. *Incompetents.*—If an injured employee is mentally incompetent or is under 18 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.

Sec. 50. *Limitations.*—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.

SEC. 51. Joint employment.—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.

SECS. 52, 53 (as amended 1920, ch. 176; 1924, ch. 318), **54, 55** (as amended 1920, ch. 176; 1924, ch. 318), **56. Industrial commission.**—[An industrial commission of three members is to be appointed by the governor for terms of six years, one term expiring each two years. Not more than one may be a representative of labor, and one of employers. Members may engage in no occupation or business interfering with their duties. Salaries are \$4,000 a year. A secretary at \$3,000 and such clerical and other assistants as are deemed necessary may be employed. Offices are to be maintained at the capitol, open for business during regular business hours; sessions may be held at any place within the State.

The commission and its deputies may subpoena witnesses, administer oaths, and examine books and records; depositions may be taken within or without the State. County or city officials serving subpoenas receive the same fees as provided for civil action; so also witnesses' fees and mileage. Blank forms and literature deemed requisite are to be printed and furnished free of charge. Accident reports are to be tabulated and published in annual reports of the commission. Employers' reports are not to appear individually, not to be used as evidence against any employer in any suit at law brought by an employee for the recovery of damages.]

SECS. 57 (as amended 1920, ch. 176), **58-60, 61** (as amended 1922, ch. 425; 1924, ch. 318), **62, 63** (as amended 1924, ch. 318), **64, 65** (as amended 1924, ch. 318), **66. Procedure.**—[Agreements made by the parties after 10 days from the date of an injury, or at any time in case of death, may be filed with the commission, and if approved, the memorandum becomes enforceable by decree of court; if not filed, such agreement is voidable by the employee or his dependents.

If the parties fail to agree, or disagree as to the continuance of payments under an approved agreement, either party may apply for a hearing by the industrial commission. Proceedings are to be summary, and findings of fact and rules of law must be filed with a record of the proceedings and a copy of the award immediately sent to the parties. If application is made for review within seven days from the date of an award, the full commission, if the first hearing was not before the full commission, will review the evidence or hear the parties at issue if deemed advisable and make an award as above provided. Such award is conclusive and binding as to all questions of fact. Appeals lie to the supreme court of appeals, as in equity cases, but must be taken within 30 days. Such cases are placed upon the privileged docket, to be heard at the next ensuing term of court wherever held. Appeals operate as a supersedeas, and payments of award will not be required until questions at issue have been fully determined.

Certified copies of memoranda of agreement or awards not appealed from or affirmed on appeal may be filed by any party in interest in the courts, whereupon judgment in accordance therewith shall be rendered, with the same effect as though rendered in a suit determined by the court.

If proceedings have been brought, prosecuted, or defended without reasonable grounds, the whole cost may be assessed against the offending party.

The commission or a member may, on application or on its own motion, appoint an impartial physician to make examinations and report, a fee of not exceeding \$10 to be allowed, unless in extraordinary cases. Fees and expenses of such physicians are to be paid by the State.

Attorneys', medical, and hospital fees are subject to the approval of the commission. Physicians may not collect fees until they have made the reports to the commission required by it.

All questions not settled by agreement, with the approval of the commission, must be determined by it, except as otherwise provided.]

SEC. 67 (as amended 1924, ch. 318). *Reports of accidents.*—[Employers are required to record all injuries to their employees and report the same to the commission within 10 days if causing an absence from work for more than 7 days. Supplemental reports must be made on termination of disability or in 60 days, with final report in the latter case. Reports are to state the facts involved as may be required by the commission; the commission's records of such reports are not to be open to the public.]

SECS. 68 (as amended 1920, ch. 176), **69** (as amended 1922, ch. 425; 1924, ch. 318), **70-74**, **75** (as amended 1920, ch. 176; 1924, ch. 318). *Insurance.*—[Employers accepting the provisions of the act must insure and keep insured in some authorized corporation, association, organization, or the State insurance fund, unless they furnish satisfactory proof to the industrial commission of financial ability to pay compensation as it may become due. In the latter case the commission may require a deposit of security, indemnity, or both. The State treasurer is to be the custodian of securities thus deposited, and may receive a compensation of one-twentieth of 1 per cent of the amount per annum. If the employer shows that he is a member of an association or group of employers exchanging contracts of insurance through a medium authorized by the department of any State, together with a sworn financial statement showing that the group of employers or association is in a solvent condition, this will be accepted as satisfactory proof of the employer's financial ability to pay; but this provision is not to restrict or qualify the rights of self-insurers.]

Employers accepting the act must file notice of compliance with the insurance commission annually, and also of cancellation of insurance immediately on its occurrence. Neglect incurs a penalty of 10 cents for each employee, not less than \$1 nor more than \$50 for each day of neglect until the same ceases. The employer is also liable either for compensation or under an action at law in case of injury to employees during the continuance of such refusal or neglect. Self-insurers receive a certificate, revocable on at least 60 days' notice and hearing, but a new certificate may be granted after revocation upon employer's petition.

Employers may enter into or continue in approved benefit or insurance schemes providing a system of compensation in lieu of that established by the act. At least equivalent benefits must be provided, and additional benefits commensurate with any contributions required of employees. Such system may be discontinued on notice and hearing for cause shown.

Policies must provide that notice, knowledge, and jurisdiction of the employer apply to the insurer; that payments will be made promptly to the person entitled to the same regardless of default of the insurer after injury or default as to notice. They must be of approved form and will be deemed to be made subject to the provisions of the act. This act does not apply to policies of insurance against loss from explosion of boilers and flywheels or other similar single catastrophe hazards.

Rates are to be fair, reasonable, and adequate, and risks of the same kind and degree must be written at the same rate by the same carrier. The approval of the commissioner of insurance is required as to rates provided both in the basic and merit rating schedules. Carriers must report to the commissioner of insurance who may inspect books and records for solvency and adequacy of rates.

An administrative fund for paying salaries and expenses of the commission is provided for by a tax on premiums of insurance carriers at the rate of 3½ per cent of the amount of such premium in lieu of all other taxes thereon. Self-insurers pay an equivalent assessment. The commission may incur no expenses or indebtedness chargeable against the maintenance fund in excess of the premium tax payable for the period. Any excess of collections over expenditures must be paid annually to the State rehabilitation fund.]

SEC. 76. Unconstitutionality.—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.

SEC. 77. Appropriation.—[An initial appropriation is made to organize the fund, the same to be repaid when and as a sum sufficient therefor is available.]

SEC. 78. Act in effect.—[The act became effective January 1, 1910.]

WASHINGTON

REMINGTON'S COMPILED STATUTES

Workmen's compensation act

SECTION 7673. *Civil suits abolished.*—[The common law remedy for injuries to employees is declared inconsistent with modern industrial conditions, economically unwise and unfair. Workmen insured in extrahazardous employments and their families and dependents are entitled to redress for industrial injuries regardless of questions of fault, and the subject is withdrawn from private controversies, every other remedy for proceedings being excluded except as provided in this act.]

SEC. 7674. *Extrahazardous employments.*—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: 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; general warehouse and storage; transfer, drayage, and hauling; warehousing and transfer; fruit warehouse and packing houses. 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 7676.

The director of labor and industries through and by means of the division of industrial insurance shall have power, after hearing had upon its own motion, or upon the application of any party interested, to declare any occupation or work to be extrahazardous and to be under this act. The director of labor and industries shall fix the time and place of such hearing, and shall cause notice thereof to be published once at least 10 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 defect or inaccuracy in such notice or in the publication thereof shall invalidate any order issued by the director of labor and industries 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 director of labor and industries 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 7697 and not otherwise.

SEC. 7674a (added 1923, ch. 128). *Peace officers.*—[The work of salaried peace officers of the State and its municipalities is declared extrahazardous, subject to the provisions of this law. Premium payments are to be made from the treasury of the State or municipality, rates to be fixed by the director of labor and industries; but if other provision is made by law, charter, or ordinance, officers affected will not be included under the act. Compensation will be allowed only for injuries sustained in the course of employment as peace officers.]

SEC. 7675. *Definitions.*—In the sense of this act words employed mean as here stated, to wit: Factories mean undertaking 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 or who contracts with another to engage in extrahazardous work. 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 death results 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.

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 benefit 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 director of labor and industries 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 16 years, viz: Invalid child over the age of 18 years, daughter between 16 and 18 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. 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 word "injury" or "injured" as used in this act refers only to an injury resulting from some fortuitous event as distinguished from the contraction of disease. The term "educational standard" shall mean such standards as the supervisor of safety shall make for the purpose of educating and training both employer and workmen in the appreciation and avoidance of danger, and in the maintenance and proper use of safe place and safety device standards.

Sec. 7676 (as amended 1923, ch. 136). *Premium rates.*—Inasmuch as industry should bear the greater portion of the burden of the cost of its accidents, each employer shall, prior to January 15, May 15, and September 15 of each year, pay into the State treasury for the accident fund a sum equal to a percentage of his total pay roll for the preceding four calendar months, and for the medical aid fund a certain number of cents for each day worked by workmen in extrahazardous employment during the preceding four calendar months, in accordance with the following schedule, to wit: (The same being deemed the most accurate method of equitable distribution of burden in proportion to relative hazard): *Provided*, That an adjustment shall be made in each class of the accident fund having an average rate of 1 per cent or more by the director of labor and industries through and by means of the division of industrial insurance 30 days prior to such four months' call, and the amount of such call, together with the amount of the estimated balance in the accident fund of such class at the time of the call, shall not exceed one hundred and twenty-five per cent of the estimated amount required to carry such class for the succeeding four months based on the previous five years' experience of such class, but there may be added the amount of the estimated deficit, if any, in the accident fund of such class at the time of such call.

Class	Industry	Industrial insurance rate, per cent of pay roll	Medical aid rate, cents per day
1-1	Ditches and canals (not otherwise specified)	2	3
	Excavations (not otherwise specified)	2	3
	Pipe laying (not otherwise specified)	2	3
	Grading (not otherwise specified)	2	3
1-2	Diking	2	3
	Drilling wells	2	2
1-3	Shaft sinking (not otherwise specified)	4	3
	Digging wells	4	3
1-4	Sewers (including all operations incidental to sewer construction; pipe laying, back filling, etc.)	3	3
	Side sewers	3	3
	Conduit construction	3	3
	Water main construction (includes all operations incidental to water main construction; back filling, pipe laying, etc.)	3	3
	Tunnel work in connection with sewer and water main construction	3	3
	Trenches, ditches, excavations where depth is greater than width	3	3
1-5	Tunnels (not otherwise specified) (includes lining of tunnels)	2½	2½
	(Includes all labor in connection with and incidental to tunnel construction.)		
1-6	Tunnels, railroad (includes lining of tunnels)	4	3
1-7	Land clearing (includes clearing by all methods)	3	3
	Clearing rights of way for roads and railroads	3	3
	Clearing rights of way (not otherwise specified)	3	3
	Grubbing stumps (includes grubbing stumps by all methods)	3	3
1-8	Railroad construction (not otherwise specified)	2½	3
	(Excludes all bridge and trestle work.)		
	Railroad grading	2½	3
2-1	Bridges and bridge work	3	3
	Steel bridges	3	3
	Concrete bridges	3	3
	Wooden bridges	3	3
	Concrete or other types of culverts with span greater than 12 feet	3	3
	Bridge foundations	3	3
	Sub aqueous work	3	3
	Trestles, framed or pile	3	3
	Wharf and pier construction	3	3
	Pile driving	3	3
	Bulkhead construction	3	3
	Breakwaters and jetties	3	3
	Marine railways	3	3

Class	Industry	Industrial insurance rate, per cent of pay roll	Medical aid rate, cents per day
5-1	Window washing (excludes domestic servants regularly employed for other purposes)	3	3
	Washing or cleaning buildings	3	3
5-2	Brick work	1	2
	Stone work	1	2
	Marble, tile, terra cotta	1	2
	Chimneys (brick)	1	1
	Slate work	1 ³ / ₄	2
5-3	Plumbing	2 ³ / ₄	2
	Installation of heating and ventilation systems	2 ³ / ₄	2
	Furnaces (installation in buildings)	2 ³ / ₄	2
5-4	Painting	2	2
	Sign painting	2	2
	Frescoing	2	2
	Kalsomining	2	2
5-6	Carpenter work (not otherwise specified)	1	2
	Hot-house building	1	2
	Wooden stair building	1	2
	Lathing	1	2
	Grain elevators (wood)	1	2
	House wrecking and moving store or bank fixtures (installation)	1	2
	Advertising signs (wood)	1	2
	Elevators, freight or passenger (installation)	1	2
	Ornamental metal work	1	2
	Glass setting (not otherwise specified)	1	2
	Galvanized iron and tin work	1	2
	Fire-proof doors and shutters	1	2
	Demolishing structures	1	2
	Safes and vaults (installation)	1	2
5-6	Concrete construction (not otherwise specified)	1	2
	Concrete culverts (less than 12 ft. span)	1	2
	Concrete, plain or reinforced (not otherwise specified)	1	2
	Concrete floors and foundations	1	2
	Chimneys (concrete)	1	2
	Erection and tearing down of forms in connection with concrete work	1	2
5-7	Plastering	2 ³ / ₄	1
	Paper hanging	2 ³ / ₄	1
	Floor compositions (hot or cold)	2 ³ / ₄	1
	Mantel setting	2 ³ / ₄	1
	Tile setting in floors	2 ³ / ₄	1
5-8	Iron and steel structures (not otherwise specified)	4	3
	Tanks, wood or metal (erection)	4	3
	Chimneys, metal (erection)	4	3
	Windmills, wood or metal (erection)	4	3
	Fire escapes	4	3
5-9	Hardwood floors (laying)	1 ¹ / ₂	1
5-10	General construction (includes all operations by temporary employers in building construction)	1	2
6-1	Electric apparatus (installation in buildings)	2 ¹ / ₂	1 ¹ / ₂
	Electric wiring (inside)	2 ¹ / ₂	1 ¹ / ₂
	Automatic sprinklers (installation)	2 ¹ / ₂	1 ¹ / ₂
	Conduit work (excludes construction of conduit)	2 ¹ / ₂	1 ¹ / ₂
	Fire-alarm systems (installation)	2 ¹ / ₂	1 ¹ / ₂
6-2	Electric railway construction	2	3
	Street railway construction (including cable) (excludes grading and bridge work)	2	3
	Telegraph and telephone construction	2	3
	Transmission lines (construction)	2	3
6-3	Installation of machinery (not otherwise specified)	1 ¹ / ₂	2
	Dynamo installation	1 ¹ / ₂	2
	Covering steam pipes and boilers	1 ¹ / ₂	2
	Gas engines (installation)	1 ¹ / ₂	2
	Boilers and engines, steam (installation)	1 ¹ / ₂	2
	Belts, pulleys, shafting (installation)	1 ¹ / ₂	2
	Dismantling machinery	1 ¹ / ₂	2
6-4	Junk dealers	1	1 ¹ / ₂
8-1	Street and highway paving (construction)	1 ¹ / ₂	1 ¹ / ₂
	Asphalt paving	1 ¹ / ₂	1 ¹ / ₂
	Brick paving	1 ¹ / ₂	1 ¹ / ₂
	Block paving (wood, stone)	1 ¹ / ₂	1 ¹ / ₂
	Concrete paving	1 ¹ / ₂	1 ¹ / ₂
	Bituminous pavements (all types)	1 ¹ / ₂	1 ¹ / ₂
	Asphalt mixing	1 ¹ / ₂	1 ¹ / ₂
	Concrete sidewalks	1 ¹ / ₂	1 ¹ / ₂
	Plank sidewalks	1 ¹ / ₂	1 ¹ / ₂
	Road and highway pavements (not otherwise specified)	1 ¹ / ₂	1 ¹ / ₂
	Plank road and street construction	1 ¹ / ₂	1 ¹ / ₂
8-2	Road and street grading	1 ¹ / ₂	1 ¹ / ₂

Class	Industry	Industrial insurance rate, per cent of pay roll	Medical aid rate, cents per day
8-3	Road and street maintenance.....	1½	1½
	Road and street employees.....	1½	1½
	Irrigation ditches (maintenance).....	1½	1½
	Ditches (not otherwise specified) (maintenance).....	1½	1½
	Engineers and surveyors (includes city, county, or State engineers engaged in field work).....	1½	1½
8-4	Gravel bunkers (operation).....	1½	1½
	Sand bunkers (operation).....	1½	1½
9-1	Ship or boat building (steel hulls).....	1½	3
	Repair work on steel vessels (includes all operations incidental to this industry within shipyard).....	1½	3
9-2	Ship or boat building (wooden hulls).....	3	3
	Repair work on wooden vessels (includes all operations incidental to this industry within shipyard).....	3	3
9-3	Ship or boat building (concrete hulls).....	3	3
	Repair work on concrete vessels (includes all operations within shipyard).....	3	3
9-4	Steamboats, tugs, ferries (operation).....	3	1
10-2	Sawmills.....	1½	2
	Planing mills (independent).....	1½	2
	Planing mills (not otherwise specified).....	1½	2
	Lath mills.....	1½	2
	Spars (with or without machinery).....	1½	2
10-3	Shingle mills.....	1½	2
10-6	Creosote works.....	2	2
	Pile-treating works.....	2	2
10-7	Lumber inspectors.....	1½	2
11-1	Team and truck driving (includes all warehouses operated by transfer companies).....	1	1½
11-2	Retail lumber yards.....	1	1½
	Retail fuel yards (includes wood saws and all employees in fuel yards).....	1	1½
12-1	Dredging (operation).....	2	1½
13-1	Electric light and power plants (operation).....	1½	2
	Electric systems (not otherwise specified).....	1½	2
	(Includes tenders of electrically-operated bridges.)		
13-2	Steam heat and power plants.....	2	2
13-3	Telephone and telegraph (operation and maintenance) (excludes telephone and telegraph operators).....	3	3
14-1	Street railways (operation).....	¾	2½
14-2	Interurban railways (operation).....	1½	2½
14-3	Steam railroad operations (excludes logging railroads).....	2½	2½
16-1	Coal mines (includes shaft sinking and all tunneling in connection with coal mines).....	2½	2½
	Coke ovens (operation) (excludes office force only).....	2½	2½
17-1	Gravel pits.....	4	3
17-2	Mines (other than coal) (includes all shaft sinking and tunneling in connection with mines other than coal).....	2½	3
	Ore reduction (by wet or dry process at the mine).....	2½	3
17-3	Quarries.....	2½	3
	Stone cutting (quarry hazard).....	2½	3
17-4	Stone crushing.....	3	3
18-1	Blast furnaces (operation).....	1½	2½
	Rolling mills (operation).....	1½	2½
	Steel and iron making.....	1½	2½
	Open-hearth furnaces (operation).....	1½	2½
18-2	Smelters (operation).....	1½	2½
	Copper, lead, zinc, etc., smelting.....	1½	2½
19-1	Gas works (operation) (excludes meter [meter] readers, complaint men, solicitors, and storeroom employees).....	½	1½
21-1	Chop, feed, and flour mills (operation).....	1	2
	Seed cleaning.....	1	2
21-2	Grain warehouse and elevators (operation).....	1	1½
21-3	General warehouse and storage (operation).....	1	1½
	(Excludes operations in connection with class 11.)		
21-4	Fruit warehouses.....	¾	1½
22-1	Laundries (operation).....	½	1½
	Dye works and dleners.....	½	1½
23-1	Waterworks (operation).....	1	1½

Class	Industry	Industrial insurance rate, per cent of pay roll	Medical aid rate, cents per day	
24-1	Paper mills (operation).....	1 1/2	3	
	Pulp mills (operation).....	1 1/2	3	
20-1	Cooperage (manufacturing).....	1	2	
	Staves, barrel (manufacturing).....	1	2	
20-2	Barrels, kegs, pails (manufacturing).....	1	2	
	Sash, door, blinds, etc.....	1	2	
	Planing mill (in connection with sash and door factory).....	1	2	
20-3	Glazing and beveling glass (in connection with sash and door).....	1	2	
	Excelsior (manufacturing).....	3/4	2	
	Veneering (manufacturing).....	3/4	2	
	Cabinet works.....	3/4	2	
	Furniture (manufacturing).....	3/4	2	
	Boxes and packing cases (manufacturing).....	3/4	2	
	Wooden and fiber ware (manufacturing).....	3/4	2	
	Woodworking (not otherwise specified).....	3/4	2	
	Kindling wood.....	3/4	2	
	Wood pipe (manufacturing).....	3/4	2	
	Pattern shops (independent).....	3/4	2	
	31-1	Building material (manufacturing) (not otherwise specified).....	1 1/2	1 1/2
		Concrete blocks and tiles (independent of concrete construction).....	1 1/2	1 1/2
		Cement staves (independent of concrete construction).....	1 1/2	1 1/2
		Lime (manufacturing).....	1 1/2	1 1/2
Paint (manufacturing).....		1 1/2	1 1/2	
31-2	Cement (manufacturing).....	2	3	
31-3	Stone handling and cutting (not quarry hazard).....	1	3	
	Paving blocks (cutting).....	1	3	
33-1	Fish canneries (operation).....	1	2	
33-2	Fish oil (manufacturing).....	1	2	
	Fish products (not otherwise specified).....	1	2	
34-1	Auto repair shops (operation).....	2 1/2	2	
	Auto garages (operation).....	2 1/2	2	
	Vulcanizing tires and tubes.....	2 1/2	2	
	Automobile painting.....	2 1/2	2	
34-2	Machine shops (operation).....	2 1/2	2 1/2	
	Blacksmith shops (operation).....	2 1/2	2 1/2	
	Boiler works (operation).....	2 1/2	2 1/2	
	Foundries (operation).....	2 1/2	2 1/2	
	Woodworking (incidental to car and machine building).....	2 1/2	2 1/2	
	Welding (not otherwise specified).....	2 1/2	2 1/2	
34-4	Metal working trades (not otherwise specified).....	2 1/2	2	
	Sheet metal (manufacturing).....	2 1/2	2	
	Metal stamping.....	2 1/2	2	
	Tin stamping.....	2 1/2	2	
	Hardware (manufacturing).....	2 1/2	2	
34-5	Galvanized iron works.....	2 1/2	2	
34-5	Airplane pilots and instructors.....	10	3	
35-1	Brick and tile (manufacturing).....	1	1 1/2	
	Earthenware (manufacturing).....	1	1 1/2	
	Porcelain (manufacturing).....	1	1 1/2	
	Fireclay (manufacturing).....	1	1 1/2	
	Terra cotta.....	1	1 1/2	
35-2	Pottery (manufacturing).....	1	1 1/2	
	Briquettes (manufacturing).....	1	1 1/2	
	Peat fuel (manufacturing).....	1	1 1/2	
	Charcoal (manufacturing).....	1	1 1/2	
35-3	Glass (manufacturing).....	1 1/2	1 1/2	
37-1	Alcohol, ammonia, nitrogen, oxygen (manufacturing).....	3/4	2	
37-2	Bottling works (operation).....	1 1/2	2	
	Breweries (operation).....	1 1/2	2	
38-1	Brooms and brushes (manufacturing).....	1 1/2	2	
38-2	Textile (manufacturing).....	2 1/2	2	
	Wool (working in).....	2 1/2	2	
	Cloth (working in).....	2 1/2	2	
38-3	Cordage (manufacturing).....	1	2	
38-4	Leather (working in).....	1	2	
	Rubber (working in).....	1	2	
	Vulcanizing (excludes work in garages).....	1	2	
	Asbestos products (manufacturing).....	1	2	
	Paper products (manufacturing).....	1	2	

Class	Industry	Industrial insurance rate, per cent of pay roll	Medical aid rate, cents per day
39-1	Bakeries, candy and crackers (manufacturing).....	1½	1
39-2	Foodstuffs (not otherwise specified).....	1	1
	Fruits and vegetables (working in) (includes canning, preserving, pickling).....	1	1
	Oils (working in edible oils).....	1	1
39-3	Sugar refineries (operation).....	1	1
40-1	Condensed milk (operation).....	1	1½
40-2	Creameries (operation).....	1½	1½
	Ice cream (manufacturing).....	1½	1½
	Cheese making.....	1½	1½
41-1	Electrotyping.....	1½	1
	Photo-engraving.....	1½	1
	Lithographing.....	1½	1
41-2	Printing.....	1½	1
	Linotype (includes all employees in room with machinery and shafting).....	1½	1
41-3	Jewelry manufacturing.....	1	1
	Jewelry engraving.....	1	1
42-1	Wharf operations.....	1½	3
	Longshoring.....	1½	3
43-1	Packing houses (operation).....	1½	2
	Sausage making.....	1½	2
	Slaughtering.....	1½	2
	Soap and tallow making.....	1½	2
	Lard making.....	1½	2
	Fertilizer manufacturing.....	1½	2
	Stock yards (operation).....	1½	2
	Tanneries (operation).....	1½	2
43-2	Garbage works (operation).....	2	2
	Incinerators (operation).....	2	2
44-1	Cold storage (operation).....	1½	2
	Artificial ice, manufacturing and delivery.....	1½	2
44-2	Natural ice, producing and handling.....	2	2
45-1	Theater stage employees.....	1½	1
	Moving-picture operators.....	1½	1
46-1	Powder works (manufacturing).....	1½	3
	Fireworks (manufacturing).....	3	3
	Elective adoption for nonhazardous industries.....	1	2
50-1	Logging (includes all operations in connection with and incidental to logging).....	2½	2½
	Logging railroad operations.....	2½	2½
	Logging railroad grading.....	2½	2½
	Logging railroad construction (includes bridge and trestle work on logging railroads).....	2½	2½
	Cutting wood and bolts.....	2½	2½
	Booming and driving logs (not otherwise specified).....	2½	2½
	Tie cutting.....	2½	2½
50-2	Booming logs (this subclass exclusively for independent boom companies. All booming and driving done by logging companies must be classified as 50-1).....	1½	2½

The application of this act as between employers and workmen shall date from and include the 1st day of July, 1923: *Provided*, That this section shall not be effective until the 1st day of September, 1923. 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 director of labor and industries of such fact, accompanying such notification with an estimate of his pay roll for the first four months of his proposed operations, and shall make payment of the premium on such estimated pay roll. Every such employer shall be liable for a premium of at least \$1 irrespective of the amount of his pay roll.

Every employer within the provisions of this act shall on or before the 15th day of January, the 15th day of May, and the 15th 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, and shall pay his premiums thereon to the accident fund and medical aid fund. The sufficiency of such statement shall be subject to the approval of the director of labor and industries.

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 director of labor and industries, supervisor of industrial insurance, or the traveling auditors, agents, or assistants of the department, as provided in section 7690 of Remington's Compiled Statutes of Washington.

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 \$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 of not to exceed \$500 and shall also be liable if an accident has been sustained by an employee prior to the time such estimate is received by the department, to a penalty in a sum equal to 50 per cent of the cost to the accident fund and medical aid fund of such accident, to be collected in a civil action in the name of the State, and paid into the accident fund. In case the consequent payment to the injured workman, his dependents or beneficiaries, be payable in monthly payments, the cost to the accident fund shall be estimated in accordance with the rule stated in section 7681 of Remington's Compiled Statutes of Washington. The director of labor and industries may waive the whole or any part of any penalty charged under this act.

Any employer who shall misrepresent to the department the amount of his pay roll or the number of days 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, and shall also be guilty of a misdemeanor if such misrepresentation shall be made knowingly. Civil penalties to the State under this act shall be collected by civil action in the name of the State and paid into the accident fund.

Any person, firm, or corporation who not having previously reported to the department 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 the department within five days after such establishing or entering shall be guilty of a misdemeanor.

For the purpose of such payments into the accident fund 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. The fund thereby created shall be termed the "accident fund," which shall be devoted to the purpose specified for it in this act.

The medical-aid fund created in section 7713 of Remington's Compiled Statutes of Washington shall not be kept by classes, and all payments shall be made from the one fund; but accounts shall be kept with each class and subclass of industry in accordance with the classification herein provided for the purpose of computing the medical-aid cost experience of such classes and subclasses and determining the correctness of the medical-aid rates charged such classes and subclasses.

In that the intent is that the accident 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 director of labor and industries, in accordance with any relative increase or decrease in hazard shown by experience, and if in the adjustment by the director of labor and industries 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.

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 into the accident fund 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 director of labor and industries shall 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 joint board created by the administrative code upon notice to the interested parties and in the manner provided in section 7697 of Remington's Compiled Statutes of Washington, a review by the courts.

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, or in the discretion of the director of labor and industries a single rate of premium may be charged for the entire establishment based upon the rate of premium of the occupation reporting the largest pay roll. In computing the pay roll the entire compensation received by every workman employed in extra-hazardous 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.

The director of labor and industries shall have power to authorize any employee of the department who is an attorney admitted to practice law in the State of Washington to appear for the department in any action instituted for the purpose of collecting industrial insurance premiums.

Sec. 7677. [Repealed.]

Sec. 7678. [Repealed.]

Sec. 7679 (as amended 1923, ch. 136). *Schedule*.—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.

(a) Where death results from the injury the expenses of burial not to exceed \$100 in any case where the deceased was an unmarried man, or \$150 in any case where the deceased left a widow or an orphan child or children, shall be paid to the undertaker conducting the funeral: *Provided*, That no sum shall be paid an undertaker for the burial expenses where the deceased left a widow or an orphan child or children unless the undertaker shall make and file with the department an affidavit that no part of the burial expenses have been either directly or indirectly paid by or charged to the widow or orphan child or children.

(1) If the workman leaves a widow or invalid widower a monthly payment of \$35 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 per month for each child of the deceased under the age of 16 years at the time any monthly payment is due the following payments: For the youngest or only child \$12.50, for the next or second youngest child \$7.50, and for each additional child \$5; *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 \$250.

Upon remarriage of a widow she shall receive once and for all a lump sum of \$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 16 years, a monthly payment of \$25 shall be made to each such child until such child shall reach the age of 16 years, but the total monthly payment shall not exceed \$75, and any deficit shall be deducted proportionately among the beneficiaries.

(3) If the workman leaves no widow, widower, or child under the age of 16 years, but leaves a dependent or dependents, a monthly payment shall be made to each dependent equal to 50 per cent of the average monthly support actually received by such dependent from the workman during the 12 months next preceding the occurrence of the injury, but the total payment to all dependents in any case shall not exceed \$20 per month. If any dependent is under the age of 16 years at the time of the occurrence of the injury, the payment to such dependent shall cease when such dependent shall reach the age of 16 years. 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 21 years and unmarried at the time of his death, the parents or parent of the workman shall receive \$20 per month for each month after his death until the time at which he would have arrived at the age of 21 years.

(4) In the event a surviving spouse receiving monthly payment shall die leaving a child or children under the age of 16 years, such child or children shall receive each the sum of \$25 per month until arriving at the age of 16 years, but the total monthly payment shall not exceed \$75, and any deficit shall be deducted proportionately among the beneficiaries.

(b) Permanent total disability means the loss of both legs or 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.

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 \$35.

(2) If the workman have a wife or invalid husband, but no child under the age of 16 years, the sum of \$40.

If the husband is not an invalid, the monthly payment of \$40 shall be reduced to \$20 as long as they are living together as husband and wife.

(3) If the workman have a wife or husband and a child or children under the age of 16 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 \$12.50 for the youngest or only child, \$7.50 for the next or second youngest child, and \$5 for each additional child under the age of 16 years.

(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 \$25 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 7712 to 7725, inclusive, of Remington's Compiled Statutes.

(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 16 years, the surviving widow or invalid widower shall receive \$35 per month until death or remarriage, to be increased per month for each child of the deceased under the age of 16 years at the time any monthly payment is due, as follows: For the youngest or only child \$12.50, for the next or second youngest child \$7.50, and for each additional child \$5; but if such child is or shall be without father or mother, such child shall receive \$25 per month until arriving at the age of 16 years. Upon remarriage the payments on account of the child or children shall continue as before to such child or children.

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 have 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 16 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, \$22.50; injured workman having one child, whose husband is not an invalid, \$30; injured workman having two children, whose husband is not an invalid, \$37.50; injured workman having three children, whose husband is not an invalid, \$45; injured workman having four or more children, whose hus-

band is not an invalid, \$52.50; injured workman with wife or invalid husband and no child, \$42.50; injured workman with a wife or invalid husband and one child, or being a widow or widower and having one child, \$52.50; injured workman with a wife or invalid husband and two children, or being a widow or widower and having two children, \$60, and \$5 for each additional child.

(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 workman 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 5 per cent.

(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 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 4 per cent per annum.

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 or other earnings of the reserve fund shall become a part of the reserve fund itself. The department shall, on October 1 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 1 of each year, beginning in the year 1918, the State insurance commissioner shall expert the reserve fund of all classes to ascertain their standing as of October 1 of that year, and the relation of all 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 31. If the report shows that there was on said October 1 in the reserve fund of all classes in cash or at interest a greater sum than the annuity value of the outstanding pension obligations, the surplus shall be forthwith turned over to the accident fund of all classes, such return to be made on a proportionate basis according to the percentage of annuity deposits paid by each of said classes to said fund; but if the report show the contrary condition of said reserve, the deficiency shall be forthwith made good out of the accident funds of all of said classes proportioned on a basis according to the percentage of annuity deposits paid by each of said classes to said fund. The State treasurer shall keep accurate account of the reserve fund and the investment and earnings thereof, to the end that the total reserve fund 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.

(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:

Specific major permanent partial disability injuries

Loss of one leg amputated so near the hip that an artificial limb can not be worn.....	\$2,400
Loss of one leg at or above the knee so that an artificial limb can not be worn.....	2,280
Loss of one leg below the knee.....	1,500
Loss of the major arm at or above the elbow.....	2,280
Loss of the major hand at wrist.....	1,920
Loss of one eye by enucleation.....	1,440
Loss of sight of one eye.....	1,080
Complete loss of hearing in both ears.....	2,280
Complete loss of hearing in one ear.....	600

Specific minor permanent partial disability injuries

Loss of one thigh at upper third.....	2,280
Loss of one thigh at lower third.....	2,280
Loss of one leg at lower third.....	1,500
Loss of foot at the ankle.....	1,500
Loss of great toe with metatarsal bone thereof.....	480
Loss of great toe at the proximal joint.....	300
Loss of great toe at the second joint.....	105
Loss of one other toe other than the great toe with metatarsal bone thereof.....	165
Loss of second toe at proximal joint.....	75
Loss of third toe at proximal joint.....	75
Loss of fourth toe at proximal joint.....	75
Loss of fifth toe at proximal joint.....	30
Loss of metatarsal bone on toe other than great toe.....	90
Loss of fore-arm at upper third.....	2,100
Loss of fore-arm at lower third.....	2,100
Loss of thumb with metacarpal bone thereof.....	720
Loss of thumb at proximal joint.....	480
Loss of thumb at second joint.....	180
Loss of index or first finger at proximal joint.....	300
Loss of index or first finger at second joint.....	330
Loss of index or first finger at distal joint.....	150
Loss of middle or second finger at proximal joint.....	300
Loss of middle or second finger at second joint.....	250
Loss of middle or second finger at distal joint.....	90
Loss of ring or third finger at proximal joint.....	270
Loss of ring or third finger at second joint.....	210
Loss of ring or third finger at distal joint.....	90
Loss of little or fourth finger at proximal joint.....	105
Loss of little or fourth finger at second joint.....	75
Loss of little or fourth finger at distal joint.....	30
Loss of metacarpal bone in finger, except thumb.....	75
Broken arch in foot.....	600
Ankylosed ankle.....	480
Ankylosed knee.....	600

Provided, however, If any of the above-mentioned specific minor permanent partial disability injuries shall not result in or involve amputation, not more than three-fourths of the foregoing respective sums shall be paid: *Provided further,* That payment for any injury to minor hand or arm or any part thereof, shall not exceed 95 per cent of the amounts hereinbefore enumerated.

Compensation for any other specific major permanent partial disability or specific minor permanent partial disability shall be in the proportion which the extent of such other disability shall bear to that major specific or minor specific 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 \$2,400.

If the injured workman be under the age of 21 years and unmarried, the parents or parent shall also receive a lump-sum payment equal to 10 per cent of the amount awarded the minor workman.

(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.

(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.

(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).

(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.

(l) No workman injured after June 30, 1923, shall receive or be entitled to receive compensation out of the accident fund for or during the day on which injury was received or the three days following the same.

SEC. 7680. *Intentional injury; minors.*—[Injuries or death due to the deliberate intention of the workman to produce the same are not compensable; if due to the deliberate intention of the employer to cause such injury or death, compensation is payable and an action also lies against the employer for any excess damages.]

Minors legally employed are sui juris for the purposes of this act, the remedy being exclusive; but lump-sum payments to minors are within the probate jurisdiction of the courts as other property of minors. If guardianship is necessary, an allowance may be made from the accident fund toward the expenses of the same, not to exceed \$25. If the lump-sum payment is \$250 or less, payment may, in the discretion of the director of labor and industries, be paid directly to the minor without the appointment of a guardian.]

SEC. 7681. *Lump sums.*—[In case of death or permanent total disability monthly payments may be converted in whole or in part into a lump-sum payment, not to exceed \$4,000, equal or proportionate to the value of the annuity then remaining. Commutation is to be made only on written application of the beneficiary, and rests in the discretion of the department.]

SEC. 7682 (as amended 1923, ch. 136). *Collection of premiums.*—[Premiums in default may be collected in an action at law plus a penalty of 25 per cent. Claims of the State for payments and penalties are a lien prior to all others except for taxes on the property operated or constructed by any employer or article produced or manufactured by him. In all cases of probate, insolvency, etc., the claim of the State is a prior lien over all other claims except taxes.]

SEC. 7683. *Absence of safety appliances.*—[If injury is due to the absence of safeguards required by law or regulation, or the injured employee is a minor unlawfully employed, the employer must pay, in addition to the normal premium 50 per cent additional to any lump sum awarded, or if monthly payments are made, a sum equal to 50 per cent of the lump-sum value of such payments. This does not apply if the removal of the safeguard was by the injured workman himself or with his knowledge or by a fellow workman, unless done by order of a superior. If the removal was by the workman himself, or with his consent or by a fellow workman without orders, benefits shall be reduced 10 per cent.]

SEC. 7684 (as amended 1923, ch. 126). *Assignments; aliens.*—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 garnished, nor shall the same pass to any other person by operation of law. Any such assignment 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*, That if any workman shall suffer any injury and shall die therefrom before he shall have received payment of any monthly installment covering time loss for any period of time prior to his death, the amount of such monthly payment 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 further*, That if the injured workman shall have resided in the United States as long as three years prior to the date of such injury such payment shall not be made to any widow or child who was at the time of such injury a nonresident of the United States.

Except as otherwise provided by treaty, whenever under the provisions of this act, compensation is payable to a beneficiary or dependent who is an alien not residing in the United States, the department shall pay 50 per cent of the compensation herein otherwise provided to such beneficiary or dependent. But if a nonresident alien, beneficiary, or 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 he shall receive no compensation.

Proof of dependency by any beneficiary or dependent residing without the United States shall be made before the nearest United States consul or consular agent under the seal of such consul or consular agent, and the department may cause any warrant or warrants to which such beneficiary or dependent is entitled to be transmitted to the beneficiary or dependent through the nearest United States consul or consular agent.

Sec. 7685. *Waivers*.—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. 7686. *Claims*.—[Workmen entitled to compensation must file a claim, together with a physician's certificate, with the department, the physician being obligated to render all necessary assistance. Claims for death must be similarly submitted by beneficiaries or some one in their behalf, with proof of death and of relationship. Like application must be made for increase or rearrangement of compensation as change of circumstances warrant. Applications to be valid must be made within one year after the date on which the injury occurred or the right thereto accrued. Physicians failing or refusing to file reports as required within 10 days of the date of treatment showing condition and probable duration of injury or failing to render the necessary assistance to a claimant are guilty of a misdemeanor.]

Sec. 7687. *Physicians to testify*.—[Physicians must testify fully in all proceedings before the director, and are not exempt by reason of the relationship of physician and patient.]

Sec. 7688. *Medical examinations*.—[Workmen entitled to compensation must submit to medical examinations from time to time as may be provided by the rules of the department. Failure suspends and bars compensation for the period. Persistence in unsanitary or injurious practices authorizes reduction or suspension of compensation. Necessary traveling expenses incurred by a workman taking medical examinations at the request of the department are to be repaid from the accident fund.]

Sec. 7689. *Reports of accidents*.—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.

SEC. 7690. *Inspection of employers' books.*—[Books, records, and pay rolls of the employers pertinent to the administration of the act must be open to inspection by the department or its agents.]

SEC. 7691. [Repealed.]

SEC. 7692 (as amended 1923, ch. 136). *Public works.*—Whenever the State, county, any municipal corporation, or other taxing district shall engage in any extrahazardous work, or let a contract therefor 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. 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.

The provisions of this act shall apply to all extrahazardous work done by contract; the person, firm, or corporation who lets a contract for such extrahazardous work shall be responsible primarily and directly for all payments due to the accident fund and medical-aid fund upon the work. The contractor and any subcontractor shall be subject to the provisions of this act, and the person, firm, or corporation letting the contract shall be entitled to collect from the contractor the full amount payable to the accident fund and medical-aid fund, and the contractor, in turn, shall be entitled to collect from the subcontractor his proportionate amount of the payment.

It shall be unlawful for any city or town to issue a construction building permit to any person who has not submitted to the department of labor and industries an estimate of pay roll and paid premium thereon as provided by section 7676 of Remington's Compiled Statutes.

SEC. 7693 (as amended extra session, 1925, ch. 84). *Rules.*—[Employees engaged in the maintenance and operation of railroads or in the maintenance or construction of their equipment are exempt from the operations of the act, but this does not exclude railroad construction or employees engaged thereon. The liability of common carriers by railroad engaged in interstate or foreign commerce and in intrastate commerce is to be covered by Federal statute now existing or hereafter enacted. If an interstate common carrier is engaged in one or more intrastate enterprises or industries, the provisions of this section shall not exclude such work from the provisions of the act if the pay roll is clearly separable and distinguishable from railroad operations. Independent contractors engaged through or by their employees in performing extrahazardous work for a common carrier are not exempt, nor are their employees deprived of the benefits of this act.]

SEC. 7694 (amended extra session, 1925, ch. 111). *Maritime occupations.*—The provisions of this act shall apply to all employers and workmen engaged in maritime occupations for whom no right or obligation exists under the maritime laws for personal injuries or death of such workmen.

If an accurate segregation of pay rolls covering any class or classes of workmen engaged in maritime occupations and working part time on shore and part time off shore can not be made by the employer, the director of the department of labor and industries is hereby authorized and directed to fix from time to time a basis for the approximate segregation of the pay rolls of such class or classes of employees to cover the shore part of their work, and the employer shall pay to the accident fund on that basis for the time such workmen are engaged in their work.

Where two or more employers are simultaneously engaged in a common enterprise at one and the same site or place in maritime occupations under circumstances in which no right or obligation exists under the maritime laws for personal injuries or death of such workmen, such site or place shall be deemed for the purposes of this act to be the common plant of such employers.

SEC. 7695. Commerce.—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 7693.

SEC. 7696 (amended 1923, ch. 136). Election, when.—[Occupations other than those enumerated or declared to be under the act as provided in section 7674 may be brought thereunder by written application to the director of labor and industries to fix rates of contributions. On the fixing of such rates the employer may file notice with the supervisor of industrial insurance of his election to contribute, and must post notices to that effect in and about his plant. Within five days after such posting any employee may give notice of rejection, filing the same with the department; otherwise the statute becomes operative as to the applicant's establishment.]

SEC. 7697. Court review.—[Any person in interest may initiate proceedings in the nature of an appeal in a superior court of the county for a review of any decision of the department affecting his interests. Such appeal must be brought within 20 days after rendition of the decision. Proceedings are informal and summary, but with full opportunity for the parties to be heard. Bonds are not required except in case of an appeal from a decision of the department under section 7683 except in the case last named an appeal shall not be a stay. Trial by jury rests in the discretion of the court except in cases under sections 7683, 7690, and 7691, in which either party shall be entitled to jury trial on demand. Attorneys' fees are subject to regulation by the court. If the department is reversed or its decision modified, fees and costs are payable out of the administrative fund. In other respects the practice in civil cases applies.]

SECS. 7698-7703. Administration.—[An industrial insurance department was created with duties of administration, but it is now superseded (ch. 7, Acts of 1921) by the division of industrial insurance under the director of labor and industries. The director of labor and industries is authorized to establish rules, fix premiums, regulate matters of proof under the act, supervise medical, surgical and hospital treatment, issue receipts and certificates, make necessary investigations, and compile such statistics as will afford reliable information upon which to base operations and make annual reports to the governor showing the financial status and outstanding obligations of the accident fund, together with statistics as above noted.]

SECS. 7704-7711. Miscellaneous provisions.—[Penalties are provided for employers failing to comply with rules promulgated by the department under the authority of this act. Provision is made for the disbursement of funds on vouchers made out by the department and audited by the State auditor. The State treasurer is liable on his official bond for the safe custody of the moneys and securities of the accident fund.]

The adjudication of any employer or of his workmen as being outside the lawful scope of the act because of remoteness of employment from the hazards of the employer's work is not to impair the validity of the act in other respects. Should the provision as to the accident fund and exclusive payments therein provided for be held invalid, the entire act falls except that section which provides for the effect of repeal. In case of declared invalidity or repeal, the statute of limitations may not include any portion of the time elapsed between the occurrence of the injury or death and the repeal or decision. The act does not affect regulations for safety, nor any pending cause of action.]

SECS. 7712-7722. Medical aid.—[The declared purposes of the medical-aid act is to require the industries of the State to furnish medical, surgical, and hospital care to their injured workmen, the expense to be borne by such industry in proportion as it produces injury and creates expense, as nearly as may be. Contributions to the medical-aid fund are to be as provided in section 7676, rates to be subject to change as shown by experience, with appeals in cases of grievances. Provision is made for surgical and hospital treatment, the expenses to be borne by the fund, for the maintenance of first-

aid kits, the supplying of artificial limbs, mechanical appliances, etc. The director of labor and industries supervises and controls the administration of the act, fixes fees, and must provide care and treatment for workmen within the provisions of the act. Employers contributing to the fund may take one-half the amount required of them from the pay of their workman. Demanding or collecting from workmen any sum of money on account of medical, surgical, hospital, or other treatment or for transportation otherwise than as herein provided is unlawful, entailing liability to civil action for the benefit of the medical-aid fund in ten times the amount so demanded or collected, and punishment as for 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*

SECTIONS 1, 2 (as amended 1919, ch. 131), 3, 4, 5 (repealed), 6-8. *Compensation commissioner*.—[The governor appoints a compensation commissioner for a term of six years at a salary of \$6,000 per annum and may remove him for incompetency, neglect of duty, gross immorality, or malfeasance in office after hearing. The attorney general is to perform all legal services required by the commissioner under the provisions of this act. The commissioner has a seal, may employ a secretary, actuary, and other assistants and fix their salaries, must maintain an office at the capital, and has jurisdiction over the State compensation fund and awards of compensation and applications therefor. Expenses of administration are to be paid from the workmen's compensation fund, for which fixed appropriations are provided. The commissioner is to adopt reasonable and proper rules of procedure, regulate the kind and character of notices and service, forms of application, investigations, physical examinations, and inspections and prescribe the time in which adjudications and awards shall be made.]

SEC. 9 (as amended 1910, ch. 131; 1923, ch. 53; 1925, ch. 68). *Scope of law*.—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 20, acts of 1911, 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, nor 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, any elective official of the State, county, or municipal corporation be deemed an employee within the meaning of this act.

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.

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.

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 commission to the credit of the workmen's compensation fund the amount required by section 24 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.

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.

For the purpose of this act a mine shall be adjudged within this State when the main opening, drift shaft, or slope is located wholly within this State.

Any employee, within the meaning of this act, whose employment necessitates a 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.

SECS. 10-17. Duties of commissioner.—[The employers are to furnish information required by the commissioner, who may examine under oath any employer or his agent or employee. The commissioner is to furnish blanks to be filled out with the information desired, the questions to be answered and verified under oath. The commissioner, his secretary and every inspector and examiner employed by the commissioner may administer oaths, certify official acts, take depositions, issue subpoenas and compel the attendance of witnesses and the production of books, papers and records. Fees and mileage are the same as in civil cases. Depositions may be taken within or without the State and a transcribed copy of the evidence certified and sworn to may be accepted as evidence in proceedings before the commissioner.]

SECS. 18 (as amended 1919, ch. 131; 1923, ch. 58), 19-22 (all as amended 1919, ch. 131). State fund.—[The commissioner is to distribute into groups or schedules the industries subject to the act in accordance with the nature of the business and the degree of hazard. Accounts are to be kept of all funds as well as accounts of individual subscribers. In fatal cases and disability cases exceeding 85 per cent disability the amount charged against an employer's account shall be such sum as is estimated to be the average cost of such cases to the fund. Rates are to be the lowest consistent with the maintenance of a solvent fund and a reasonable surplus in such schedule. Readjustments are to be made yearly on the 1st day of October or any time that may be necessary. Rates are to apply to all subscribers of any schedule or class, but if considerable difference appear in the degree of hazard, individual rates may be fixed, based on the records for the preceding year ending June 30, and a reasonable minimum and maximum may be prescribed for schedules to which this individual method of rating is applied. Employers must notify of changes made. Ten per cent of the income to the fund must be set aside for a surplus until the sum of \$500,000 is accumulated after which 5 per cent is to be set aside until an adequate fund for catastrophe and other losses not specifically provided for has been accumulated. The compensation fund made up of premiums and other funds paid thereto by employers is to cover benefits and expenses in accordance with rules and regulations adopted by the commissioner. Insuring employers must conform to the requirements of the commissioner as to reports and methods of preceeding and making returns required. The State treasurer is custodian of the fund, giving separate bond and keeping a separate account therefor. Provision is made for investments, the interest to be for the benefit of the fund. Employers electing to pay premiums into the fund are exempt from actions at law so long as not in default in the payment of premiums under the requirements of the act unless the employees give notice of rejection.]

Sec. 23. Notice to be posted; waivers.—[Employers paying premiums into the State fund or electing to act as self-insurers must post notices about their plants stating the facts, the same to be sufficient notice to all employees. No contract or rule providing for waiver of the benefits and liabilities of this act is valid.]

Sec. 24 (as amended 1919, ch. 131). Premiums.—[Premiums based on the pay roll of each employer as determined by the commission are to be paid monthly, the minimum for any month by any employer being 50 cents. Failure

to make payments as required automatically terminates the employers' status in the fund. The commissioner is not required to notify the employer of such termination, but shall notify the employees in such manner as he may deem best and sufficient. Delinquent employers are to be reinsured on application on terms prescribed by the act and by the commissioner, after paying all unpaid premiums, penalties, and charges. Provision is made for making payments at least equal to the amount of premiums paid for the last two months in order to avoid lapses. Terminations are effective on the end of the month immediately succeeding the month in which election is terminated by delinquency. Withdrawing employers are entitled to adjustment of balances.]

SEC. 25 (as amended 1919, ch. 131). *Disbursements; hernia.*—[The commissioner makes disbursements of benefits to employees who "have received personal injuries in the State in the course of and resulting from their employment," or to their dependents.

Special provision is made for injuries producing hernia, specifying the evidence necessary. Radical operation is prescribed as the mode of treatment, death benefits to be paid in case death results from the operation. In non-fatal cases only time loss is to be compensated. In case of refusal to undergo operation no compensation will be allowed during the time it continues, unless it appears that the physical condition of the employee is such that it is considered unsafe, when he shall be paid as provided in section 31.]

SEC. 26 (as amended 1919, ch. 131). *Defenses abrogated.*—[Employers covered by the act, but rejecting its provisions, or in default on premiums after acceptance, are liable in damages for injuries to their employees due to negligence, without the common-law defenses.]

SEC. 27 (as amended 1919, ch. 131; 1923, ch. 58; 1925, ch. 68). *Medical, etc., aid.*—[The commissioner may pay such sums for medical, surgical, and hospital treatment as in his opinion are reasonably required, not to exceed \$800. Payment made to the injured employee or any person who may have furnished the service or advanced payment therefor. If the employee is entitled under contract connected with the employment, or by reason of a subscription list, to receive such treatment without further charge to him, no payment shall be made from the fund; but if the commissioner is of the opinion that hospital treatment is necessary he shall order the same, the cost to be met from the fund within the limit of \$800.]

SEC. 28 (as amended 1919, ch. 131). *Willful misconduct, etc.*—[No benefits under this act are payable on account of personal injury or death caused by a self-inflicted injury, willful misconduct, disobedience of rules adopted by the employer and approved by the commissioner posted in conspicuous places, the intoxication of the employee, or failure to use protective or safety appliances prescribed by the commissioner and furnished by the employer for the use of the employee. The commissioner may require all employers to adopt rules approved by him for the protection and safety of their employees and install safety appliances as it may be necessary.

If injury or death results to an employee from the deliberate intention of the employer to produce the same, the employee or his dependents may take under the act and also recover any damages in excess of the amount received or receivable under the act.]

SEC. 29 (as amended 1919, ch. 131). *Funeral expenses.*—[In case of death within a year, reasonable funeral expenses may be paid, not to exceed \$150.]

SEC. 30. *Waiting time.*—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 27 and 29.

(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 27 and 29.

SEC. 31 (as amended 1919, ch. 131; 1923, ch. 58; 1925, ch. 68). *Compensation for disability.*—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 66 $\frac{2}{3}$ per cent of his average weekly earnings, not to exceed a maximum of \$16 per week nor to be less than a minimum of \$8 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 52 weeks: *Provided*, That in case in [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 52 weeks, the period which compensation shall be paid may be, but shall not exceed 78 weeks.

(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 2 per cent disability, 66 $\frac{2}{3}$ per cent of the average weekly earnings for a period of eight weeks.

For a 5 per cent disability, 66 $\frac{2}{3}$ per cent of the average weekly earnings for a period of 20 weeks.

For a 10 per cent disability, 66 $\frac{2}{3}$ per cent of the average weekly earnings for a period of 48 weeks.

For a 15 per cent disability, 66 $\frac{2}{3}$ per cent of the average weekly earnings for a period of 60 weeks.

For a 20 per cent disability, 66 $\frac{2}{3}$ per cent of the average weekly earnings for a period of 80 weeks.

For a 30 per cent disability, 66 $\frac{2}{3}$ per cent of the average weekly earnings for a period of 120 weeks.

For a 40 per cent disability, 66 $\frac{2}{3}$ per cent of the average weekly earnings for a period of 160 weeks.

For a 50 per cent disability, 66 $\frac{2}{3}$ per cent of the average weekly earnings for a period of 200 weeks.

For a 60 per cent disability, 66 $\frac{2}{3}$ per cent of the average weekly earnings for a period of 240 weeks.

For a 70 per cent disability, 66 $\frac{2}{3}$ per cent of the average weekly earnings for a period of 280 weeks.

For an 80 per cent disability, 66 $\frac{2}{3}$ per cent of the average weekly earnings for a period of 320 weeks.

For an 85 per cent disability, 66 $\frac{2}{3}$ per cent of the average weekly earnings for a period of 340 weeks.

For a disability from 85 to 100 per cent, 66 $\frac{2}{3}$ per cent of the average weekly earnings during the remainder of life.

Awards for permanent disability of from 2 per cent to 85 per cent shall be computed on the basis of four weeks compensation for each per cent of disability determined.

(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 10 per cent disability.

The loss of a great toe (one phalange) shall be considered a 5 per cent disability.

The loss of other toes shall be considered a 4 per cent disability.

The loss of other toes (one phalange) shall be considered a 2 per cent disability.

The loss of all toes shall be considered a 25 per cent disability.

The loss of forepart of foot shall be considered a 30 per cent disability.

The loss of a foot shall be considered a 35 per cent disability.

The loss of leg shall be considered a 45 per cent disability.

The loss of thigh shall be considered a 50 per cent disability.

The loss of thigh at hip joint shall be considered a 60 per cent disability.

The loss of little or fourth finger (one phalange) shall be considered a 3 per cent disability.

The loss of little or fourth finger shall be considered a 5 per cent disability.

The loss of ring or third finger (one phalange) shall be considered a 3 per cent disability.

The loss of ring or third finger shall be considered a 5 per cent disability.

The loss of middle or second finger (one phalange) shall be considered a 3 per cent disability.

The loss of middle or second finger shall be considered a 7 per cent disability.

The loss of index or first finger (one phalange) shall be considered a 6 per cent disability.

The loss of index or first finger shall be considered a 10 per cent disability.

The loss of thumb (one phalange) shall be considered a 12 per cent disability.

The loss of thumb shall be considered a 20 per cent disability.

The loss of thumb and index finger shall be considered a 32 per cent disability.

The loss of index and middle finger shall be considered a 20 per cent disability.

The loss of middle and ring finger shall be considered a 15 per cent disability.

The loss of ring and little finger shall be considered a 10 per cent disability.

The loss of thumb, index, and middle finger shall be considered a 40 per cent disability.

The loss of index, middle, and ring finger shall be considered a 30 per cent disability.

The loss of middle, ring, and little finger shall be considered a 20 per cent disability.

The loss of four fingers shall be considered a 32 per cent disability.

The loss of hand shall be considered a 50 per cent disability.

The loss of forearm shall be considered a 55 per cent disability.

The loss of arm shall be considered a 60 per cent disability.

(c) The total loss of one eye, or the total and irrecoverable loss of the sight thereof, shall be considered a 33 per cent disability, and the injured employee shall be entitled to compensation for a period of 132 weeks.

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 or [of] from 2 per cent to 85 per cent shall be in the same proportion and shall be computed and allowed by the commissioner.

(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 \$16 per week, nor to be less than a minimum of \$8 per week.

(i) Where an injury results 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 or her estate; except that such compensation as may have accrued to the date of his or her death shall be paid to the dependents of such injured employee, if there be such dependents at the time of death.

(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.]

Sec. 33 (as amended 1910, ch. 131; 1923, ch. 58). *Death*.—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 27 and 29 of this act.

(b) If the deceased employee be under the age of 21 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 66% per cent of the average weekly wages of the deceased employee, not to exceed a maximum of \$7 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 16 years at the time of death, payment shall continue until such employee would have been 21 years of age: *And provided further,* Payment of compensation awarded under this subsection to a dependent father shall be continued and paid to his surviving widow, mother of the deceased employee, to continue as per original award to father.

Compensation in either case to cease upon the death of the dependent.

(c) If the deceased employee be under the age of 21 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 66% per cent of the average weekly wages, not to exceed a maximum of \$7 per week, to continue until the employee would have been 21 years of age.

(d) If the deceased employee leaves a dependent widow or invalid widower, the payment shall be \$30 per month until death or remarriage of such widow or widower, and in addition \$5 per month for each child under 16 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 20 per cent of the amount that would be due for the period remaining between the date of such remarriage and the end of 10 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 may stop the payment of the benefits herein provided to said widow or widower.

If the deceased employee be a widow or widower and leave a child or children under the age of 16 years, the payment shall be \$10 per month to each child until he or she reaches the age of 16 years.

In all awards of compensation to children, the award shall be until they reach the age of 16 years or their death prior thereto.

(e) If the deceased employee be an adult and there be no dependent widow or widower, or child under 16 years of age, but there are wholly dependent persons at the time of death, the payments shall be 50 per cent of the average monthly support actually received from the employee during the preceding 12 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 \$20 per month.

(f) If the deceased employee be an adult and there be no dependent widow, widower, or child under 16 years of age, or wholly dependent persons, but there are partly dependent persons at the time of death, the payment shall be 50 per cent of the average monthly support actually received from employee during the preceding 12 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 \$20 per month.

Compensation under subsection (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 16 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 16 years of age, child under 16 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.

SEC. 34. *Payment of death benefits.*—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 benefit of all the dependents, as may be determined by the commis-

sioner 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.

SEC. 35. *Duty of recipient.*—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.

SEC. 36 (as amended 1919, ch. 131). *Spouses living apart.*—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.

SEC. 37 (as amended 1919, ch. 131). *Computing wages.*—The average weekly wage or earnings of the injured person at the time of the injury shall be taken as a 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.

SEC. 38 (as amended 1923, ch. 58). *Special medical, etc., treatment.*—The commissioner shall have authority in certain cases where an employee has sustained a permanent disability, and such fact having been so determined by the commissioner, and in his opinion the per cent of said permanent disability can be materially reduced or made negligible by medical, surgical, or hospital treatment, expend an amount not to exceed the sum of \$600 for such medical, surgical, or hospital treatment, regardless of any other provision in this act providing for the payment of medical, surgical, or hospital treatment. No payment shall be made for such medical, hospital or surgical treatment provided for in this section unless such treatment has been duly authorized by the commissioner prior to the rendering of such treatment.

SECS. 39 (as amended 1919, ch. 131), 40, 41, 42 (as amended 1919, ch. 131), 43, 44 (as amended 1919, ch. 131). *Procedure.*—[Application for benefits must be made within six months from the date of injury or death, and proof of dependency in fatal cases must be filed within nine months. However, if the employer fails to report an injury within six months, the commissioner may, in his discretion, accept an application for compensation filed after the expiration of the six months' period above provided. Nonresident aliens may be officially represented by consular officers of their countries, but this does not give to such officer the right to make application for compensation in their behalf.

The power and jurisdiction of the commissioner over each case is continuing and he may make such modifications of findings as are from time to time in his opinion justified. He may commute periodical benefits to one or more lump-sum payments under special circumstances, as he deems advisable. Compensation is only for the use and benefit of the employees and their dependents, and is exempt from all claims of creditors and from attachment, execution, or assignment.

The commission has full power and authority to hear and determine all questions within his jurisdiction and to review the action of any employer in regard to the payment of benefits. If the right of a claimant to benefits is denied on the ground that the injury was self-inflicted, or was not received in the course of and resulting from the employment, or other ground going to the basis of claimant's rights, he may, within 90 days after notice of the commissioner's decision apply for an appeal to the supreme court of appeals. The commissioner is to furnish a transcript of the evidence upon which the court or a judge thereof may decide whether or not the appeal will be granted. If granted, the case has precedence over other cases on the docket as if the claim was allowed prior to 30 days before the beginning of any term. The decision will be as to the right of the claimant, and if allowed, the commissioner is to fix the compensation according to the terms of the act. Costs, including a reasonable attorney's fee not exceeding \$100 to the claimant's attorney, will be taxed against the unsuccessful party. No fees, expenses, or costs may be paid out of any compensation awarded.

The commissioner is not bound by the customary rules as to evidence, but may adopt rules of practice and proceed as herein provided and make investigations in such manner as appears best calculated to ascertain the substantial rights and carry out the provisions of the act.]

SECS. 45, 46. Reports.—[The commissioner may make necessary expenditures to obtain statistical and other information as to industries, and must make an annual report of his operations under the act, including a statement of disbursements and the condition of the fund with other matters deemed proper.]

SEC. 47 (as amended 1925, ch. 68). Medical examination.—[The commissioner may require a claimant to appear for examination before a medical examiner appointed by him. Reasonable traveling and other expenses incurred by the claimant are to be paid from the allowance for medical, surgical, and hospital treatment.]

SEC. 48. Deputy.—[If the commissioner is to be absent or disabled for service for a week or more, the secretary may be designated to act for the period.]

SECS. 49, 50 (as amended 1925, ch. 68). Offenses.—[Knowingly failing to make a report of the performance of any duty required by the commissioner is a misdemeanor. Persons knowingly making false reports or statements under oath respecting information required by the commissioner are guilty of perjury. Any person knowingly and with fraudulent intent attempting to secure compensation to which he is not entitled or to procure the same for another is guilty of a misdemeanor. Punishment is a fine or imprisonment, or both.]

SEC. 51. Investments.—[Funds not required for immediate use are to be invested by the board of public works.]

SEC. 52 (as amended 1919, ch. 131; 1925, ch. 68). Interstate commerce.—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.

Unless and until the Congress of the United States has by appropriate legislation established a rule of liability or method of compensation governing employers and employees engaged in commerce within the purview of the commerce clause of the Federal Constitution (Art. I, sec. 8), section 9, as herein amended, shall apply without regard to the interstate or intrastate character or nature of the work or business engaged in: *Provided, however*, that this act shall not apply to employees of employers engaged in interstate commerce.

SEC. 53. Persons outside the act.—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 on 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.

SEC. 54. Self-insurers.—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 who maintain their own benefit funds or systems of compensation, to which their employees are not required or permitted to con-

tribute, 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 employee's 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 25th 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 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.

Sec. 55. [Repealed.]

Sec. 56. [Amendment of 1923 in effect July 1.]

Sec. 57 (added 1925, ch. 68). *Appeals commission*.—Should an injured employee, or in case of the death of an employee, his beneficiary, feel aggrieved at any award made by the workman's compensation commissioner, the said employee, or his beneficiary in case of death, shall have the right of appeal to a commission, hereby created, to be composed of the governor, who shall be ex officio chairman, the commissioner of health, and the commissioner of labor. Either written or oral evidence by the party or parties aggrieved may be submitted to said commission, and after due consideration of the case in controversy a majority decision of the aforesaid commission shall be binding on the workman's compensation commissioner in the payment of compensation. Appeals from the decision of the commission shall lie with the supreme court of appeals.

WISCONSIN

STATUTES—1923

Workmen's compensation

SECTION 102.01. Defenses abolished, when.—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—

(a) That the employee either expressly or impliedly assumed the risk of the hazard complained of.

(b) 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.

(c) 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 102.01.

3. Paragraphs (a), (b), and (c) of subsection 1 of section 102.01 of the statutes shall not apply to farm labor, except that in determining the number of employees in common employment of an employer not engaged in farming, farmers or farm laborers working along with the employees of an employer not engaged in farming shall be counted.

SEC. 102.02. Waivers.—No contract, rule, or regulation shall exempt the employer from any of the provisions of section 102.01.

SEC. 102.03. Remedy exclusive.—Liability for the compensation hereinafter provided for, in lieu of any other liability whatsoever, shall exist against an employer for any personal injury accidentally sustained by his employee, and for his death, in those cases where the following conditions of compensation concur:

(1) Where at the time of the accident both the employer and employee are subject to the provisions of sections 102.03 to 102.34, 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 102.03 to 102.34, 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 102.03 to 102.34, inclusive, had not been passed, but shall be subject to the provisions of sections 102.01 and 102.02.

SEC. 102.04. Who are employers.—The following shall constitute employers subject to the provisions of sections 102.03 and 102.34, inclusive, within the meaning of section 102.03:

(1) The State, each county, city, town, village, school district, sewer district, drainage district, and other public or quasi public corporations 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 102.03 to 102.34, inclusive, may be claimed, shall, in the manner provided in section 102.05, have elected to become subject to the provisions of sections 102.03 to 102.34, 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 102.05.

Sec. 102.05 (as amended 1925, ch. 171). *Election presumed.*—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 102.03 to 102.34, inclusive, the filing of which statement shall operate, within the meaning of section 102.04, to subject such employer to the provisions of sections 102.03 to 102.34, inclusive, for the term of one year from the date of filing such statement and until the 1st day of July following, and thereafter, without further act on his part, for successive terms of one year each, beginning July 1 of each year, unless such employer shall, at least 30 days prior to the 1st 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 102.03 to 102.34, inclusive.

2. If any 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 102.03 and 102.34, 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 102.03 to 102.34, 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 102.03 to 102.34, inclusive, in the manner provided in subsection 1 of section 102.05. The provisions of this subsection shall not apply to farmers or to farm labor. In determining the number of employees in the common employment of an employer not engaged in farming, farmers or farm laborers working along with the employees of an employer not engaged in farming shall be counted. Members of partnerships shall not be counted as employees under this subsection.

3. Any employer who shall enter into a contract for the insurance of the compensation provided for in sections 102.03 to 102.35, inclusive, or against liability therefor, shall be deemed thereby to have elected to accept the provision of sections 102.03 to 102.35, and such election shall include farm laborers and domestic servants if such intent is clearly shown by the terms of the policy. Such election shall remain in force until withdrawn in the manner provided in subsection 1 of this section.

Sec. 102.06. *Contractors' employees.*—An employer subject to the provisions of sections 102.03 to 102.34, inclusive, shall be liable for compensation to an employee of a contractor or subcontractor under him who is not subject to sections 102.03 to 102.34, inclusive, shall be liable for compensation to an employee of a contractor or subcontractor under him who is not subject to sections 102.03 to 102.34, inclusive, or who has not complied with the conditions of subsection 2 of section 102.23 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 102.06 shall be in force as to all contracts made subsequent to August 31, 1913.

Sec. 102.07. *Who are employees.*—The term "employee" as used in sections 102.01 to 102.34, inclusive, shall be construed to mean:

(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 102.03 to 102.34, inclusive, be deemed an official. The State and any county or municipality may require a bond from a contractor to protect the State, county, or municipality against compensation to employees of such contractor or employees of a subcontractor under him.

(2) Sheriffs, deputy sheriffs, constables, marshals, policemen, and firemen shall be deemed employees within the meaning of subdivision (1) of section 102.07: *Provided*, That any policeman or fireman claiming compensation under sections 102.03 to 102.34, 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 policemen 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 102.08, 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 employers, unless such employer has, by an affirmative election, in the manner provided in subsection (1) of section 102.05, specifically elected to include domestic and other employees under coverage of the act. A working member of a partnership receiving wages irrespective of profits from such partnership shall be deemed an employee within the meaning of sections 102.03 to 102.35, inclusive.

SEC. 102.08 (as amended 1925, ch. 171). *Notice*.—Any employee, except policemen and firemen, as defined in subdivision (1) of section 102.07 shall be subject to the provisions of sections 102.03 to 102.34, inclusive. Policemen and firemen and any employee as defined in subdivisions (4) of section 102.07 shall be deemed to have accepted and shall, within the meaning of section 102.03, be subject to the provisions of sections 102.03 to 102.34, inclusive, if at the time of the accident upon which liability is claimed:

(1) The employer charged with such liability is subject to the provisions of sections 102.03 to 102.34, 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 102.03 to 102.34, 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 102.03 to 102.34, inclusive, may elect to become subject to the provisions of sections 102.03 to 102.34, 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 102.03 to 102.34, 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.

(5) Epileptics and persons who are totally blind may elect not to be subject to the provisions of sections 102.03 to 102.35, for injuries resulting because of such epilepsy or blindness and still remain subject to the provisions of such sections for all other injuries.

(6) Except as provided in subsection (5) of this section, any nonelection by an employee which was procured by his employer as a condition of employ-

ment, or by solicitation, coercion, or fraud shall be void and shall not affect the right of such employee or his dependents to the benefits provided by sections 102.03 to 102.35.

SEC. 102.09 (as amended 1925, chs. 171, 384, 405). *Compensation benefits; payments; schedule, etc.*—Where liability for compensation under sections 102.03 to 102.34, inclusive, exists, the same shall be as provided in the following schedule:

(1) (a) 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 90 days immediately following the accident, to cure and relieve from the effects of the injury, and for such additional period of time as in the judgment of the commission will tend to lessen the period of compensation disability, 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 on behalf of the employee in providing the same.

(b) The employee shall have the right to make choice of his attending physician from a panel of physicians to be named by the employer. 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. Failure of the employer to maintain a reasonable number of competent and impartial physicians ready to undertake the treatment of the employee and to permit the employee to make choice of his attendant from among them shall constitute neglect and refusal to furnish such attendance and treatment.

(c) 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.

(d) 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.

(e) In determining the reasonableness of the size of the medical panel, the commission shall take into account the number of competent physicians immediately available to the community in which the medical service is required, and where only one such physician is available in such community, the tender of attention by such physician shall be construed as a compliance with the provisions of this section. In no event shall the employer be required to maintain a panel of more than five such physicians. In such panel partners and clinics shall be deemed as one physician. Every employer shall post a list of the names and addresses of the physicians on his panel in such manner as to afford his employees reasonable notice thereof.

(f) Whenever in the opinion of the industrial commission a panel physician has not impartially estimated the degree of permanent disability of the extent of temporary disability of any injured employee, the commission shall have the power to cause such employee to be examined by a physician selected by the commission and to obtain from such physician a report containing his estimate of such disabilities. If the report of such physician shows that the estimate of the panel physician has not been impartial from the standpoint of such employee, the commission shall have the power, in its discretion, to charge the cost of such examination to the employer, if he is a self-insurer, or to the insurance company which is carrying the risk.

(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:

(a) If the accident causes total disability, 65 per cent of the average weekly earnings during the period of such total disability.

(b) If the accident causes partial disability, during the period of such partial disability such proportion of the weekly indemnity rate for total disability as the actual wage loss of the injured employee bears to his average weekly wage at the time of his injury.

(c) If the disability caused by the accident is at times total and at times partial, the weekly indemnity during the periods of each such total or partial disability shall be in accordance with said subdivisions (a) and (b), respectively.

(d) Said paragraphs (a), (b), and (c) shall be subject to the following limitations:

First. In case of temporary 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.

Second. 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:

Third. One thousand weeks for all persons under 31 years of age.

Fourth. For each successive yearly age group, beginning with 31 years, the maximum limitation shall be reduced by 18 weeks, until a minimum limit of 280 weeks shall be reached.

Fifth. In case of permanent partial disability aggregate indemnity shall bear such relation to the aggregate indemnity for permanent total disability as the nature of the injury bears to one causing permanent total disability.

Sixth. In case where the only permanent disability is covered by the provisions of subsections (5) and (6) of this section, such subsection shall govern.

Seventh. 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.

Eighth. 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.

Ninth. 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-second 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-second day and be paid therewith.

Tenth. 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.

(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) 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 the maximum amount which might have accrued to him for permanent total disability if death had not ensued.

(4) If death occurs to an injured employee other than as a 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.

(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.

(3a) 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 be such sum as the commission shall determine to represent fairly and justly the aid to support which the dependent might reasonably have anticipated from the deceased employee but for the accident, considering their physical surroundings and conditions. The aggregate benefits in such case shall not exceed twice the average annual earnings of the deceased; but, if the deceased has contributed to the support of such dependents during the year immediately preceding his death, and if four times such contribu-

tions shall exceed twice the average annual earnings of the deceased, then the aggregate benefit may exceed twice the average annual earnings of the deceased, but shall not exceed four times such contributions. In no event shall the aggregate benefits in such case exceed the amount which would accrue to a person solely and wholly dependent. Where there is more than one partial dependent the weekly benefit shall be apportioned according to their relative dependency. The term "support" as used in this section shall include contributions to the capital fund of the dependents, for their necessary comfort.

(4m) (a) Where the beneficiary under paragraph (a) of subsections (3) or (4) of this section is the wife or husband of the deceased employee and is wholly dependent for support, an additional death benefit shall be paid from the funds provided by paragraph (f) of this section for each child by the marriage living at the time of the death of the employee, and who is likewise wholly dependent upon him for support, such additional benefit to be computed from the date of the death of the employee according to the following schedule:

(b) For the child 1 year of age or under, a sum equal to the average annual earnings of the deceased employee. For children in each successive yearly age group the amount allowed shall be reduced by one-fifteenth part of such average annual earnings, with no allowances for any child over 15 years of age at the death of the employee unless such child be physically or mentally incapacitated from earning, in which case the commission shall make such allowance as the equities and the necessities of the case merit, not more however than the amount payable on account of a child under 1 year of age.

(c) A child lawfully adopted by the deceased employee and the surviving spouse, prior to the time of the injury, and a child not his own by birth or adoption but living with him as a member of his family at the time of the injury shall for the purpose of this subsection be taken as a child by their marriage. The provisions of this subsection applicable in the case of a child 1 year of age or under shall attach in favor of a posthumous child.

(d) Where the employee leaves a wife or husband wholly dependent and also a child or children by a former marriage or adoption, likewise wholly dependent, aggregate benefits shall be the same in amount as if the children were the children of such surviving spouse and the entire benefit shall be apportioned to the dependents in such amounts as the commission shall determine to be just, considering their ages and other facts bearing on dependency. The benefit awarded to the surviving spouse shall not exceed four times the average annual earnings of the deceased employee.

(e) Dependency of any child for the purposes of this subsection shall be determined according to the provisions of subsection 3 of section 102.11, in like manner as would be done if there was no surviving dependent parent.

(f) In each case of injury resulting in death, leaving no person wholly dependent for support, the employer or insurer shall pay into the State treasury such an amount, when added to the sums paid or to be paid on account of partial dependency, as shall equal four times the deceased employee's average annual earnings, such payment to the State treasury in no event to exceed \$1,000. The payment into the State treasury so provided shall be made in all such cases regardless of whether the dependents or personal representatives of the deceased employee commence action against a third party as provided in subsection (2) of section 102.29.

(g) The moneys paid into the State treasury pursuant to paragraph (f) of this subsection with all accrued interest is hereby appropriated to the industrial commission for the discharge of all liability for additional death benefits accruing under this subsection.

(h) The additional benefits for account of each child shall accrue at the rate of 10 per cent of the surviving parent's weekly indemnity. The commission shall have authority to award such benefits to the surviving parent of such child, to his guardian or to such other person, bank, or trust company for his use as may be found best calculated to conserve the interests of the child.

(i) For the proper administration of the funds available under paragraphs (f) and (g) of this subsection the commission shall, by order, set aside in the State treasury suitable reserves to carry to maturity the liability for additional death benefit.

(j) The benefits payable under this subsection when added to the indemnity paid and due at the time of death and those benefits payable to the surviving

spouse shall not in the aggregate exceed the maximum amount that might have accrued to the injured employee for permanent total disability if death had not ensued.

(4n) (a) In all cases where death proximately results from the accident the employer or insurer shall pay the reasonable expense for burial, not exceeding \$200.

(b) Death benefit, other than burial expenses, except otherwise provided, shall be paid in weekly installments corresponding in amount to 65 per cent of the weekly earnings of the employee, until otherwise ordered by the commission.

(5) (a) The specific injuries described in the following schedule are declared to be major permanent partial injuries. The percentage assigned in such schedule shall represent the relation of the permanent disability in wage loss caused by such an injury to an employee aged 30 years when compared with an injury causing permanent total disability to an employee of the same yearly age group, namely

Major permanent partial injury schedule

- (1) The loss of an arm at the shoulder, 50 per cent.
- (2) The loss of an arm at the elbow, 42½ per cent.
- (3) The loss of a hand, 33¼ per cent.
- (4) The loss of a palm where the thumb remains, 22½ per cent.
- (5) The loss of a thumb at the proximal joint, 10 per cent.
- (6) The loss of a thumb and the metacarpal bone thereof, 12½ per cent.
- (7) The loss of all the fingers of one hand where the thumb and palm remain, 14 per cent.
- (8) The loss of a leg at the hip joint, 50 per cent.
- (9) The loss of a leg at the knee, 42½ per cent.
- (10) The loss of a foot at the ankle, 25 per cent.
- (11) The loss of the great toe with the metatarsal bone thereof, 8½ per cent.
- (12) The loss of an eye by enucleation or evisceration, 22½ per cent.
- (13) Total blindness of one eye, 20 per cent.
- (14) Total deafness of both ears, 33¼ per cent.
- (15) Total deafness of one ear, 5 per cent.
- (16) Total deafness of second ear, 28½ per cent.

(b) For the loss of an arm at the shoulder by an employee 30 years of age and under 31 years the indemnity to be paid for his permanent disability shall be 50 per cent of such weekly indemnity as would have accrued to him for total disability for the period of 1,000 weeks.

(bm) For each yearly age group under 30 years the percentage shall be reduced by two-thirds of 1 per cent, with no reduction below 40 per cent for the child 15 years or under. For each later yearly age group beginning with 31 the percentage shall be increased by seven-eighths of 1 per cent, with no increase beyond 85 per cent for age 70 group.

(c) For the loss of an arm at the shoulder by an employee of any other yearly age group the weekly indemnity shall be determined by application of the percentage allowance developed for such yearly age group to the weekly indemnity for total disability, and shall be paid for an indemnity to be determined in the manner provided in subsection (2) of this section pertaining to permanent total disability.

(cm) The weekly indemnity to be paid for the permanent disability resulting for each of the other schedule injuries shall bear such relationship to that payable under paragraph (a) of this subsection for loss of an arm at the shoulder as the percentage assigned to such other injury bears to that assigned to the loss of an arm at the shoulder, and the indemnity period shall also be determined in the manner provided in subsection (2) of this section.

(d) Where injuries to two or more of the members specified in the schedule in paragraph (c) of this subsection produce permanent disability entitling the employee to compensation for a period in excess of 50 weeks, the injured employee shall be entitled to have his disability and resultant indemnity determined on the basis of the foregoing provisions applicable to major permanent partial injuries. Indemnity in such case shall bear such relation to the indemnity payable for the most similar injury specified in the schedule in paragraph (a) of this subsection as the nature of the injury under consideration bears to such schedule injury.

(*dm*) Healing period in case of major permanent partial injuries shall be compensated for as a liability distinct from that for the permanent disability.

(*dn*) The industrial commission shall prepare supplemental tables, in which there shall be extended such figures as may be sufficient to render them convenient for use in determining indemnity in case of major permanent partial injuries.

(*e*) In cases included in the following schedule of lesser permanent partial injuries 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 65 per cent of the average weekly earnings of the employee for the periods named in the following schedule, to wit:

Lesser permanent partial injury schedule

- (1) The loss of a thumb at the second or distal joint, 30 weeks.
- (2) The loss of an index finger and the metacarpal bone thereof, 50 weeks.
- (3) The loss of an index finger at the proximal joint, 35 weeks.
- (4) The loss of an index finger at the second joint, 20 weeks.
- (5) The loss of an index finger at the distal joint, 12 weeks.
- (6) The loss of a middle finger and the metacarpal bone thereof, 40 weeks.
- (7) The loss of a middle finger at the proximal joint, 25 weeks.
- (8) The loss of a middle finger at the second joint, 14 weeks.
- (9) The loss of a middle finger at the distal joint, 8 weeks.
- (10) The loss of a ring finger and the metacarpal bone thereof, 30 weeks.
- (11) The loss of a ring finger at the proximal joint, 15 weeks.
- (12) The loss of a ring finger at the second joint, 9 weeks.
- (13) The loss of a ring finger at the distal joint, 6 weeks.
- (14) The loss of a little finger and the metacarpal bone thereof, 30 weeks.
- (15) The loss of a little finger at the proximal joint, 16 weeks.
- (16) The loss of a little finger at the second joint, 10 weeks.
- (17) The loss of a little finger at the distal joint, 6 weeks.
- (18) The loss of a great toe at the proximal joint, 25 weeks.
- (19) The loss of a great toe at the second joint, 15 weeks.
- (20) The loss of the second toe with the metatarsal bone thereof, 30 weeks.
- (21) The loss of the second toe at the proximal joint, 10 weeks.
- (22) The loss of the second toe at the second joint, 7 weeks.
- (23) The loss of the second toe at the distal joint, 5 weeks.
- (24) The loss of the third, fourth, or little toe with the metatarsal bone thereof, 25 weeks.
- (25) The loss of the third, fourth, or little toe at the proximal joint, 8 weeks.
- (26) The loss of the third, fourth, or little toe at the second or distal joint, 5 weeks.
- (27) 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 (*fm*) of subsection (5) of section 102.00.

(*cm*) If in case of any injury specified in paragraph (*e*) the healing period is unusually prolonged by reason of infection or other cause not due to the neglect or misconduct of the injured employee, then such injured employee shall be entitled, in addition to the allowance in paragraph (*e*) to indemnity for such portion of his healing period as is in excess of the normal healing period for such injury.

(*cn*) In case an accident causes more than one permanent injury specified in paragraph (*e*) of 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 said paragraph plus 10 per cent, for the second additional injury, and for each other additional injury, the allowance specified in said paragraph plus 20 per cent.

(*co*) Whenever amputation of a member is made between any two joints mentioned in the schedules in paragraphs (*a*) and (*e*) of this subsection the determined loss and resultant indemnity therefor shall bear such relation to the loss and indemnity applicable in case of amputation at the joint next nearer the body as such injury bears to one of amputation at the joint nearer the body.

(f) For the purposes of the schedules in paragraphs (a) and (e) of this subsection permanent and complete paralysis of any member shall be deemed equivalent to the loss thereof.

(fm) For all other injuries to the members of the body or its faculties which are specified in the schedules in paragraphs (a) and (e) of this subsection 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 these schedules as disabilities bear to those produced by the injuries named in these schedules. 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. For such computation the permanent disability period for injuries named in the schedule in paragraph (e) only of this subsection shall be taken at 80 per cent thereof.

(fn) 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 his average annual earnings as defined in section 102.11.

(g) In case of permanent injury included in the schedule in paragraph (e) only, or paragraph (fm), as applied to said schedule in said paragraph (e) only, to an employee who is over 55 years of age, the compensation herein accruing for the permanent disability shall be reduced by 5 per cent; in case he is over 60 years of age, by 10 per cent; in case he is over 65 years of age, by 15 per cent; in case he is over 70 years of age, by 20 per cent; and in case he is over 75 years of age, by 25 per cent.

(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 102.03 to 102.34, inclusive, shall be increased 15 per cent.

(i) Where injury is caused by the willful failure of the employee to use safety devices where provided by the employer, or

(j) Where injury results from the employee's willful failure to obey any reasonable rule adopted by the employer for the safety of the employee, or

(k) Where injury results from the intoxication of the employee, the compensation and death benefit provided herein shall be reduced 15 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 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 3 per cent per annum.

(6) In the following cases special indemnity shall be paid an employee only from the funds provided for in subdivisions (d), (e) and (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 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.

(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.

(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 \$150 into the State treasury. The payment into the State treasury shall be made in all such cases regardless of whether the employee, his dependents or personal repre-

representatives, commence action against a third party as provided in subsection (2) of section 102.20.

(c) 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.

(f) For the proper administration of the funds available under subdivisions (d) and (e) the commission shall, by order, set aside in the State treasury suitable reserves to carry to maturity the liability for special additional indemnity in each case, and for any contingent death benefit.

(7) When the injury is sustained by a minor illegally employed, compensation and death benefits, as provided in sections 102.03 to 102.35, shall be as follows:

(a) Double the amount otherwise recoverable, if the injured employee is 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 103.05, except as provided in paragraph (b).

(b) Treble the amount otherwise recoverable, if the injured employee is a minor of permit age and at the time of the accident is employed, required, suffered, or permitted to work without a permit in any place of employment or at any employment in or for which the industrial commission acting under authority of section 103.05, has adopted a written resolution providing that permits shall not be issued.

(c) Treble the amount otherwise recoverable, if the injured employee is a minor of permit age, or over, and at the time of the accident is employed, required, suffered, or permitted to work at prohibited employment.

A permit unlawfully issued by an officer specified in section 103.05, or unlawfully altered after issuance, without fraud on the part of the employer, shall be deemed a permit within the provisions of this subsection.

(8) In case of liability for the increased compensation or increased death benefits provided for by subdivision (a) of subsection (5) of this section or included in subsection (7) 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 increase [increased] death benefits shall be void.

(9) Whenever the industrial commission shall certify to the State treasurer that excess payment has been made under paragraph (d) of subsection (6) or under paragraph (f) of subsection 102.09 either because of mistake or otherwise, the State treasurer shall within five days after receipt of such certificate draw an order against the fund in the State treasury into which such excess was paid, reimbursing such payer of such excess payment together with interest actually earned thereon.

Sec. 102.10. Rehabilitation.—An employee who is entitled to and is receiving rehabilitation instruction pursuant to section 41.215 shall, in addition to his other indemnity, be paid a sum sufficient to maintain him during rehabilitation, subject to the following conditions and limitations:

(a) He must undertake the course of instruction within 60 days from the date when he has sufficiently recovered from his injury to permit of his so doing, or as soon thereafter as the State board of vocational education shall provide opportunity for his rehabilitation.

(b) He must continue in rehabilitation training with such reasonable regularity as his health and situation will permit.

(c) He may not have maintenance in excess of \$10 per week during training, nor for a maintenance period in excess of 20 weeks in all.

(d) The commission shall determine the rights and liabilities of the parties under this section in like manner and with like effect as it does other issues under compensation.

Sec. 102.11. Computation of earnings; dependents.—1. The average weekly earnings referred to in section 102.09 shall be one-fiftieth of the average annual earnings of the employee.

The average annual earnings for employees shall be taken at not less than \$525 nor more than \$1,400 per annum. 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 300 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 on which to compute the indemnity accruing to him for permanent disability shall be determined on the basis of the earnings that such minor, if not disabled, probably would earn after attaining the age of 21 years. Unless otherwise established his earnings shall be taken as equivalent to the amount upon which maximum weekly indemnity is payable.

(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.

2. The weekly loss in wages referred to in section 102.00 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.

3. The following shall be conclusively presumed to be solely and wholly dependent for support upon a deceased employee:

(a) A wife upon a husband with whom she is living at the time of his death.

(b) A husband upon a wife with whom he is living at the time of her death.

(c) A child or children under the age of 18 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 between such dependents

in such proportion as the commission shall determine to be just considering their ages and other facts bearing on such dependency, 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 and payable to the dependent or dependents entitled thereto or their legal guardians or trustees: *Provided*, That in case of the death of a dependent whose right to a death benefit has thus become fixed, so much of the same as is then unpaid shall be recoverable by and payable to his personal representatives in gross. No person shall be excluded as a dependent who is a nonresident alien.

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.

Sec. 102.12. *Claim*.—[Claims for compensation may not be maintained unless notice was given of the occurrence of the accident within 30 days thereafter. Notice is to be in writing signed by a claimant or some one in his behalf and served on the employer, either personally or by registered mail. Any payment of compensation prior to the expiration of such 30 days is equivalent to notice, and failure or defects do not bar recovery if it is found that the employer or his representative had actual notice, or if there was no intention to mislead and the employer was not in fact misled. If no notice is given or payment made within two years, the right to compensation is wholly barred. The employer will not be deemed to have been misled until the employee knew or ought to have known the nature of his disability and its relations to the employment. The name of the person who may receive reports of injuries must be posted in one or more conspicuous places about the premises.]

Sec. 102.13. *Medical examinations*.—[An employee entitled to compensation must, on the written request of his employer, submit from time to time to medical examinations; he may have his own physician present. Refusal or obstruction suspends proceedings or rights to benefits during its term; if refusal is to an order of the commission or a member, the right to weekly indemnity accruing and becoming payable during the period is barred. Any physician attending an employee in a professional capacity may be required to testify before the commission. Testimony as to conditions determined from an autopsy may be rejected if it appears that the party offering such testimony failed to notify at least one party in adverse interest or the industrial commission after the autopsy at least 12 hours before it took place, or if the autopsy was performed by or at the direction of a coroner for purposes other than those authorized by chapter 200 of the statutes, findings may be withheld until an autopsy is held in accordance with the directions of the commission.]

Secs. 102.14, 102.15, 102.16 (as amended 1925, ch. 171), 102.17, 102.18. *Procedure*.—[The compensation is to be administered by the industrial commission, a majority of which constitute a quorum. The commission may adopt its own rules of procedure, employ expert examiners, deputies, clerks, and other employees as it may deem necessary. It has a seal with which to authenticate its orders, etc. Disputes and controversies are to be submitted to it, and compromises are subject to review, dismissal, modification, or confirmation within one year from the date of filing with the commission; it also has jurisdiction over medical and hospital bills or disputes.

No employer under the act may receive or deduct from the wages of any employee any sum for the purpose of discharging his liability under the act, not sell to the employee or require him to purchase medical or hospital tickets or contracts for treatment required to be furnished by the employer.

When any application is filed with the commission with regard to controversies, a copy of the same must be mailed to all parties in interest, and time for hearing set at such places as the commission shall designate. Parties

may appear in person or by attorney or any other agent. The commission may, with or without notice to either party, collect testimony to be taken or inspection had of the premises, time books, and pay rolls of the employer, and may direct claimants to be examined by a physician. It may on its own motion provide for a hearing if it has reason to believe that the liabilities fixed by the act have not been discharged, and make such findings and award as it might have made in proceedings on application of either party.

The commissioner or any member or examiner may issue a subpoena, administer oaths, compel the attendance of witnesses and the production of books, papers, or records. Orders may be secured from the circuit court of the county to compel the attendance, etc. In all proceedings on claims for compensation against the State the attorney general or an assistant may appear on behalf of the State.

After final hearing the commission must file its findings on the facts and enter its award. Pending final action it may make interlocutory findings or awards. The final order may include a penalty for noncompliance with any interlocutory order, if not in good faith, not exceeding 25 per cent of the amount not paid as directed. The commission may on its own motion modify or change its orders within 20 days if any mistake is discovered.]

Sec. 102.19. *Aliens.*—[The consular officer of a country in which dependent nonresident alien beneficiaries reside is to be sole legal representative of deceased employees leaving such dependents, except as otherwise determined by the industrial commission, and payment to such officer or agent is a full discharge of the benefits payable under the act. Good and sufficient bond may be required, conditioned on the proper application by such consular officer of all moneys received by him.]

Secs. 102.20—102.28. *Enforcement; status of awards; insurance.*—[Either party may present a certified copy of an award to the circuit court which shall, without notice, render a judgment accordingly, which shall have the same effect as those rendered in an action before the court unless set aside by action for review taken within 30 days. If the award is against a municipality, payment must be made by the treasurer, unless appeal shall be taken within 20 days. If the sum awarded is not paid when due, payments bear interest at the rate of 6 per cent per annum, but if unexcusable delay is found, the payments affected are to be increased by 10 per cent. If the delay is chargeable to the employer and not to the insurer, the provisions of subsection (8) of section 102.09 apply.

If action for review is taken, the ground must be stated and service made on the secretary of the commission or any member thereof. Provision is made for answer and hearings, and any judgment theretofore rendered may be set aside only on grounds of action without or in excess of the powers of the commission, that the order was procured by fraud, or that the findings of fact did not support it. Irregularities or errors not affirmatively shown to cause damage will be disregarded. If an order is set aside, the case may be recommitted to the commission or the court may enter judgment, as the nature of the case shall demand. Appeal may be taken from the order of the court as provided in other cases except that the undertaking required by section 3052 of the statutes is not necessary. Any decision rendered must be promptly furnished the commission by the clerk of the court. No fees may be charged by the clerks of the courts except for docketing judgments and for certified copies of transcripts. Costs as between the parties may be allowed or not in the discretion of the court, but none may be taxed against the commission. Contingent fees or fees in excess of 10 per cent of a compromised claim, or fees in excess of \$100 may not be collected unless previously authorized by the commission. The limitation as to contingent fees applies to combined charges of all parties knowingly combining their efforts toward the enforcement or collection of any compensation claim.

Awards equal to or exceeding \$100 must be made payable to the claimant in person; but the commission may fix the amount of attorneys' fees and provide for their payment direct to the person or persons entitled thereto.

Claims are not assignable before payment, but this provision does not affect their survival; nor may claims be taken or held for debts. Claims for compensation for injury, or any award or judgment thereon, and claims for unpaid compensation insurance premiums have the same preference in bankruptcy or insolvency as wage debts for labor, but this may not impair the lien of any judgment entered on an award.

Employers under the act must insure the payment of compensation in an authorized company unless exempted by the industrial commission on grounds of financial ability to pay the same. The commission may at any time require a further statement of such financial ability and may revoke its order granting exemption from insurance on 10 days' notice for financial reasons, or for failure of the employer to faithfully discharge his obligations as agreed. The commission may also require the employer to furnish such security as it may consider sufficient to insure the payment of all claims. Failure to comply with the provisions as to insurance is a misdemeanor, each day constituting a separate offense. If the employer's liability continues uninsured, he may be required to show cause why he should not be restrained from employing any person in his business pending proceedings, or until he shall have satisfied the court that he has complied with the provisions as to insurance. Judgments and forfeitures are to perpetually enjoin the employer from employing any person in his business at any time during noncompliance. If compensation is awarded during such noncompliance the employer is not entitled to any of the exemptions of property from seizure and sale on execution allowed in sections 2982a to 2984a, Wisconsin statutes. The officers and directors of corporations are individually and jointly and severally liable for any unsatisfied portion of any judgment after execution against a corporation.

Employers must, on request of the industrial commission, report to it the number of their employees, the nature of their work, and the name of the insurance company with whom insured with number and date of expiration of the policy. Failure to make such report within 10 days after request constitutes presumptive evidence of a violation of the provisions as to safety insurance.]

Sec. 102.29 (as amended 1925, ch. 334). *Third party liability.*—[Where right of action lies against a third party, the making of a lawful claim against the employer or insurer operates as an assignment of such cause of action, which may be enforced in the name of the employer or insurer for their benefits. Any excess recovery, less costs, goes to the beneficiary, and in no event shall such beneficiary receive less than one-third of the amount recovered from a third party less the reasonable cost of collection. Settlements of such claims and the distribution of the proceeds must be approved by the court or if no litigation is pending, by the industrial commission. If the employer or insurer fails to pursue his remedy against the third party within 90 days, the beneficiary may act, accounting for the proceeds as above. The beginning of action by an employee or his dependents operates as a waiver of any claim for compensation, and the amount accruing to any dependent from any recovery by the personal representative from a third party discharges in equal amount the liability for compensation. The employer or insurer also has right of action against the third party for reimbursement for funds paid into the State treasury in cases of injury resulting in death, leaving no dependents, or of loss or total impairment of an arm, foot, leg, or eye, as provided in section 102.09. The provisions of this act are not a bar against the maintenance of a civil action against physicians or surgeons for malpractice in addition to taking compensation, but the amount received as compensation shall be deducted from the damages due to the malpractice.]

Secs. 102.30, 102.31. *Insurance.*—[The provisions of this compensation act are not to affect the organization of any insurance company or an existing contract for insurance or right to insure against employers' liability, or that for compensation provided by the act, or to make other arrangement for benefits in addition to the compensation provided by the act; but the liability therein provided shall not be reduced or affected by any insurance or benefit system, and persons entitled to compensation under the act may recover the same directly from the employer irrespective of any insurance or other contract and may also proceed directly against an insurance company under its contract, but any payment by the employer or the company is a bar to that extent to recovery against the other. The failure of the employer to do or refrain from doing any act required by the policy is not a defense to the company against the claim of an injured employee or his dependents. Insurance contracts covering the compensation herein provided are deemed to be made subject to the provisions of the act and to claimant full coverage of all liability thereunder unless by written order of the industrial commission a contract of insurance for a part of the liability has been consented to. Contracts may not be written for less than a term of one year and may not be canceled until 10 days after service of notice unless other insurance coverage is pro-

vided. Companies must be approved before any insurance is written, and the commission may examine its books and records at any time, failure enailing revocation of license to do business in the State. Companies writing compensation insurance must make annual reports of their business to the industrial commission.]

Sec. 102.32. Lump sums.—[Where compensation payments have extended or will extend over a period of six months or more, discharge from future payments may be made by deposits at present value of the total unpaid amount with a designated bank or trust company on a 3 per cent interest discount basis, or by purchasing an annuity from a licensed company, or by a lump-sum payment on a 3 per cent discount basis approved by the commission. If the time for making payments or the amount thereof can not be definitely determined, a bond or other satisfactory security may be given for the payment of such compensation as may be due or become due. In lieu of a bond a deposit may be made of the maximum amount that may reasonably become payable, but if this does not fully protect, the compensation insurer or insured employer, as the case may be, is still liable to the beneficiary.]

Sec. 102.33. Blank forms.—[The commission is to supply necessary blank forms, maintain proper record books, and cause notice of employers subject to the act to be given to employees as the commission may deem most effective. Employers rejecting the act must post and maintain notices of that fact on their premises as the commission may require.]

Sec. 102.34. Severability.—[This section treats of the severability of certain provisions, so that their failure does not affect other parts of the act.]

Sec. 102.35. Occupational diseases.—The provisions of sections 102.01 to 102.34, 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.

Sec. 102.36. Record of accidents.—Every employer of three or more persons shall keep a record of all accidents causing death or disability of any employee, which record shall show such facts in regard to the accident and the person disabled as the industrial board may require; said record to be kept in a book in such form as the industrial accident board may prescribe.

Sec. 102.37. Same. Insurance companies.—Every casualty insurance company, mutual corporation, benefit society, or other person which indemnifies any employer against liability for or on account of any injury of an employee, shall keep a record of all accidents causing death or disability of any such employee, which record shall show such facts in regard to the accident and the person disabled as the industrial accident board may require; said record to be kept in a book in such form as the industrial accident board may prescribe.

Sec. 102.38. Monthly reports.—Within the first five days of each and every month and at such other times as may be required by the industrial accident board, every employer of four or more persons and every casualty insurance company, mutual corporation, benefit society, or other person which indemnifies any employer against liability for or on account of injury to an employee, shall furnish a report to the industrial accident board, which shall contain a copy of every entry made in said record book during the preceding month, and such other facts in regard to the employees as may from time to time be required by said industrial accident board.

Sec. 102.39. Inspection of records.—Such record book shall be open at all times to the industrial accident board or any member thereof, or any examiner appointed thereby. Any statement contained in any such record or report shall not be admissible as evidence in any action arising out of the death or accident reported.

Sec. 102.40. Blanks, etc., to be furnished.—Every employer and every casualty insurance company, mutual corporation, benefit society, or other person which indemnifies any employer against liability for or on account of any injury of an employee shall, upon request, be furnished by the industrial accident board with a book in which such record may be kept, and blanks for making the reports hereinbefore specified.

Sec. 102.41. Penalty.—Any person, casualty insurance company, mutual corporation, or benefit society that violates any of the provisions of sections 102.36 to 102.41, inclusive, or neglects or fails to furnish reports required to be furnished under said sections, shall forfeit the sum of \$50 for each such violation or neglect or failure to furnish such report.

WYOMING
CONSTITUTION

ARTICLE 10.—Employers' liability—Workmen's compensation

SECTION 4 (as amended 1914). [The amount recoverable for injury or death may not be limited, nor is any waiver valid. As to all extrahazardous employments, the legislature may establish a fund for the payment of compensation to injured employees and their dependents, except where the injury is due solely to the culpable negligence of the injured employee. The right to such compensation is in lieu of any other right of recovery.]

COMPILED STATUTES—1920

Workmen's compensation

SECTION 4315. Title.—This chapter shall be known as the "Workmen's compensation law."

SEC. 4316. Compensation payable.—Compensation herein provided for shall be payable to persons injured in extra-hazardous employment, 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. [Conflicting laws repealed.]

SEC. 4317. Remedy exclusive.—The rights and remedies provided in this chapter 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 chapter 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.

SEC. 4318 (as amended 1921, ch. 138; 1923, ch. 60). *Extra-hazardous occupations.*—The extra-hazardous occupations to which this chapter 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, general trucking, smelters, powder works, laundries operated by power, quarries, engineering works, logging, lumberyards, 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, the occupations of city or town firemen and city or town policemen, and all employments wherein a process requiring the use of any dangerous explosives or inflammable materials is carried on, which is conducted for the purpose of business, trade, or gain, each of which employments is hereby determined to be extra-hazardous 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 chapter shall not apply in any case where the injury occurred before this chapter takes effect, and all rights which have accrued by reason of any such injury prior to the taking effect of this chapter shall be saved the remedies now existing therefor.

SEC. 4319 (as amended 1923, ch. 60). *Occupations exempt.*—This act [chapter] 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 legis-

lative power of the State nor to persons injured while they are so engaged, nor to any employee engaged in domestic service, ranch, farm, agricultural, or horticultural labor, or stock raising, or any person holding an appointment as sheriff or deputy sheriff, or constable or deputy constable.

Sec. 4320 (as amended 1921, ch. 138; 1923, ch. 60). *Definitions.*—In this chapter, unless the context otherwise requires—

(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 standpipes, power plant, blast furnaces, paper mills, printing plant, flour mill, glass factory, cement plant, artificial-gas plant, machine or repair shop, oil 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, 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 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 safes, 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 municipality, county, person, or body of persons, corporate or incorporate, and the legal representatives of a deceased employer or the receiver or a trustee of a person, corporation, association, or partnership.

Sec. 4321 (as amended 1921, ch 138; 1923, ch. 60). *Same.*—(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 "workman" 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 chapter means such members of the workman's family, as were wholly or in part actually dependent upon the workman 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 chapter unless he or she shall have been married to the deceased at the time of the injury.

(k) "Child or children" means boys under 16 years of age and girls under 18 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 boys under 16 years of age or girls under 18 years of age, or parent or parents, and as to such nonresident aliens the rate of compensation shall not exceed 33½ per cent of the rates of compensation herein provided.

(l) The words "injuries sustained in extrahazardous employment," as used in this chapter, 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 employers' business requires their presence and subjects them to extra-hazardous duties incident to the business, but shall not include injuries of the employees 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. 4322. *Guardians*.—[Guardians may act in behalf of any injured workman who is a minor or mentally incompetent, and no limitation runs against such workman so long as he has no guardian.]

SEC. 4323. *Third party liability*.—[If an employee's injury is due to the negligence of a third party, the employer is exempt under this act and the employee is left to a remedy at law against the third party.]

SEC. 4324. *Waivers*.—[Contracts or rules relieving the employer of liability under this chapter are void except as herein provided.]

SEC. 4325 (as amended 1921, ch. 138; 1923, ch. 60). *Forms, etc.*—[The State treasurer is to print and supply blank forms necessary for the administration of the law, to keep records required by the provisions of the chapter, and must also prepare and distribute instructions to assist the injured workman in correctly making claims for compensation.]

SEC. 4326 (as amended 1923, ch. 60; 1925, ch. 124). *Reports of accidents*.—[Accidents to employees in the extra-hazardous employments defined by this chapter must be reported by the employer and the injured employee or someone in his behalf within 20 days to the office of the clerk of the district court of the county, giving data as to the employee, his status, the nature of the employment and of the injury, etc. The employer's report may be on a printed form and must be verified as pleadings in civil actions. Willful failure or neglect to report is a misdemeanor.]

The employee's report may also be on forms supplied for the purpose, and no claim is enforceable unless filed by the injured workman or someone in his behalf with the clerk of the district court of the county within six months from the date of injury, unless the employee has filed a report of the accident within the prescribed time, in which case the period of limitation is nine months.]

SECS. 4327, 4328 (as amended 1925, ch. 124), 4329. *Procedure*.—[On receipt of a notice of injury by the clerk of the district court of the county it is his duty to at once notify the judge of the fact. The judge is thereupon to inves-

tigate in such manner as he may deem necessary to ascertain the nature of the case and whether there is a dispute as to the right of the workman to receive compensation, and if no dispute, as to the amount of the settlement and whether free from collusion; if satisfactory, payment of compensation may be ordered accordingly. If there is a dispute, hearing is to be had, notices being served by the sheriff without expense to either party except actual traveling expenses. A jury trial may be demanded by either party if the employer alleges that the injury was due wholly to the culpable negligence of the injured employee or that the claim was not within the terms of the law. The claimant is to be represented by the county and prosecuting attorney or other competent attorney appointed by the court. Witnesses are allowed the same fees as in civil actions, these being the only costs, jury costs being paid from the accident fund if the verdict is in favor of the employer; but if against the employer, he shall pay such costs. The court or judge may appoint an impartial physician to examine the claimant and give testimony, allowing a fee of \$5. with mileage allowed unless otherwise ordered. Either party may have present a qualified physician at such examination who shall give testimony at the hearing or investigation. Any order made by a court or a judge on investigation and hearing is reviewable by the State supreme court on proceedings in error, if petition is made within 30 days. The court granting an appeal to an employer from an order of award must allow stay payments until the appeal is finally determined on such terms as seem to it just and proper.

Orders are to be entered by the clerk of the court and copies forwarded to the State auditor and State treasurer, whereupon warrant will issue for the payment of compensation awards against the industrial accident fund.]

SECS. 4330 (as amended 1921, ch. 65), 4331 (as amended 1923, ch. 60; 1925, ch. 124), 4332, 4333 (both as amended 1923, ch. 60). *Industrial accident fund.*—[An industrial accident fund is provided for, to be held by the State treasurer, and to consist of two distinct funds, one to be known as the general fund and the other as the reserve fund. The first is for the payment of awards, claims, and items of expenses; the second not to be used for such payments unless the general fund is at the time insufficient, in which case transfer will be made from the reserve fund of a sufficient sum to meet immediate demands. An amendment of 1919 sets aside \$300,000 for the reserve fund, to which 25 per cent of the excess of receipts over expenditures is to be added at the end of each month.

Employers engaged in the occupations covered by the act must pay 1½ per cent of the employees' wages monthly into the industrial accident fund. Separate accounts are to be kept of the amount received from each employer and of all amounts paid from the fund on his account as awards and injuries, medical and hospital costs, and costs of investigations and witness fees. Monthly contributions are to continue unless an employer's account, after the above deductions have been made, equals 2 per cent of his annual pay roll for his workmen covered, and is likewise not less than \$3,000. If an employer's account is overdrawn he must pay monthly a sum, including the payments as above specified, equal to 4 per cent of the monthly earnings of his workmen in extra-hazardous employments until the overdraft is paid. A copy of the pay roll must be furnished the State treasurer, covering the current calendar month, sworn to by the employer or a person having knowledge of the pay roll. An employer discontinuing extra-hazardous occupations must notify the State treasurer. Failure to comply with these requirements is a misdemeanor.

The State treasurer may appoint inspectors for the purpose of enforcing the cost of premiums, and failure or refusal to pay an assessment subjects the employer to a fine of not more than \$500 besides a suit for the cost of the assessment, judgment to be in double the amount of the pay-roll assessment of costs.]

SEC. 4334 (as amended 1921, ch. 138; 1923, ch. 60; 1925, ch. 124). *Compensation; schedule of benefits.*—Each employee who shall be injured in any of the extra-hazardous 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 taking the place of any and all rights of action against any employer contributing, as

required by this chapter 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 the 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 a 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 the more than one-half of such thumb shall be considered to be equal to the loss of the whole thumb.

The loss of a 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 the 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, 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 resulted from the injury the workman shall receive a lump sum of \$4,000. If the workman have a boy or boys under 16 years of age, or girl or girls under 18 years of age, the guardian of such child or children, appointed as hereinafter provided, shall receive for the use and benefit of said child or children a lump sum of \$120 per year for each boy under 16 years of age until the time when each of said boys shall become 16 years of age, and a lump sum of \$120 per year for each girl under 18 years of age until the time when each of said girls shall become 18 years of age: *Provided*, That the aggregate lump sum paid to said guardian shall in no case exceed \$4,000, and any and all awards made on account of any such child or children shall be disbursed under a proper guardianship to be created by the court or judge making such award.

(c) "Temporary total disability" means an injury which, though it may result or does result in a permanent total or partial disability, temporarily incapacitates the injured person from performing any work at any gainful occupation for the time, but from which injury such person may recover by medical or surgical treatment and be able to resume work. In such case, if the workman be unmarried at the time of the injury he shall receive the sum of \$50 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 \$60 per month, and if he have children under 16 years of age, he shall receive \$7.50 per month for each child under 16 years of age, but the total monthly payments shall not exceed \$90 per month. No compensation except the expense of medical attention shall be allowed for the first 7 days of disability, unless the incapacity extends beyond the period of 21 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.

(d) In all cases of temporary total disability, permanent partial disability, and permanent total disability the expense of medical attention and care in hospital of the injured workman shall be paid from date of said injury, the expense of medical attention not to exceed \$150 in any case and the expense of care in hospital not to exceed \$150 in any case, unless under general arrangement the workman is entitled to medical attention and care in hospital or the employer furnishes adequate and proper medical attention and hospital facilities to his employees: *Provided, however,* That no bill or fee for medical attention or care in hospital shall be allowed or paid without notice to the employer and a hearing requested by said employer. The State treasurer shall have the power to establish a schedule fixing the fees for which all medical, surgical, hospital, or other legalized forms of treatment rendered to employees under this section shall be compensated. Each physician or surgeon attending a workman injured while engaged in an extra-hazardous occupation shall file with the clerk of the court of the county within which such injury occurred and with the State treasurer, under rules to be prescribed, the nature of the injuries to such workman: *Provided,* That such report shall not be required unless the disability resulting from such injury lasts through the day of the injury or required medical services other than the ordinary first-aid treatment. Any physician or surgeon failing to file any report as herein provided shall be punishable by a fine of not more than \$50. Where death results from the injury the expense of burial shall be paid, not to exceed \$150 in any case, unless other arrangements exist between employer and employees under agreement.

(1) But if the workman leaves a widow or invalid widower, to whom she or he had been regularly married by a marriage duly solemnized by a legal ceremony, such surviving spouse shall receive a lump-sum payment of \$2,000: *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 case the right of boys under 16 years of age and girls under 18 years of age to compensation shall not be defeated. If said workman leaves a surviving boy or boys under 16 years of age or girl or girls under 18 years of age, the guardian of such child or children, appointed as hereinafter provided, shall receive for the use and benefit of said child or children a lump sum of \$120 per year, and each surviving boy under 16 years of age until the time when each of said surviving boys shall become 16 years of age, and a lump sum of \$120 per year for each surviving girl under 18 years of age until the time when each of said surviving girls shall become 18 years of age: *Provided,* That the aggregate lump sum paid to said guardian shall in no case exceed \$3,600. In all cases where an order of compensation is made on account of boys under 16 years of age, or girls under 18 years of age, or both, 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 pay-

ment in excess of \$2,400 received by him during such disability and prior to his death shall be proportionately deducted from the lump amounts herein provided to be paid to the surviving widow and the guardian of the workman's boys under 16 years of age and girls under 18 years of age.

(3) If the workman leaves no widow, or widower, or boy under the age of 16 years, or girl under the age of 18 years, but leaves a parent or parents surviving, such surviving parent or parents shall receive a lump sum of \$1,000: *Provided*, A parent or parents who are nonresident aliens shall receive a lump sum of one-third of \$1,000.

Sec. 4335. Refusing treatment.—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 [chapter]; 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 chapter, 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. 4336. Assignments, etc.—No money paid or payable under this chapter 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 garnisheed, or shall the same pass to any other person by operation of law any such assignment or charges shall be void.

Sec. 4337. 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 chapter, and no other person shall have any cause of action or right to compensation for injury to such minor workman, except as lawfully provided in this chapter; but in the event of a lump-sum payment becoming due under this chapter 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.

Sec. 4338. Public work.—Whenever the State, county, or any municipal corporation shall engage in any extrahazardous work in which workmen are employed for wages, this chapter 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 chapter 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 [in] 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 chapter and shall not be included in the pay roll of the municipality under this chapter.

Sec. 4439. Safety devices.—Nothing in this chapter 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.

Sec. 4340 (as amended 1921, ch. 188). Fees.—[Attorneys, agents, interpreters, and all other persons are limited in their charges for services rendered, either jointly or separately to 5 per cent of the recovery of the beneficiary, the amount in no event to exceed \$50.]

Sec. 4341. Physicians to testify.—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

chapter, and the law of privileged communication between physician and patient, as fixed by statutes, shall not apply in such cases.

Sec. 4342. *False statement.*—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 chapter to which he is not lawfully entitled shall be guilty of a misdemeanor, and shall, on conviction, be fined not more than \$300 or imprisonment for not more than 90 days.

Secs. 4343, 4344. *Reports; records.*—[The State treasurer is to compile annually statistical information as to accidents, costs, and other information relative to the operation or the administration of the act. He may direct the State examiner to examine the books and pay-rolls of any employer to secure information desired in the administration of the act.]

Sec. 4345. *Medical examinations.*—Every workman awarded compensation for temporary total disability under the law must, if requested by the employer, submit to examination by the employer's physician, but may have his own physician present. If it is agreed that the workmen has recovered, the act is to be reported to the judge of the court who made the award; if there is a dispute, the judge shall determine the matter as he may deem proper under the facts. The judge's certificate is authority to discontinue compensation payments if recovery is determined. Refusal or obstruction suspends payments, and no compensation is payable during or on account of such period of refusal.

Sec. 4346 (as amended 1923, ch. 60). *Statement of dependents.*—All employees or workmen coming within the provisions of this act [chapter] shall be required upon entering within the provisions of this act [chapter] shall herein defined to make a service in any of the extra-hazardous employments 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 boys under the age of 16 years and girls under the age of 18 years.

Sec. 4347 (as amended 1921, ch. 76). *Payments absolute.*—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: *Provided*, That when any employer engaged in an extra-hazardous occupation as defined in this chapter has heretofore sold and conveyed, or shall hereafter sell and convey, his or its property to a purchaser who continues to conduct and carry on said business at the same place, the seller shall be entitled to transfer and assign to the purchaser all rights, benefits, privileges, and immunities accruing to such employer by virtue of any sum then on deposit to his or its credit in the industrial accident fund in the State treasury under the provisions of said act; and upon filing such assignment with the State treasurer the purchaser shall succeed to all said rights, benefits, privileges, immunities of said employer. Said purchaser shall be subject to obligations of compensation against the seller incurred and existing at the date of such assignment: *Provided*, That 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*, That every employer operating under the provisions of said act shall pay into said "workmen's compensation fund" the sum of at least \$5,000: *And provided further*, If this chapter shall be hereafter repealed or held invalid, the moneys which are in the industrial fund at the time of 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. 4348. *Existing contracts.*—This chapter shall not affect any contract entered into and existing before its passage or any action pending or cause of action existing prior to April 1, 1915.

ACTS OF 1925

CHAPTER 97.—*Corrupt practices*

[This act penalizes bribery, corrupt giving, or promising to give any money or other thing of value to secure assistance with reference to the performance of official duties relating to the administration of the act. The offense is a felony, punishable by imprisonment for not more than 14 years.]

CHAPTER 124.—*Workmen's compensation amendments*

[This chapter amends various sections of the compensation law and adds provisions requiring bills for medical attendance, expenses or disbursements, and for hospital services to be itemized and monthly reports made by physicians attending injured workmen. Copies of notices of attendance are to be supplied to the clerk of the district court, to the State treasurer, and the employer of the injured workman. Physicians or hospitals failing to make such reports forfeit remuneration for services rendered.]

Awards are declared to be judicial determinations of the rights of the employer, the employee, and the industrial accident fund. No award or other charge against the account of an employer contributing to the accident fund may be made without notice and hearing unless he consents.]

CHAPTER 159.—*Coal mine catastrophe insurance*

[This act provides for the maintenance of a catastrophe insurance premium fund to care for losses in excess of \$25,000 in coal mining accidents. Employers operating coal mines in the State are to pay a sum equal to one-fourth of 1 per cent monthly of their pay rolls until \$100,000 is accumulated, whereupon such payments cease, to be automatically resumed when the fund falls below that amount.]

The State treasurer is authorized to make reinsurance contracts covering any catastrophe, the premium to be chargeable against the account of the catastrophe insurance premium fund.]

UNITED STATES

ACTS OF 1915-16

(39 Statutes at Large 742)

Compensation for injuries to civil employees of the United States

SECTION 1. Compensation, payable, when.—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.

Sec. 2. Waiting time.—During the first three days of disability the employee shall not be entitled to compensation except as provided in section 9. No compensation shall at any time be paid for such period.

Sec. 3. Compensation for total disability.—If the disability is total, the United States shall pay to the disabled employee during such disability a monthly compensation equal to 66% per cent of his monthly pay, except as hereinafter provided.

Sec. 4. Partial disability.—If the disability is partial, the United States shall pay to the disabled employee during such disability a monthly compensation equal to 66% per cent 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.

Sec. 5. Refusing work.—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.

Sec. 6. Maximum and minimum payments.—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.

Sec. 7. Other payments.—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.

Sec. 8. *Annual and sick leave.*—If at the time the disability begins the employee has annual or sick leave to his credit, he may, subject to the approval of 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.

Sec. 9 (as amended 1926, Act No. 432). *Medical, etc., services.*—For any injury sustained by an employee while in the performance of duty, whether or not disability has arisen, the United States shall furnish to the employee all services, appliances, and supplies prescribed or recommended by duly qualified physicians which, in the opinion of the commission, are likely to cure or to give relief or to reduce the degree or the period of disability or to aid in lessening the amount of the monthly compensation. Such services, appliances, and supplies shall be furnished by or upon the order of United States medical officers and hospitals, but where this is not practicable they shall be furnished by or upon the order of private physicians and hospitals designated or approved by the commission. For the securing of such services, appliances, and supplies, the employee may be furnished transportation, and may be paid all expenses incident to the securing of such services, appliances, and supplies, which, in the opinion of the commission, are necessary and reasonable. All such expenses when authorized or approved by the commission shall be paid from the employees' compensation fund. Any award heretofore made by the commission on account of expenses incurred under section 9 of the act of September 7, 1916, prior to the passage of this act, shall be valid, if such award would be valid if made on account of expenses incurred under this section after the passage of this act.

Sec. 10. *Compensation for death; to whom payable.*—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.

(A) To the widow, if there is no child, 35 per cent. This compensation shall be paid until her death or marriage.

(B) To the widower, if there is no child, 35 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 clause (A) or clause (B) and in addition thereto 10 per cent for each child, not to exceed a total of 66 $\frac{2}{3}$ per cent 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 18, or, if over 18, and incapable of self-support, becomes capable of self-support.

(D) To the children, if there is no widow or widower, 25 per cent for one child and 10 per cent additional for each additional child, not to exceed a total of 66 $\frac{2}{3}$ 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 18, or, if over 18 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, 25 per cent; if both are wholly dependent, 20 per cent 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 a 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 66 $\frac{2}{3}$ 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, 20 per cent to such dependent; if more than one are wholly dependent, 30 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, 10 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 percentage payable to the widow, widower, children, and dependent parents, will not exceed a total of 66 $\frac{2}{3}$ per cent.

(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 18, or, if over 18 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) 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 stepbrothers 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 18 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.

(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.

(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.

(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 12.

(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.

Sec. 11. Burial, etc., expenses.—If death results from the injury within six years the United States shall pay to the personal representatives 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.

Sec. 12. Computation of pay.—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.

Sec. 13. Housing, board, etc.—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.

SEC. 14. Lump sums.—In cases of death or of permanent total or permanent partial disability, if the monthly payment to the beneficiary is less than \$5 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 4 per cent 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 60 months' compensation. The probability of the happening of any other contingency affecting the amount or duration of the compensation shall be disregarded.

SEC. 15. Notice.—Every employee injured in the performance of his duty, or some one on his behalf, shall, within 48 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.

SEC. 16. Contents.—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 incurred, and the cause and nature of the injury, and shall be signed by and contain the address of the person giving the notice.

SEC. 17. Compensation withheld, when.—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.

SEC. 18. Claims.—No compensation under this act shall be allowed to any person, except as provided in section 38, unless he or some one on his behalf shall, within the time specified in section 20, 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.

SEC. 19. Forms.—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.

SEC. 20 (as amended 1922, ch. 219). Time for claims.—All original claims for compensation for disability shall be made within 60 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. * * *

[Amendment relates only to civilian claims arising during the World War, and is obsolete.]

SEC. 21 (as amended 1926, Act No. 432). Medical examinations.—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. 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. For any examination required by the commission the employee shall be paid all expenses incident to such examination which, in the opinion of the commission, are necessary and reasonable, including transportation and loss of wages

incurred in order to submit to examination. All such expenses when authorized or approved by the commission shall be paid from the employees' compensation fund.

SEC. 22. *Medical referee.*—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.*—Fees for examinations made on the part of the United States under sections 21 and 22 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 21, when authorized or approved by the commission, shall be paid from the employees' compensation fund.

SEC. 24. *Reports of injuries.*—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.

SEC. 25. *Assignments, etc.*—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. 26. *Assignments of damage claims against third parties.*—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.

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. *Injuries by third parties.*—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:

(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. *Commission created.*—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, D. C., but the said commission is authorized to perform its work at any place deemed necessary by said commission, subject to the restrictions and limitations of this act.

SEC. 28a. *Transfer of claims and employees.*—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.

SEC. 29. *Powers as to witnesses.*—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 100 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.

SEC. 30. *Employees of commission.*—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.

SEC. 31. *Estimates.*—The commission shall submit annually to the Secretary of the Treasury estimates of the appropriation necessary for the work of the commission.

SEC. 32. *Rules, regulations, etc.*—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.

SEC. 33. *Annual reports.*—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.

SEC. 34. [Obsolete.]

SEC. 35. *Compensation fund.*—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 9, and the transportation and burial expenses provided by sections 9 and 11. The commission shall submit annually to the Secretary of the Treasury estimates of the appropriations necessary for the maintenance of the fund.

SEC. 36. *Findings and awards.*—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. (as amended 1924, ch. 261). *Review.*—If the original claim for compensation has been made within the time specified in section 20, 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. In the absence of fraud or mis-

take in mathematical calculation, the finding of facts in, and the decision of the commission upon, the merits of any claim presented under or authorized by this act if supported by competent evidence shall not be subject to review by any other administrative or accounting officer, employee, or agent of the United States. Any award heretofore made by the compensation commission, under the act of September 7, 1916, for disability or death resulting from a personal injury sustained prior to the passage of this act, shall be valid, if such award would be valid if made in respect to an injury sustained after the passage of this act.

SEC. 38. Mistakes.—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.

SEC. 39. False statements.—Whoever makes, in any affidavit required under section 4 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.

SEC. 40 (as amended 1924, ch. 261). Definitions.—Wherever used in this act—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 Co.

The term "commission" shall be taken to refer to the United States Employees' Compensation Commission provided for in section 28.

The term "physician" includes surgeons.

The term "monthly pay" shall be taken to refer to the monthly pay at the time of the injury.

The term "injury" includes, in addition to injury by accident, any disease proximately caused by the employment.

The term "compensation" includes the money allowance payable to an employee or his dependents and any other benefits paid for out of the compensation fund: *Provided, however,* That this shall not in any way reduce the amount of the monthly compensation payable in case of disability or death.

SEC. 41. Repeal; liability of Panama Railroad Co.—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 Co. 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 releases to the Panama Railroad Co. any right of action which he may have to enforce such liability of the Panama Railroad Co., 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 Co.

SEC. 42. Administration for Canal Zone and Alaskan Railways.—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 Co. 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 21 and 22, and the reasonable traveling and other expenses and loss of wages payable to employees under section 21, 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.

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 President may authorize the Governor of the Panama Canal to waive, at his discretion, the making of the claim required by section 18. In the case of alien employees of the Panama Canal or of the Panama Railroad Co., or of

any class or classes of them the President may remove or modify the minimum limit established by section 6 on the monthly compensation for disability and the minimum limit established by clause (K) of section 10 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 9 and the transportation and burial expenses provided by sections 9 and 11, 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:

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.

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 18 of said act.

3. That in the case of alien employees of the Panama Canal, or of the Panama Railroad Co., the minimum limit established by section 6 on the monthly compensation for disability and the minimum limit established by clause (K) of section 10 on the monthly pay on which death compensation is to be computed is hereby removed.

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 9 and the transportation and burial expenses provided by sections 9 and 11, 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 42 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 21 and 22, and the reasonable traveling and other expenses and loss of wages payable to employees under section 21, shall be paid out of appropriations for "Construction and operation of railroads in Alaska."

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 9 and the transportation and burial expenses provided by sections 9 and 11 out of appropriations for the "Construction and operation of railroads in Alaska," such appropriations to be reimbursed for such payment by transfer of funds from the employees' compensation fund.

September 29, 1916.

PART II.—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 State 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, again in Manitoba in 1920, and a revision and consolidation in Quebec in 1926.

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 comparable in many aspects. The later laws are administered by special boards in most instances, those of Quebec and Yukon Territory being exceptions. Prince Edward 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.

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.

CANADIAN AND UNITED STATES LAWS COMPARED

An analysis of the Canadian laws shows a number of striking characteristics and of deviations from the type of compensation act

prevalent in the United States. Some of the more important of these are the following:

1. In Canada there is a noticeable uniformity among most of the compensation laws. This uniformity applies to the scope of the acts, benefits, injuries covered, administration, and procedure. In the compensation acts of the United States many variations are in evidence.

2. In Canada all of the laws are compulsory as to the employers coming within the scope of the act. In the United States only 14 are compulsory, while 32 are elective.

3. In Canada the scope of the law in each Province (Yukon Territory excepted) is limited to enumerated employments, though the lists are quite inclusive. There is some diversity in the number of such employments, but the principal hazardous industries are covered, including manufacturing, mining, construction, and transportation. In the United States only 12 States limit their scope to the so-called hazardous industries, while 34 States cover industries generally.

4. In Canada occupational diseases are compensable in every Province except Quebec and Yukon Territory. Such diseases, however, are limited to those enumerated in the statutory schedule. In the United States only 12 of the 46 State laws include occupational diseases, but in 6 of these all occupational diseases are covered.

5. In Canada all of the Provinces except Quebec and Yukon Territory have exclusive State insurance funds. In Ontario, however, employers under schedule 2 (municipalities, railroad, express, telephone, telegraph, and navigation) are permitted self-insurance. In the United States only 8 of the 46 compensation States have exclusive State funds, while 11 have competitive State funds.

6. In Canada probably the most significant characteristic of compensation legislation is the assumption of liability on the part of the Province having insurance funds for the solvency of such funds, any temporary deficit being made up from other provincial funds. Under no law of any State of the United States is such liability assumed.

7. In Canada the workmen's compensation boards have exclusive and final jurisdiction over all compensation matters, no appeal to the courts being permitted except in New Brunswick and Nova Scotia. In these two Provinces appeal may be had to the supreme court upon questions of law, but only with the permission of the judge of said court. In none of the American States does the administrative commission have final decision, appeals to courts being allowed on questions of law in every jurisdiction, and of fact in some.

8. In Canada members of the workmen's compensation boards hold office during good behavior, except that in British Columbia the term of office is 10 years. In most of the Provinces, however, they are subject to compulsory retirement at the age of 75. Each board is authorized to appoint its officers and employees and to fix their salaries. The term of office of such employees is subject to the pleasure of the board. In the United States the term of office of compensation commissioners is usually 3, 4, or 5 years.

9. As regards liberality, the benefits of the Canadian laws are about on a par with the more liberal of the American acts. The scale of benefits averages perhaps somewhat lower, but the periods

for which benefits are paid are as a rule longer. In Canada, except in Yukon, compensation is paid during disability or until the death or remarriage of the widow, while in most of the States the compensation periods terminate at the end of 300, 400, or 500 weeks, though some pay during life. In none of the Provinces (Yukon Territory excepted) is the waiting period over 1 week, and in most of the laws compensation when payable begins from the date of the injury, whereas in the United States 4 States have a waiting period of 10 days and a like number of 2 weeks. The early Canadian laws did not provide for medical benefits, but all except that of Yukon Territory have now made provision therefor; in the United States all the laws require medical service.

The following pages carry an analysis of the law of each Province, using the same headings as in case of the laws of the United States in the first part of this bulletin.

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; (as consolidated to April 10, 1925).

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 solely 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 employments. Farm and ranch labor, itinerant occupations, and an extensive list of railroad employments are excepted. The board may add to, withdraw from, or rearrange the schedule of hazardous employments contained in the act.

Persons compensated.—Private employment: Workmen engaged in the employments covered, including employers and members of their families if they are occupied as workmen. Outworkers, and casual employees not in the usual course of the employer's business, are excluded. Public employment: Included.

Compensation for death:

- (a) Burial expenses, maximum \$100, and, in the case of no dependents, reasonable expenses of the last sickness.
- (b) To widow, invalid widower, or foster mother while acting as such, \$35 monthly, \$12 additional for one child under 16 years of age, \$10 for a second, \$9 for a third, and \$8 for each additional child; to orphans, \$15 per month each.
- (c) To other dependents, a sum proportionate to the pecuniary loss, not over \$30 monthly to parents nor over \$65 in all, during the period of reasonably expected assistance.
- (d) Payments to children cease at 16 unless invalid, and to a widow upon remarriage, but she shall receive a lump sum of \$480.

Compensation for disability:

- (a) Medical aid to be furnished under a scheme approved by the board; special medical and surgical treatment and apparatus at cost of accident fund as board may approve as saving to fund. Employees contribute.
- (b) For total disability 62½ per cent of average weekly wages during its continuance, not less than \$10 unless wages were less, then full wages.
- (c) For partial disability 62½ per cent of wage loss during its continuance, wages in excess of \$2,000 not to be considered; if wage loss is less than 10 per cent, commuted lump sum unless thought disadvantageous to workman.

Any award may be commuted in whole or in part to lump-sum payments.

The benefits to any injured person may not exceed \$1,140 per annum.

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.—June 21, 1902; in effect May 1, 1903. New act May 31, 1916; in effect, January 1, 1917; as last amended, 1925.

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; domestic service excluded.

Persons compensated.—Private employment: Workmen engaged in industries and occupations covered by act, not including traveling salesmen, not subject to hazards of industry, or persons whose work is casual and not for the purpose of the employer's business, outworkers, and members of employer's family. Public employment: Included if from the nature of their work employees would be covered if working for a private person.

Compensation for death:

- (a) Burial expenses, maximum \$100.
- (b) To widow or invalid widower, \$35 monthly, \$7.50 additional for each child under 16 years of age, maximum \$65; foster mother same as widow with children; to orphans, \$15 per month each, maximum, \$60.
- (c) To other dependents a sum proportionate to the pecuniary loss, not over \$30 monthly to parents, nor over \$45 in all, during the period of reasonably expected assistance. Parents may share with beneficiaries in (b), within the limits of \$65.
- (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, not over \$480.

Payments to nonresident aliens may be scaled according to differences of conditions and cost of living.

Compensation for disability:

- (a) All reasonable and necessary medical, surgical, etc., aid; employees contribute to medical-aid fund.
- (b) For total disability during disability, 62½ per cent of the average wages; minimum, \$5 per week, unless wage is less, then full wages.
- (c) For partial disability during disability, 62½ per cent of wage loss. Earnings in excess of \$2,000 a year are not considered in computing benefits.

Periodical payments may be computed 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; new act, March 27, 1920; in effect January 1, 1921; as amended to 1925.

Injuries compensated.—Injuries by accident arising out of and in course of employment causing disability for at least 3 days or death; those due solely to the serious and willful misconduct of the workman excepted unless death or serious permanent disability results; enumerated occupational diseases included.

Industries covered.—Enumerated list, which the board may enlarge or take from. Other establishments may be included by election of the employer and approval by the board. Farm labor and domestic service are excluded.

Persons compensated.—Private employment: Workmen in the industries covered except outworkers, clerical employees not exposed to the hazards of the undertaking, and casual employees for other purposes than the employer's trade or business; nonresidents only if reciprocal rights are given by country of residence. Public employment: Included if from the nature of their work they would be included if working for a private employer.

Compensation for death:

(a) Burial expenses not exceeding \$150.

(b) To widow or invalid widower, \$30 monthly, and \$12 for one child, \$10 for the second, \$9 for the third, and \$8 for each other child under age of 16; orphans \$15 each. To others in proportion to the pecuniary loss, not over \$20 to each, nor over \$40 in all, during the period of reasonably expected assistance.

Payments to children cease at age of 16 unless invalid, and to a widow on remarriage, when she receives two years' payments in a lump sum.

Compensation for disability:

(a) Medical attendance, care, maintenance, and apparatus, as the board may deem necessary.

(b) For total disability, 66⅔ per cent of the average weekly earnings during disability, not less than \$15 (\$12.50, if temporary), unless wages are less, then full wages.

(c) For partial disability, 66⅔ per cent of the wage loss during such disability; disfigurements and slight impairments may be compensated by a lump sum.

Earnings in excess of \$2,000 are not considered as basis for awards.

Any periodic 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, by which all payments are made.

Security of payments.—Fund administered by provincial board; assessments of premiums have priority over other debts; if fund is deficient, advances may be made from the consolidated revenue fund of the Province. Benefits are exempt from assignment, attachment, etc.

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 January 1, 1919; as last amended, 1924.

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 enumerated 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.—Private employment: 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. Public employment: Included as to employments such as those included under act, except municipal firemen and policemen.

Compensation for death:

- (a) Burial expenses, maximum \$100.
- (b) To widow or invalid widower, \$30 per month for life, with \$7.50 additional for each child; total not to exceed 55 per cent of the average wages, with maximum basic wage of \$125.
- (c) To partial dependents a sum proportionate to the pecuniary loss during the period of reasonably expected assistance.
- (d) Payments to boys cease at 16, to girls at 18, and to widows upon remarriage, with a lump sum equal to two years' monthly payments.

Compensation for disability:

- (a) Medical, surgical, and hospital aid, and transportation as may be necessary as the result of the injury.
- (b) For total disability, 55 per cent of the average wages during disability; minimum, \$6 per week, and maximum, 55 per cent of \$125 per month.
- (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, \$2,500. 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 that court.

NOVA SCOTIA

Date of enactment.—April 2, 1910; in effect February 1, 1911; new act, April 23, 1915; in effect January 1, 1917; amended to 1923.

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.

Persons compensated.—Private employment: 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, except on application of the employer. Public employment: Included as to occupations such as are included in the act, municipal policemen and firemen excepted.

Compensation for death:

- (a) Burial expenses, maximum \$75.
- (b) To widow or invalid widower, \$30 per month, \$7.50 additional for each child under 16 years; to orphans, \$15 each per month. Maximum, \$60.
- (c) To other dependents, a sum proportionate to the pecuniary loss, not over \$30 per month to parents, nor over \$45 in all, during the period of reasonably expected assistance.
- (d) Payments to children cease at 16 unless invalid, and to a widow on re-marriage, when she receives \$20 monthly for 25 months, or an equivalent lump sum or sums.

Aggregate payments may not exceed 55 per cent of workman's wages.

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 question of law and jurisdiction if permission is secured from a judge of that court.

ONTARIO

Date of enactment.—May 1, 1914; in effect January 1, 1915; as last amended, 1926.

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 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.—Private employment: All employees in industries covered other than outworkers and those whose employment is casual and not for the purposes of the employer's trade or business. Public employment: Included in so far as employments would be covered if under private employers.

Compensation for death:

- (a) Necessary burial expenses, not exceeding \$125.
- (b) To a widow or invalid widower, \$40 per month, \$10 additional for each child under 16 years; orphans, \$15 per month each.
- (c) To other dependents, an amount proportionate to the pecuniary loss, for such time as support might be reasonably expected.
- (d) If no dependents, reasonable allowance is to be made for medical attendance, care, maintenance, and burial.

The aggregate compensation, except for burial expenses, may not exceed 66% 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 66% per cent of the average weekly earnings, during disability, not less than \$12.50 per week, unless earnings are less, then full earnings.
- (c) For partial disability, 66% 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. New act, March 24, 1926; in effect April 1, 1927.

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.

Industries covered.—Building, manufacturing, transportation, engineering, and construction work, mining, quarrying, gas or electrical business; stone, wood, and coal yards; any industrial or mercantile enterprise using machinery operated by power or manufacturing or using explosives, if the injury is due to the machinery or explosives. Agriculture, domestic service, and navigation of sailing vessels are excluded. Employers not covered may come under act by written agreement with their employees.

Persons compensated.—Private employment: Workmen, apprentices, and employees engaged in the industries covered. Foreign workmen or their representatives are compensated only if and so long as they reside in Canada. Public employment: Included as to industries covered by the act.

Compensation for death:

(a) Funeral expenses not in excess of \$100.

(b) To a surviving consort, 20 per cent of the yearly wages, for life, 10 per cent additional for each child under 16; to orphans 20 per cent each; no total to exceed 60 per cent.

If no consort or child, 10 per cent to each ascendant for life or to descendants until 16, total not to exceed 30 per cent.

Payments to a widow cease on remarriage, when she receives 12 months' benefits.

Compensation for disability:

(a) Medical, surgical, and hospital services for 6 months with transportation and necessary appliances.

(b) For permanent total disability, a pension for life equal to 66⅔ per cent of the yearly wages.

(c) 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.

(d) 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 more than \$25, nor less than \$8 per week, unless wages are less, then full wages.

(e) In computing pensions no wage less than \$600 nor more than \$2,000 shall be considered.

All periodical payments not exceeding \$500 in capital value may be computed to lump sums.

Revision of compensation.—Demands for change of amount of compensation may be made within two years.

Insurance.—Private employers under the act must insure or deposit securities to guarantee the payment of compensation.

Security of payments.—Benefits may not be alienated, and are exempt from seizure.

Settlement of disputes.—Superior, circuit, and magistrates' 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.—Private employment: All in industries covered except outworkers and casual employees in other than the employer's trade or business. Public employment: Included.

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.

Settlement of disputes.—If parties do not agree to settlement, application may be made to a judge of the Territorial court, whose decision is final.

COMPARISON OF COMPENSATION AND INSURANCE SYSTEMS

All the Canadian compensation laws are compulsory as to employers coming within their scope. All except that of Yukon Territory require private employers to insure, and an exclusive provincial fund exists in every Province except Quebec and Yukon Territory; though in Ontario municipalities and common carriers (Schedule 2) may act as self-insurers. These funds are administered by workmen's compensation boards, which classify the industries according to hazard, fix rates, collect premiums, act on claims, and pay benefits. The boards are distinctively compensation boards and do not have the administration of other labor laws, as is the case in a number of the States, though they do have certain powers for accident prevention and the inspection of premises for safety. As already noted, their powers of decision are complete, and in case of deficits in funds advances may be made from other provincial funds until assessments can be made to restore solvency.

SCOPE OR COVERAGE

The scope or coverage of the Canadian laws is of a more restricted form than that of most of those of the United States. In all of the Provinces (Yukon Territory excepted) the employments covered are limited to enumerated industries. Most of the laws exclude agriculture and domestic service, outworkers, nonhazardous public employments, and casual employees employed otherwise than for the purpose of the employer's business. Alberta also excludes certain classes of railroad employees, reported by the commission as amounting to about 55 per cent of the total. The law of Yukon Territory does not apply when the employer has less than five workmen; and the power given the boards to extend or reduce the scope of the laws by classifications, regulations, etc., has been exercised, notably in Ontario, to exclude various classes of small employers. Public employments are generally included only to the extent that the nature of the work is such as to fall within the enumeration of industries covered. Exempted employments usually are given the privilege of coming under the act if either the employer or employee so desires.

If the workman is injured while outside the Province, most of the laws grant compensation if the place of business of the employer and the usual place of employment of the workman are within the Province. In Manitoba, however, this rule applies only to workmen on railroads and steamships, and in Quebec only if the law of the place of injury does not provide compensation; no mention is made of the subject in the law of Yukon.

OCCUPATIONAL DISEASES

The influence of the compensation act of Great Britain is nowhere more clearly seen than in the provisions of the laws relating to injuries covered. As to accidental injuries, every law except that of

Quebec uses the phrase "personal injury by accident arising out of and in the course of the employment, unless it is attributable solely to the serious and willful misconduct of the workman," found in the British act. All but three¹ also follow this act in allowing compensation for injuries due to willful and serious misconduct if they result in death or serious disability. In addition, New Brunswick excludes injuries if intentionally self-inflicted, due to intoxication, or caused by a fortuitous event not connected with the industry, while Yukon excludes those caused by intoxication.

In the matter of occupational diseases, the list formulated by the British act of 1906 was followed exactly by some laws, even though additions had already been made to the original list. Others accepted some of the additions made, and later laws following the method of enumeration show the influence of the British tendency to extend the list, but none carries the full list now found in the British law, partly, no doubt, on account of differing industrial conditions. Occupational diseases are not compensated in Quebec and Yukon, while in New Brunswick the question of enumeration rests with the board, which has prepared a list corresponding with a major part of the standard items under the British law.

WAITING TIME

In but one Province (Yukon Territory) is the waiting time in excess of seven days; in three it is but three days. The length of waiting time in each Province and the rule as to retroaction in case of disability continuing for prescribed periods are as follows:

Province	Waiting period
Alberta.....	3 days. None if disability lasts 10 days or more.
British Columbia.....	3 days. None if disability last more than 14 days.
Manitoba.....	3 days.
New Brunswick.....	7 days.
Nova Scotia.....	6 days. None if disability lasts over 6 days.
Ontario.....	6 days. None if disability lasts over 6 days.
Quebec.....	6 days. None if disability is permanent.
Yukon Territory.....	13 days. None if disability lasts over 13 days.

COMPENSATION SCALE

The Canadian compensation acts differ from most of the acts in the United States in that they provide specific monthly payments for widows, dependent widowers and children instead of percentages of the wages of the decedent. In Quebec, however, a percentage is used, and in Yukon Territory a lump sum of \$2,500 is paid dependents. This in effect establishes a uniform relief on the apparent assumption of a standardized necessary support, tending to reduce to uniformity the conditions of the families of the higher and lower paid workmen. In three Provinces (New Brunswick, Nova Scotia, and Ontario) the wage rate is effective in restricting amounts, not more than a fixed rate (55 per cent of the wages in the first two and 66½ per

¹ New Brunswick, Quebec, and Yukon Territory.

cent in Ontario) being allowed as aggregate benefits. As regards disability, all laws use the percentage basis for disabilities, except that of Yukon Territory, where a lump sum is paid for permanent total disability, and fixed amounts for specified permanent partial disabilities.

Medical, surgical, and hospital aid is uniformly provided except in Yukon, artificial members and appliances as needed being also provided for in British Columbia, Ontario, and Quebec. In Nova Scotia treatment is limited to 30 days and in Quebec to 6 months, no other restriction being made.

Burial expenses are to be met in all fatal cases except in Yukon, where a lump sum is paid as a death benefit to dependents; if there are no dependents, expenses of last sickness and burial are provided for up to \$500.

Compensation proper in case of death is usually a fixed sum monthly to the surviving consort (\$30 in Manitoba, New Brunswick, and Nova Scotia, \$35 in Alberta and British Columbia, and \$40 in Ontario), with additional sums for children under the age of 16. This sum is \$7.50 in British Columbia, New Brunswick, and Nova Scotia, \$10 in Ontario, and in Alberta and Manitoba \$12 for the eldest, \$10 for the second, \$9 for the third, and \$8 for each other child. Restrictions are that the aggregate shall not exceed 55 per cent of the wages in New Brunswick and Nova Scotia, 66 $\frac{2}{3}$ per cent in Ontario, and 65 per month in British Columbia, while no limit is set in Alberta and Manitoba. As already noted the law of Quebec grants percentages of wages—20 per cent to a consort and 10 per cent additional to each child, not over 60 per cent in all, while in Yukon a lump sum of \$2,500 is payable simply if there are dependents. Benefits to a widow continue until death or remarriage; in the latter event, she receives a lump sum of \$480 in Alberta, two years' benefits in Manitoba, New Brunswick, and Ontario, same not to exceed \$480 in British Columbia, 12 months' benefits in Quebec, and \$20 monthly for 25 months or an equivalent lump sum in Nova Scotia.

For total disability the provisions of the laws show a tendency to vary quite suggestive of the practice in the United States. The payments continue during disability except in Yukon, and are 55 per cent of the wages in New Brunswick and Nova Scotia, 62 $\frac{1}{2}$ per cent in Alberta and British Columbia, and 66 $\frac{2}{3}$ per cent in Manitoba, Ontario, and Quebec. The minimum is \$5 weekly in British Columbia and Nova Scotia, \$6 in New Brunswick, \$10 in Alberta, \$12.50 in Ontario, and \$15 (\$12.50 if disability is temporary) in Manitoba. This minimum is reduced in each Province to the actual wage in case it is less than the sum named. In Quebec the minimum basic wage is \$600. Maximum limits are \$1,140 per annum in Alberta, and a limitation on the wage used as a basis of computation elsewhere—\$2,000 per annum in British Columbia, Manitoba, Ontario, and Quebec; \$1,200 in Nova Scotia; and \$125 per month in New Brunswick. In Yukon, if the disability is permanent, \$3,000 is paid as a lump sum; if temporary, 50 per cent of the earnings payable weekly for not more than six months.

PRINCIPAL FEATURES OF LAWS OF CANADA RELATING TO WORKMEN'S COMPENSATION AND INSU

Province	Employments covered		Insurance	Suits for damages	Special contracts	Injuries covered	Waiting period	Compensation benefits					Nonresident alien beneficiaries	Time for notice and claim	Administrative system	How compensation claims are settled	Accident reports required	Accident prevention work by— (a) Compensation commission. (b) Other agencies	Province.		
	Private	Public						Per cent of wages	Maximum and minimum weekly compensation payments	Maximum period	Death (a) Dependents (b) No dependents	Total disability (a) Permanent (b) Temporary								Partial disability and surgical aid	
Alberta. Approved Mar. 5, 1908; in effect Jan. 1, 1909. New act, Apr. 12, 1918; in effect, Jan. 1, 1919; as last amended, 1923.	Compulsory, as to enumerated employments. Exemptions: Certain classes of railroad employees, farm and ranch labor, outworkers, casual employees not in usual course of employer's business, and itinerant employments.	Compulsory, as to employments covered.	Employers must contribute to State accident fund.	Not permitted.	Waivers forbidden.	Personal injuries by accident arising out of and in the course of the employment, unless due solely to serious and willful misconduct except in case of death or serious disability. Enumerated occupational diseases included.	3 days. None if disability continues for 10 days or more.	Disability, 62½ per cent.	Death: No limit. Total disability: Maximum, \$1,140 per annum; minimum, \$10 weekly, or actual wages.	Death, during life or until remarriage of widow. Disability, during its continuance.	(a) Burial expenses, maximum, \$100; widow or invalid widower, \$35 monthly; additional payments for each child. (b) Reasonable expenses of last sickness, burial not over \$100.	(a) (b) 62½ per cent of earnings during continuance, not over \$1,140 per annum, nor less than \$10 weekly unless wages are lost.	62½ per cent of wage loss during continuance. Expenses of last sickness involving no ; in other cases omitted medical aid over's hospital fund least fund to which must contribute.	Parents only after 2 years' residence of worker in Canada if British, 1 year if of other nationality.	Notice before leaving the plant, if possible, and in any case before leaving employment; claim in 12 months.	Workmen's compensation board.	Board has exclusive and final jurisdiction over all matters; no appeal to courts.	All employers under compensation act must report all accidents within 24 hours to workmen's compensation board.	(a) Yes. (b) Factory inspector; mine inspector.	Alberta.	
British Columbia. Approved June 21, 1902; in effect May 1, 1903. New act, May 31, 1916; in effect Jan. 1, 1917; as last amended, 1923.	Compulsory, as to enumerated employments. Exemptions: Farm labor, domestic service, traveling salesmen, outworkers, and casual employees not in usual course of employer's business. Voluntary, as to exempted employments.	Compulsory, as to employments covered.	Employers must contribute to State accident fund.	Not permitted.	Waivers forbidden.	Personal injuries by accident arising out of and in course of the employment, unless due solely to serious and willful misconduct, except in case of death or serious and permanent disability. Enumerated occupational diseases included.	3 days.	Disability, 62½ per cent.	Death: Monthly pension, maximum \$65. Disability: Weekly maximum \$25.04; minimum \$5, or actual wages.	Death, during life or until remarriage of widow. Disability, during its continuance.	(a) Burial expenses, maximum, \$100; widow or invalid widower, \$35 a month; \$7.50 additional for each child; monthly maximum, \$65. (b) Burial expenses, maximum, \$100.	(a) (b) 62½ per cent of wages during disability; weekly maximum, \$24.04, minimum \$5, or actual wages.	62½ per cent of wage loss during , surgical, and hospital disfigurement of head or face. as reasonably necessary; transportation included; vision for seamen; hospital fund per-	Benefits may be reduced on basis of comparative cost of living.	Notice as soon as practicable; claim in 1 year.	Workmen's compensation board.	Board has exclusive and final jurisdiction over all matters; no appeal to courts.	All employers must report all accidents within 3 days to workmen's compensation board.	(a) Yes. (b) Department of labor; department of mines.	British Columbia.	
Manitoba. Approved Mar. 16, 1910; in effect Jan. 1, 1911. New act, Mar. 10, 1916. New act, Mar. 27, 1920; in effect Jan. 1, 1921; as last amended, 1923.	Compulsory, as to enumerated employments. Exemptions: Farm labor, domestic service, outworkers, nonhazardous clerical occupations, and casual employees not in usual course of employer's business. Voluntary, as to exempted employments.	Compulsory, as to employments covered.	Employers must contribute to State accident fund.	Not permitted.	Waivers forbidden.	Personal injuries by accident arising out of and in course of the employment, unless due solely to serious and willful misconduct except in case of death or serious disability. Enumerated occupational diseases included.	3 days.	Disability, 60½ per cent.	Death: No limit. Disability: Weekly maximum \$25.64, minimum \$12.50, or actual wages.	Death, during life or until remarriage of widow. Disability, during its continuance.	(a) Burial expenses; maximum, \$100; widow or invalid widower, \$30 a month; additional payments for each child. (b) Reasonable expenses of last sickness and burial.	(a) (b) 60½ per cent of wages during disability; weekly maximum, \$25.64, minimum \$10 (\$12.50 if temporary), or actual wages.	60½ per cent of wage loss during , surgical, and hospital; as board deems necessary, including ambers.	Included only if comity exists; benefits to correspond to rate of foreign law.	Notice as soon as practicable, not later than 30 days; claim in 1 year.	Workmen's compensation board.	Board has exclusive and final jurisdiction over all matters; no appeal to courts.	All employers must report all accidents within 3 days to workmen's compensation board.	(a) No provision. (b) Bureau of labor; mine inspector.	Manitoba.	
New Brunswick. Approved, Apr. 28, 1918; in effect Jan. 1, 1919; as last amended, 1924.	Compulsory, as to enumerated employments. Exemptions: Farm labor, domestic service, outworkers, traveling salesmen, nonhazardous clerical occupations, and casual employees not in usual course of employer's business. Voluntary, as to provincial and Crown employments.	Compulsory, as to municipal employees, except members of police and fire departments. Voluntary, as to provincial and Crown employments.	Employers must contribute to State accident fund.	Not permitted.	Waivers forbidden.	Personal injuries by accident arising out of and in course of the employment, unless intentionally self-inflicted, due to intoxication, serious and willful misconduct, or to a fortuitous event unconnected with the industry. Enumerated occupational diseases included.	7 days.	Disability, 55 per cent.	Death: Monthly pension, maximum 55 per cent of wages. Disability: Weekly maximum \$16.86, minimum \$3.	Death, during life or until remarriage of widow. Disability, during its continuance.	(a) Burial expenses, maximum, \$100; widow or invalid widower, \$30 a month; \$7.50 additional for each child; monthly maximum not over 55 per cent of wages. (b) Burial expenses, maximum, \$100.	(a) (b) 55 per cent of wages during disability; weekly maximum, \$15.86, minimum, \$3.	If temporary, 55 per cent of wage loss during disability. If permanent, amounts proportioned to disability according to scale to be established by board; total not over \$2,500.	Medical, surgical, and hospital; as may be determined as may be necessary, including ambers.	Included only if comity exists.	Notice in 14 days; claim in 1 year.	Workmen's compensation board.	Board has jurisdiction over all matters; appeal to supreme court upon questions of law, but only by permission of such court.	All employers under compensation act must report all disabling accidents within 3 days to workmen's compensation board.	(a) No provision. (b) Employers' associations; factory inspector.	New Brunswick.
Nova Scotia. Approved, Apr. 22, 1910; in effect Feb. 1, 1911. New act Apr. 23, 1918; in effect Jan. 1, 1917; as last amended, 1923.	Compulsory, as to enumerated employments. Exemptions: Outworkers, traveling salesmen, casual employees not in usual course of employer's business. Voluntary, as to exempted employment.	Compulsory, as to employments covered; members of municipal police and fire departments are excepted.	Employers must contribute to State accident fund.	Not permitted.	Waivers forbidden.	Personal injuries by accident arising out of and in course of the employment unless due solely to serious and willful misconduct except in case of death or serious and permanent disability. Enumerated occupational diseases included.	6 days. None if disability continues for more than 6 days.	Disability, 55 per cent.	Death: Monthly pension, maximum \$60, but not over 55 per cent of wages; Disability: Weekly maximum \$12.60; minimum \$5, or actual wages.	Death, during life or until remarriage of widow. Disability, during its continuance.	(a) Burial expenses, maximum, \$75; widow or invalid widower, \$30 a month; \$7.50 additional for each child; monthly maximum \$60, but not over 55 per cent of wages. (b) Burial expenses, maximum \$75.	(a) (b) 55 per cent of wages during disability; weekly maximum \$12.60; minimum \$5, or actual wages.	55 per cent of impairment of earning capacity during disability.	Medical, surgical, and hospital; for 50 days in case of injury cases; establishment benefit omitted; special provisions.	Included only if comity exists; benefits to correspond to rate of foreign law.	Claim in 1 year.	Workmen's compensation board.	Board has jurisdiction over all matters; appeal to supreme court upon questions of law, but only by permission of such court.	All employers under compensation act must report all disabling accidents within 3 days to workmen's compensation board.	(a) No provision. (b) Employers' associations; department of public works and mines.	Nova Scotia.
Ontario. Approved, May 1, 1914; in effect Jan. 1, 1915; as last amended, 1926.	Compulsory, as to enumerated employments. Exemptions: Farm labor, domestic service, outworkers, and casual employees not in usual course of employer's business. Voluntary, as to exempted employment.	Compulsory, as to employments covered.	Employers under Schedule 1 must contribute to State accident fund; employees under Schedule 2 (municipalities, common carriers, etc.) are individually liable, but may be required to insure. Private employers must insure or deposit security.	Not permitted.	Waivers forbidden.	Personal injuries by accident arising out of and in course of the employment, unless due solely to serious and willful misconduct. Enumerated occupational diseases included.	6 days. None if disability continues for more than 6 days.	Disability, 66½ per cent.	Death: Monthly pension, not over 66½ per cent of wages. Disability: Maximum \$25.64, minimum \$12.50, or actual wages.	Death, during life or until remarriage of widow. Disability, during its continuance.	(a) Burial expenses, maximum, \$125; widow or invalid widower, \$40 a month; \$10 additional for each child; monthly maximum not over 66½ per cent of wages; minimum \$12.50 per week for widow and one or more children. (b) Reasonable expenses of last sickness and burial.	(a) (b) 66½ per cent of wages during disability; weekly maximum \$25.64, minimum \$12.50 or actual wages.	66½ per cent of impairment of earning capacity during disability.	Medical, surgical, and hospital; including artificial limbs and transportation; establishment benefit permitted.	Included only if comity exists; benefits to correspond to rate of foreign law.	Notice as soon as practicable and before leaving employment; claim in 6 months.	Workmen's compensation board.	Board has exclusive and final jurisdiction over all matters; employers individually liable may make direct settlements with employees with approval of board; no appeal to courts.	All employers must report all accidents which cause disability or necessitate medical aid within 3 days to workmen's compensation board.	(a) Board may inspect for compliance with safety laws. (b) Employers' associations; department of public works; bureau of mines.	Ontario.
Quebec. Approved, May 29, 1906; in effect Jan. 1, 1910; New act, Mar. 24, 1926; in effect Apr. 1, 1927.	Compulsory, as to enumerated employments. Exemptions: Farm labor, domestic service and sailing vessels.	Compulsory, as to employments covered.	Private employers must insure or deposit security.	Not permitted.	Waivers forbidden.	Accidents by reason of or in the course of their work.	6 days. None if disability is permanent.	Disability, 50 and 66½ per cent.	Death: Monthly pension, not over 60 per cent of wages. Disability: Weekly maximum, \$25.64.	Death: During life or until remarriage of widow. Disability, during its continuance.	(a) Burial expenses, maximum \$100; widow 50 per cent of wages, 10 per cent additional for each child, total not over 60 per cent. (b) Burial expenses, maximum \$100.	(a) Two-thirds of wages for life. (b) 50 per cent of wages during disability; weekly maximum \$25; minimum \$5, or actual wages.	50 per cent of wage loss, maximum basic wage, \$2,000, minimum \$600.	Medical and hospital expenses, including transportation and necessary expenses.	No provision.	Notice in 30 days; claim in 1 year.	Courts.	Voluntary agreements between parties must have the sanction of a judge or court; disputed cases settled by courts.	All employers other than the Province must report all disabling accidents to the minister of public works and labor within 30 days.	(a) No commission. (b) Department of public works and labor; mine inspector.	Quebec.
Yukon Territory. Approved, Apr. 24, 1917.	Compulsory, as to all employments except those having less than 5 employees, outworkers and casual employees not in usual course of employer's business.	Compulsory, as to all municipal employments and hazardous territorial employments.	Not required.	Permitted in lieu of compensation after injury, if employer was negligent; defenses abrogated.	Waivers forbidden.	Personal injuries by accident arising out of and in course of the employment, unless due to intoxication, or serious and willful misconduct.	13 days. None if disability continues for more than 13 days.	Temporary total disability, 50 per cent.	Death: Monthly pension, not over 60 per cent of wages. Disability: Weekly maximum, \$25.64.	Death: During life or until remarriage of widow. Disability, during its continuance.	(a) Burial expenses, maximum \$100. (b) Expenses of last sickness and burial, maximum, \$500.	(a) \$3,000. (b) 50 per cent of wages during disability but for not over 6 months.	For specified injuries, fixed amounts ranging from \$100 to \$2,000, others proportioned to degree of total disability; maximum \$3,000.	Medical and hospital expenses, including transportation and necessary expenses.	Included only if comity exists; benefits to correspond to rate of foreign law.	Notice as soon as practicable; claim in 6 months.	Courts.	Voluntary agreement between parties; disputed cases settled by courts.	No provision.	(a) No commission. (b) Mine inspector.	Yukon Territory.

* Not provided for in compensation law.

ADMINISTRATION AND SETTLEMENT OF CLAIMS

With the exception of Quebec and Yukon, the Canadian laws provide for administration by special boards, with full and usually final powers of determination of all matters arising in connection with the subject of compensation. In Quebec adjustments or agreements not approved by a court or judge are null and of no effect. Proceedings are nontechnical and summary and designed to facilitate prompt action.

ACCIDENT REPORTING AND PREVENTION

In all jurisdictions except Yukon Territory employers are required to report accidents befalling their employees; in Quebec, to the minister of public works and labor, and in the other Provinces to the workmen's compensation boards. The common qualification is that they must be disabling or cause inability to earn full wages (New Brunswick, Nova Scotia, Ontario, Quebec), though some require the reporting simply of "an accident" (Alberta, British Columbia, Manitoba).

Inasmuch as the administration of the compensation acts is practically the sole function of the boards, there is little tendency to charge them with the duty of accident prevention. Provisions therefore are found, however, in Alberta and British Columbia, while in Ontario the board may inspect for compliance with safety laws.

NONRESIDENT ALIEN DEPENDENTS

The tendency to avoid or restrict compensation payments to non-resident dependents is hardly so evident in Canada as in the United States. However, special provision is made in all laws but that of Quebec, the most common disposition of the matter being to allow compensation if by the law of the country of residence it would be allowed to a dependent of a citizen of the Province in question killed in employment in the foreign country. This is in effect the provision of the laws of Manitoba, New Brunswick, Nova Scotia, Ontario, and Quebec. Except in New Brunswick, it is further provided that benefits will be limited in amount to the scale established by the foreign law; while in British Columbia compensation is allowed without reference to comity but may be reduced to correspond to any existing difference in cost of living. In Alberta only parents will be considered as dependents of a workman after two years' residence in the Province if British, or after one year if of other nationality.

The appended chart presents in conspectus the items discussed above. The same headings are used as in presenting the State laws, though except for exactness in comparability two might have been omitted—the one headed "Suits for damages"—such proceedings being uniformly forbidden except in Yukon, where an option is given a workman whose injury is due to the negligence of the employer, and that headed "Special contracts," no substitute schemes being allowed in any Province; even the purpose of uniformity would not justify the reproduction of the columns relating to election when all the laws are compulsory.

The text of the laws follows the chart.

TEXT OF WORKMEN'S COMPENSATION LAWS OF CANADA

ALBERTA

ACT OF 1918¹

The workmen's compensation act (accident fund)

1. *Title.*—This act may be cited as “The workmen's compensation act (accident fund).”

2. *Definitions.*—In this act and in the schedules hereto, unless the context otherwise requires—

(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 fund” shall mean any fund provided for the payment of compensation, outlays, and expenses and the cost of the installation and operation of mine rescue stations under this act.

(c) “Board” shall mean the commission constituted under this act.

(cc) “Child” shall include an illegitimate child, and any child of any child, and the child of a husband or wife by a former marriage.

(d) “Compensation” shall include medical aid.

(e) “Construction” shall include reconstruction, repair, alteration, and demolition.

(f) “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.

(g) “Employer” shall mean 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 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 municipal corporations, and school boards, and commissions and boards having the management of any work or service operated for a municipal corporation, 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; a contractor contracting for the performance of mining operations for another person engaged in the industry of mining shall not be deemed to be an employer within the meaning of this act, but such other person shall be deemed to be the employer of the said contractor if actually working and of the workmen employed by him.

(h) “Employment” shall mean 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, any department or part of such undertaking which would if carried on separately be an industry within the scope of this act.

(i) “Industry” shall mean any establishment, undertaking, trade, and business included in the schedules hereto, whether the same be carried on in conjunction with other occupations or separately.

(j) “Industrial disease” shall mean any of the diseases mentioned in the enumeration of industrial diseases hereto and any other disease which by the regulations is declared to be an industrial disease.

(k) “Invalid” shall mean physically or mentally incapable of earning.

(l) “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.

(m) “Medical referee” shall mean a medical referee appointed by the board.

¹ Office consolidation to Apr. 10, 1925; no amendments in 1926.

(n) "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 standing in loco parentis to the workman or to whom the workman stands 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 each of his parents and grandparents.

(o) "Mine" shall mean a mine as defined by the mines act.

(p) "Regulations" shall mean regulations made by the board under the authority of this act.

(q) "Workman" shall mean 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 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, and shall include the employees of a contractor contracting for the performance of mining operations for another person engaged in the industry of mining, and also such contractor whilst actually working.

(r) "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.

(s) "Medical aid" shall include the several matters and things, including all necessary drugs and dressings, which the board is empowered by this act to provide for injured workmen.

(t) "Mine rescue and first aid work" shall include the equipment necessary for such work, the repairs thereof, the training necessary for such work, and the supplies used therein.

3-19. *Workmen's compensation board.*—[Administration rests with a commission of not more than three members to be appointed by the lieutenant governor in council, who designates one member to be chairman. Terms are during good behavior, but commissioners may be removed at any time for cause. Two members constitute a quorum, and the board has the same power as the supreme court for compelling witnesses to attend, produce books, papers, documents, etc., and depositions may be taken in manner similar to that prescribed by the rules of the supreme court. The board may appoint necessary officers to serve during its pleasure and has exclusive jurisdiction to hear and determine all matters and questions arising under the act. Its actions are final and conclusive and not open to question or review in any court or restraint by injunction, prohibition, or other process, nor are they removable by certiorari or otherwise into any court. The board may reconsider its own acts and rescind, alter, or amend. Its decisions are to be upon the real merits and justice of the case, without being bound to follow strict legal precedent.

Without limiting jurisdiction thereto, the board is declared to have exclusive jurisdiction to determine whether an injury comes within the act, the degree of disability resulting, the effect on earning capacity, the amount of average earnings, the amounts of any refunds or adjustments of assessments, the fact of employment, the existence of dependency and questions of the application of the statute to any industry or department thereof or workman employed therein. The board may act on the report of any of its officers or a member, and may make such regulations and prescribe such forms for carrying out the act as it may deem expedient. It may add to, withdraw, or rearrange any of the industries which are or may be included in the schedules appended. Industries not within the scope of the act may be placed thereunder on application of the workmen or a majority thereof or of the employer except as to those excluded by paragraphs (a), (b), (c), and (e) of section 70. Application shall be for a period of not less than 12 months, at the end of which the employer or a majority of his employees may on notice withdraw. but in default of such notice the industry will remain under the act until withdrawn. The board may require an employer to include in his pay roll the wages of all workmen in any industry which, if carried on separately, would come within the act, and on such requirement being made the workmen shall be deemed to be within the scope of the act. Questions of inclusion of an industry or any part thereof are to be decided finally by the board. Annual reports

of the transactions of the board are to be made to the lieutenant governor in council.]

20-30. *Premiums.*—[The board is required to make assessments from time to time on the employers in such amounts as to pay the expenses of the board in administering this act and the electrical protection act, including mine rescue and first-aid work; to pay benefits from the accident fund; to provide capitalized reserves in respect of such accidents as have occurred; to provide a disaster fund; and to provide for losses which, in the opinion of the board it would be unfair to place upon the employers in any particular class. No capitalized reserve fund is to be provided for employments under the Dominion or provincial Governments.

No assessment shall be less than \$2.50, and no earnings of any workman in excess of \$2,000 per year shall be used as a basis for assessments. If the workmen or any group employ a workman as checkweigher, checker or otherwise, premium is to be paid in respect of such workman, and the employer may deduct the amount from the wages of the workmen or group of workmen employing him. Employers are liable whether the assessment is made or not, and an employer continues liable in cases of deficiency arising from default even though the deficiency has been made up in whole or in part by a special assessment.

Provision is made for the formation of reserve funds, the recovery of premiums by actions as for debt, and for prosecution for default or for violations of rules or regulations. If an accident is found to be due entirely to the failure of the employer to comply with the directions of the board or the regulations made under this act, the board may levy and collect from the employer a sum not exceeding one-half of the amount of compensation payable in respect of the injury, but not more than \$300 in any case. If the default was excusable, the employer may be relieved from such liability in whole or in part. Employers are required to submit wage statements annually, and at such other times as the board may require, and it may examine the books and accounts of employers for the purpose of ascertaining the amounts of the payroll. If incorrect statements are found, adjustment is required.

The board has power to investigate and inspect as to safety and determine and enforce suitable devices and safety standards. Employers are required to keep a careful account of wages paid and any amount due the board on any assessment made by it is a prior charge upon the property of an employer.]

31-33. *Accident fund.*—[Separate accident funds are to be maintained for each schedule, and compensation and administration costs for such schedules are to be paid therefrom. If funds are not available at any time when a payment for compensation becomes due, the lieutenant governor in council may direct an advance to be made out of the general revenue fund for the purpose. Individual accounts are to be kept with the different employers, but for the purpose of paying compensation each accident fund is to be deemed one and indivisible. If the board finds that any employer does not take sufficient precautions as to safety or sanitation, it may assess an additional contribution as it deems just.]

34. *Compensation payable; waiting time.*—(1) 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 unless the injury is attributable solely to the serious and willful misconduct of the workman and death or serious disablement does not result from it.

(1a) Notwithstanding any of the provisions of this act, when a workman is frostbitten in the course of his employment, such occurrence shall be deemed to be an accident arising out of and in the course of his employment within the meaning of this act.

(1b) The preceding subsection shall be deemed to have been in effect from the last day of September, 1924.

(2) Compensation shall not be payable out of the accident fund to an employer or the members of the family of an employer unless application to come within the scope of this act has been received and approved by the board.

(3) Such application shall contain the names of the employer and members of the family of the employer, together with the estimated amount of wages for the ensuing year for such employer and members of the family of the employer.

(4) Upon compliance with the provisions of this section and of section 21 of this act, such employer and members of his family shall be deemed workmen and they and their dependents shall be entitled to compensation as provided by this act.

(5) Assessments shall be levied upon the said estimates and compensation shall be payable on the basis of the same.

(6) If a workman is disabled for a period of 10 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 10 days he shall be paid for and from the fourth day after the accident.

35. *Nonresident dependents.*—In the case of an injury to a workman after the expiry of two years, if he is of British nationality, or of one year, if he is not of British nationality, 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 dependents as are resident in Canada.

36. *Who to contribute to fund.*—(1) Employers to whom this act applies shall be liable to contribute to the accident fund, as herein provided.

(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.

(3) 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.

(4) 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.

(5) 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.

(6) Except as authorized by 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 he 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 him against any liability which he has incurred or may incur under this act.

37. *Accidents outside Province.*—(1) Where an accident which would entitle the workman or his dependents to compensation under this act, if it happened in the Province, happens while he is employed elsewhere than in the Province, the workman or his dependents shall be entitled to compensation under this act—

(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 workman is a resident of the Province and the nature of the employment is such that in the course of the work of service which the workman performs it is required to be performed both within and without the Province.

(2) Except as provided by subsection (1) of this section, 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.

38. *Suits forbidden.*—[The provisions of this act are exclusive and no action for the recovery of compensation will lie, but all claims are to be heard and determined by the board.]

39. *Change of residence.*—[If a workman receiving periodical payments leaves the Province, he is entitled to no further benefits, unless on certification of injury of a permanent nature, when quarterly payments may be made. Examination by a medical referee may be required.]

40. *Waivers.*—[Agreements waiving an employee's right under the act are absolutely void.]

41. *Assessments.*—[Benefits under the act may not be assigned, attached, or any claim set off against them without the approval of the board.]

42. *Notice.*—[Notice of accident must be given to the employer before the injured person leaves the plant, if he is able to give it, and in every case before he has voluntarily left the employment. Claims are barred unless made within 12 months from the happening of the accident, or of death if the injury was fatal.]

43, 44. *Medical examination.*—[If, and only if, required by the board, a claimant must submit to examination by a medical referee, who must certify to the board the condition of the workman and his fitness for employment, or if unfit the cause therefor. Failure or obstruction by the workman suspends the right to benefits.]

45. *Special medical treatment, etc.*—[If the board is of the opinion that a special surgical operation, medical treatment, or apparatus will avoid heavy expense for permanent disability or will appreciably alleviate an injury, the same must be supplied and the cost met from the accident fund, but without affecting payments made to the workman.]

46. *Review.*—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 such payment or may increase it to a sum not beyond the maximum hereinafter prescribed.

47. *Retarding recovery.*—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.

48. *Lump sums.*—[Commutation to a lump sum may be made in any case; and where the board is of the opinion that the interest or pressing need of the beneficiary warrants it advance payments may be made. In cases of death or permanent total disability or where there is permanent partial disability in excess of 10 per cent of the earning capacity no commutation will be made, except on application and at an amount agreed to by the beneficiary.]

49. *Benefits.*—(1) Where death results from injury the amount of compensation shall be—

(a) The necessary expenses of burial of the workman, not exceeding \$100;

(b) Where a widow or invalid widower is the dependent, a monthly payment of \$35;

(c) Where the dependents are a widow or invalid widower and one child under the age of 16 years, a monthly payment to the widow or invalid widower of \$35, with an additional payment of \$12 in respect of such child; where the dependents are a widow or invalid widower and two children under the age of 16 years, a monthly payment to the widow or invalid widower of \$35, with additional payments of \$12, in respect of the eldest of such children and \$10 in respect of the other child; where the dependents are a widow or invalid widower and three children under the age of 16 years, a monthly payment to the widow or invalid widower of \$35, with additional monthly payments of \$12 in respect of the eldest of such children, \$10 in respect of the second eldest of such children, \$9 in respect of the youngest of such children; and where the dependents are a widow or invalid widower and four or more children under the age of 16 years, a monthly payment of \$35 to the widow or invalid widower and additional monthly payments of \$12 in respect of the eldest of such children, \$10 in respect of the second eldest of such children, \$9 in respect of the third eldest of such children, and \$8 in respect of each of all the other children;

(d) Where the only dependents are children, a monthly payment of \$15 to each child under the age of 16 years;

(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 \$30 per month to a parent or parents, and not exceeding in the whole \$65 per month.

(2) Where the workman leaves no widow, or the widow subsequently dies and it seems desirable to continue the existing household, and an aunt, sister, or other suitable person acts as foster mother in keeping up such household and maintaining and taking care of the children entitled to compensation, in a manner which the board deems satisfactory, such foster mother while so doing shall be entitled to receive the same monthly payments of compensation for herself and the children as if she were the widow of the deceased, and in such case the children's part of such payments shall be in lieu of the monthly payments which they would otherwise have been entitled to receive.

(3) As long as any payment is being made in respect of a child under the provisions of the preceding subsection, no other payment shall be made in respect of such child.

(4) "Existing household" in this section shall mean any household where all the children are maintained and taken care of by one foster mother.

(5) All payments to foster mothers under the provisions of this section shall cease when all the children have either reached the age of 16 years or have died.

(6) In the case provided for by paragraph (e) of subsection (1) of this section 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.

(7) 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.

(8) Where there are both total and partial dependents, the compensation may be allotted partly to the total and partly to the partial dependents.

(9) 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 person or be applied in such manner as it may deem most for the advantage of the child.

(10) Where a payment to any one of a number of dependents ceases, the board shall 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.

49a. *Commitment to jail, etc.*—(1) Where any person entitled to compensation under this act is committed to a jail or prison, compensation shall not be payable to such person for the period of his confinement therein, but the board may pay the whole or any part of such compensation to any dependent of any person so committed.

(2) If any person entitled to compensation under this act is committed to any institution, the compensation otherwise payable to or in respect of such person may in the discretion of the board be paid to the governing body of the said institution.

50. *Remarriage of widow.*—(1) Subject to the provisions of section 49 hereof, 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 of \$480, and such lump sum shall be payable within one month after the date of her marriage.

(2) Subsection (1) of this section shall not apply to payments to a widow in respect of a child, but the payments provided in paragraph (c) of subsection (1) of section 49 hereof in respect of a child other than an invalid child shall cease when the child attains the age of 16 years or dies.

51. *No dependents.*—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.

52. *Permanent total disability.*—(1) 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 62½ per cent of his average weekly earnings.

(2) In the following cases it shall be conclusively presumed that the injury is permanent and results in total disability, that is to say:

- (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.

(3) In the case of injuries other than those specified in the next preceding subsection, the board shall determine whether permanent total disability has resulted or not.

53. *Permanent partial disability.*—(1) Where permanent partial disability results from the injury, the compensation shall be a weekly payment of 62½ 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 its opinion 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) Notwithstanding the provisions of this section, the board may in respect of accidents happening after the 30th day of April, 1924, and 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 lump sums or periodical payments or both as compensation.

54. *Temporary total disability.*—Where temporary total disability results from the injury, the compensation shall be on the same scale as prescribed by section 52 hereof, but shall be payable only so long as the disability lasts.

55. *55. Temporary partial disability.*—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 62½ 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.

56. *Computing earnings.*—(1) In ascertaining the average weekly earnings of a workman for the purposes of this act, the board may take into consideration any number of weeks during which the workman has been employed by his employer previous to the happening of the accident.

(2) If by reason of the shortness of time during which the workman has been in the employment of his employer, or the casual nature 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 earnings which are being earned by a person in the same grade of employment.

(3) 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.

(4) 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.

(5) The amount of compensation to which an injured person shall be entitled under the provisions of this act shall, notwithstanding any other provisions thereof, not exceed the rate of \$1,140 per annum.

(6) For the purpose of ascertaining the amount of compensation payable under the provisions of sections 53 and 55, 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, but not so as in any case to exceed \$2,000 per annum.

57. *Minimum benefits; earnings; minors.*—(1) The amount of compensation to which an injured person shall be entitled for temporary total or permanent total disability under the provisions of this act shall not be less than \$10 per week, or where his average earnings are less than \$10 per week the amount of such earnings.

(2) Notwithstanding that the ascertainment of the amount of compensation is based upon the average weekly earnings, such compensation may be paid periodically and at such intervals as may seem good to the board.

(3) Notwithstanding the provisions of this act with reference to average earnings, the board may, in its discretion, agree with the workmen and employers or their representatives, in any industry or part thereof, as to what is the average wage earned by the workmen, and such average earnings when agreed upon shall be deemed to be the average earnings of the workmen affected.

(4) Where the workman was at the date of the accident under 21 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.

58. *Other benefits.*—(1) 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.

(2) For the purpose of ascertaining the amount of compensation due, such amount may be computed on a daily basis.

59. *Minors.*—Where a workman or a dependent is under the age of 21 years or under any other legal disability, the compensation to which he is entitled may be paid to him or be applied in such manner as the board may deem most for his advantage.

60. *Medical aid.*—[No plan for providing medical aid to workmen under the act shall be valid, and employers may retain nothing from the wages of employees for such purpose unless approved by the board. If no such plan has been approved, the board may require the employer to retain designated sums for medical aid from the wages and pay the same to the board to form a part of the accident fund to be used as a special fund for medical aid. Employers failing to retain such sums are personally liable in the amounts directed. When the board provides medical aid or takes pay therefor, the amount payable to any physician is to be fixed by the board, and no greater amount may be recovered from it or any other person. The board may make contracts with doctors, nurses, hospitals, etc., but where it deems it expedient, selection of the physician may be left with the injured workman. Immediate transportation to a hospital and necessary attention on the journey must be provided to all injured workmen in need of hospital treatment on information to the employer or his agent.]

61. *First aid.*—Employers in any industry shall, when required by the board, install and maintain such first-aid appliances and service as the board may direct.

62. *Industrial diseases.*—(1) Where—

(a) 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 12 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, and the disablement shall be treated as the happening of an accident.

(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 enumeration of industrial diseases hereto and the disease contracted is the disease in the first column of the said schedule set opposite to the description of such 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.

63-65. *Notices and receipts.*—[Employers must keep conspicuously posted certificates or duplicates of their last assessment receipts and such other notices as the board may require. It is the duty of workmen entering employment to satisfy themselves that the employer has paid his assessment and that subsequent assessments are paid when due. No employer may employ workmen without complying with the provisions of the act, and notice must be given within 10 days after he ceases to be an employer within the meaning of the act, together with a statement of the total amount of wage earnings for the portion of the current year.]

Employers must be given notice of all accidents to their workmen within 24 hours after knowledge thereof; also of return to work within 24 hours after that fact is known. Physicians and surgeons attending injured workmen must report within five days after the first attendance and also on the first day of each month and at such other times as the board may require. All books, notices, etc., are to be in a form approved by the board.]

66-68. *Penalties.*—[Penalties of fine or imprisonment are imposed for violation of the act, but no prosecution may be instituted therefor except by some person appointed by the board.]

69. *Application.*—[The act applies to the employments designated in the schedules appended.]

70. *Exemptions.*—[Exempt are those employees whose employment is of a casual nature and otherwise than for the purpose of employer's trade or business unless brought within the act by action of the board; outworkers; and persons employed in itinerant industries; certain employees of designated railway companies (extensive list of operative and maintenance men, shopmen, and accessory workers; the same companies are named in classes 91-94, schedule 2);¹ persons employed in the industry of farming and ranching; all subject to the powers of the board as to inclusions, classifications, etc.]

SCHEDULE 1

Class 1. Employment incidental to or connected with coal mining, other than coal mining by the removal of the overlying strata;

Class 2. Employment incidental to or connected with the operation of coke ovens;

Class 3. Employment incidental to or connected with the operation of briquetting plants;

Class 4. Employment incidental to or connected with mining other than coal mining;

Class 5. Employment of employees of workmen in or about mines;

Class 6. Employment incidental to or connected with coal mining by the removal of the overlying strata.

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, operation and maintenance of freight and passenger elevators, including the work of janitors in buildings where such elevators are operated; quarrying, lumber yards, wood yards, ice, and any occupation incidental to or connected with the industries enumerated in this schedule, also

¹The compensation board reports about 55 per cent of railway men in the Province excluded, and about 45 per cent included.

including moving pictures and theaters, 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:

Classification

Class 13. Lumbering, logging, river driving, rafting, booming; sawmills, shingle mills, lath and planing mills, sash and door factories, lumber yards (including delivery); manufacturing of wooden boxes, furniture, fixtures, small boats, canoes, mattresses, bed springs, artificial limbs; upholstering and picture framing; carpenter, joiner, or cabinet work in shop.

Class 15. Sand, shale, clay, or gravel pits; manufacture of brick, tile, sewer pipe, glass products, porcelain, pottery, cement, concrete, plaster blocks, artificial stone; stone cutting and dressing; quarrying, stone crushing, lime kilns, marble works; manufacture, transmission, or distribution of natural or artificial gas or oil; manufacture of paint, chemicals, compounds, artificial ice; boring, drilling, sinking of artesian wells; preparation of metal or minerals; reduction of ores and smelting; oil refineries; creosoting of timbers; handling of natural ice.

Class 20. Garages, blacksmith shops, machine shops; tinsmithing and sheet-metal works; gas or electric welding; locksmiths, gunsmiths; ornamental iron works, foundries, rolling mills, fabrication of structural steel, iron, or metal; manufacture of agricultural implements, vehicles, typewriters, cash registers, adding machines, rubber stamps, pads, stencils, gold or silver ware, jewelry.

Class 27. Grain elevators, flour milling; manufacturing of cereals, cattle foods, liquor, beverages, wine, vinegar, cider (including bottling); packing plants, abattoirs; manufacturing of meat products, soap, toilet preparations, drugs, medicines.

Class 37. Warehousing, storage, teaming, cartage; wood and coal yard (including teaming); manufacture of wearing apparel; power laundries, dyeing, cleaning, bleaching; printing, lithographing, engraving; moving pictures and theaters; manufacture of leather goods, rubber goods, tobacco products, textiles, fabrics; scrap and junk dealers, liveries, stable, taxi, or motor; aeroplane transportation; aeroplane mechanics; janitors, mail contractors, food products, creameries, and bakeries.

Class 39. Building construction, concrete or cement work, bricklaying, masonry, structural carpentry, lathing, plastering, floor laying, painting, decorating, renovating, roofing; sheet-metal work on buildings; electric wiring; installation of lighting fixtures; plumbing, heating, sanitary engineering, gas and steam fitting, sewer or water work construction; tunneling, well digging, trenching; excavation work for foundations; road making, street paving, culvert construction, house wrecking, house moving, construction, installation or operation of electric-light plants, power plants, telegraph lines, telephone lines; bridge construction; installation of elevators, fire escapes, engines, boilers, heavy machinery; erection of windmills; railway construction; irrigation operations, dredging, fishing; operation of boats; window cleaning; exhibition associations.

Class 45. Operation of express companies in connection with railways.

Class 89. Municipal corporations.

Class 91. Canadian Pacific Railway Co.

Class 92. Grand Trunk Pacific Railway Co.

Class 93. Canadian National Railways.

Class 94. Edmonton, Dunvegan & British Columbia Railway; Central Canada Railway.

Class 97. School boards; University of Alberta.

Class 98. The Alberta & Great Waterways Co.; Lacombe & Northwestern Railway Co.

Class 99. The Workmen's Compensation Board.

SCHEDULE 3

Class 95. Employment by Dominion Government.

Class 96. Employment by provincial government of Alberta; or by any permanent board or commission appointed thereunder, other than the workmen's compensation board.

ENUMERATION OF 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.

BRITISH COLUMBIA

ACTS OF 1916

CHAPTER 77.—*Compensation of workmen for injuries*¹

1. *Short title.*—This act may be cited as the "workmen's compensation act."

2. (1) *Definitions.*—In this act, unless the context otherwise requires—

"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.

"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 23 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

¹ As last amended, 1925.

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 corporation.

"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 101 of the "coal mines regulation act."

(2) This act shall not apply to domestic servants or to their employers.

PART I.—COMPENSATION TO WORKMEN AND DEPENDENTS

4. *Application.*—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, water works 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 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 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.

5. *Admission of industries.*—(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 workman, as the case may be, as being within the scope of this part, and upon such admission the industry or workman shall be deemed to be within the scope of this part.

(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 dependent to the same compensation as if the employer were a workman within the scope of this part.

(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.

6. *Public employees.*—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.

7. *Compensation.*—(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.

(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: *Provided*, That where the disability is of more than 14 days' duration, compensation shall be payable from the date of disability.

(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.

(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.

8. *Industrial diseases.*—(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 12 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:

(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 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 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.

9. *Accidents happening out of Province.*—(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).

10. *Choice of remedies.*—[If the accident occurred in a country or place in which compensation is given by law, the injured workman or his dependents must choose between such law and this statute. If no election is made, it will be presumed that compensation is not claimed under this act. Such notice must be given within three months unless further time is allowed by the board.]

11. *Liability of third party.*—[If action lies against a third party for the injury, either remedy may be pursued. If action is brought and less than the compensation allowance recovered, the party is entitled to the difference. If compensation is claimed, the board is subrogated to the right of action against such third party. In no case may an action be brought against an employer within the scope of this part of the act; but if it appears that the injury is due to the negligence of an employer or his workman in another class under the act, the compensation awarded must be charged against such class.]

12. *Remedy exclusive.*—[The provisions of this part are in lieu of all rights of action against an employer. Minors engaged at permitted employments are deemed *sul juris* for the purposes of this part of the act; and where any action on account of injury is brought, the board may determine whether the case is one governed by this part of the act, which determination shall be final and conclusive, and the action shall be forever stayed if the case is held to come under this part.]

13-15. *Waivers; assignments, etc.*—[Agreements attempting to waive the benefits of the act are void, and, except for the provision as to medical aid, no deduction may be made from the wages of workmen as a contribution toward indemnifying the employer against his liability under this part of the act. Benefits shall not be assigned or attached nor pass by operation of law except to a personal representative.]

16. *Death benefits.*—(1) Where death results from the injury the necessary expenses of the burial of the workman, not exceeding the sum of \$100, shall be paid in addition to all other compensation payable under this section.

(2) Where death results from the injury compensation shall be paid to the dependents of the deceased workman as follows:

(a) Where the dependent is a widow or an invalid widower without any dependent children a monthly payment of \$35 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 \$35, with an additional monthly payment of \$7.50 for each child under the age of 16 years and for each invalid child over that age, not exceeding in the whole \$65.

(c) Where the dependents are children without any widow or invalid widower a monthly payment of \$15 to each child under the age of 16 years and to each invalid child over that age, not exceeding in the whole \$60; and

(d) Where there is no widow, invalid widower, child under the age of 16 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 \$30 per month to a parent or parents, and not exceeding in the whole \$45 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 \$30 per month, and not exceeding with the compensation otherwise payable under this subsection \$65 per month.

(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.

(g) [If the care of a household devolves on an approved person acting as foster mother, such person may be awarded the same monthly payments for herself and the children as if she were the widow of the deceased workman.]

(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) 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.

(5) Payments in respect of a child under the age of 16 years shall cease when the child attains the age of 16 years or dies, provided that in case the child at the time of attaining the age of 16 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 16 years shall cease when the child ceases to be an invalid or dies.

(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.

17. *Reserves for benefits to alien dependents.*—[Where smaller amounts are paid to nonresident aliens under clause (f), subsection (2) above, the same reserve shall be made as in the case of other classes of beneficiaries. Excess accumulations are to be applied semiannually to make up payments to children residing within the Dominion who have not received the full award on account of the maximum monthly limit fixed by the law, any remainder to go to widows and other dependents in order, undistributed balances to be carried over. If the payments under the above provision do not bring up the amount of compensation to the full amount due but for the maximum limitation, such additional amounts as may be necessary are to be paid from the accident fund.]

18. *Remarriage.*—(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; but not to exceed in any case the sum of \$480.

(2) Subsection (1) shall not apply to payments to a widow in respect of a child.

19. *Permanent total disability.*—(1) Where permanent total disability results from the injury, the compensation shall be a periodical payment to the injured workman equal in amount to 62½ per cent 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 \$5 per week, unless the workman's average earnings are less than \$5 per week, in which case he shall receive compensation in an amount equal to his average earnings.

20. *Permanent partial disability.*—(1) Where permanent partial disability results from the injury, the compensation shall be a periodical payment to the injured workman equal in amount to 62½ 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 the compensation shall be payable during the lifetime of the workman.

(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.

21. *Temporary total disability.*—(1) Where temporary total disability results from the injury, the compensation shall be the same as that prescribed by section 19, but shall be payable only so long as the disability lasts.

(2) The compensation awarded under this section shall not be less than an amount equal to \$5 per week, unless the workman's average earnings are less than \$5 per week, in which case he shall receive compensation in an amount equal to his average earnings.

22. *Temporary partial disability.*—Where temporary partial disability results from the injury, the compensation shall be the same as that prescribed by subsection (1) of section 20, but shall be payable only so long as the disability lasts.

23. *Medical aid.*—[Medical, surgical, and hospital treatment, transportation and apparatus, including artificial members must be supplied as the board 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. In emergency cases, a physician may be called in other than the one provided by the board, and, if found justifiable, reasonable charges will be paid by the board. Employers may be authorized to furnish medical aid at the expense of the board on terms fixed by it. Approved plans for medical aid may be maintained, subject to such conditions as the board may require. Reductions may be made from the wages of the employees in accordance with the terms settled by the plan or determined by the board. Such activities are under the supervision and control of the board at all times. Fees and charges for medical aid under the act may not be more than would properly and reasonably be charged the workman if he himself were paying.]

The foregoing provisions do not apply in the case of maritime workers covered by the provisions of the sick mariners' fund of the Canada shipping act.

The act authorizes selection by the employee or his employer of competent physicians without distinction, but without limiting the power of the board to supervise and provide for such services when it deems it expedient to exercise the power in order to procure prompt and efficient medical aid.]

24. *First aid.*—[The board may direct a supply of such first-aid appliances and service as it may deem proper in any industry. If the employer fails or refuses to make such installation, the board may do so and charge the cost to the employer, with the same power of enforcing payment as in respect of collecting premiums.]

25. *Average earnings.*—(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 \$2,000 per year.

(2) Where the workman was at the date of the accident under 21 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.

26. *Deductions in certain cases.*—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.

27. *Mode of payment; lump sums.*—[Benefits are to be paid periodically as the board may direct, and to suitable persons, whether the legal guardian or not, in case of minors and mental incompetents. The whole or any part of periodical payments may be commuted to one or more lump sums in the discretion of the board. In case of death or permanent total disability, or permanent partial disability of more than 10 per cent, no commutation can

be made except on application of the beneficiary, except that in the case of nonresident aliens the board may commute in its discretion.]

28. *Accident fund.*—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 29 and 30, be divided into the following classes:

Class 1. Lumbering; logging; sawmills; planing mills; manufacture of pulp and paper.

Class 3. Coal mining.

Class 4. Mining (other than coal); reduction of ores and smelting; quarrying; manufacture of brick, lime, or cement.

Class 5. Manufacture of iron and steel; manufacture, alteration, and repair of iron, steel, and metal products.

Class 6. Manufacture of compounds, paints, chemicals, liquors, food products, glass, leather, leather goods, rubber, rubber goods, paper products, wood products, textiles, clothing; flour milling; handling of grain; operation of steam-heating plants, cold-storage plants, and elevators.

Class 7. Construction of buildings, railways, bridges, ships, roads, sewers, irrigation works, and aeroplanes; subaqueous construction, dredging, well drilling, pile driving.

Class 8. Construction and operation of electric railways, electric light and power plants, lines, and appliances, gasworks, telegraph and telephone systems.

Class 9. Navigation, stevedoring.

Class 10. Canadian Pacific Railway Co.; Canadian Pacific Ocean Services (Ltd.); Esquimalt & Nanaimo Railway Co.; Kettle Valley Railway Co.; Dominion Express Co.; Consolidated Mining & Smelting Co. of Canada (Ltd.); West Kootenay Power & Light Co. (Ltd.).

Class 11. Grand Trunk Pacific Railway Co.; the Grand Trunk Pacific Coast Steamship Co. (Ltd.); the Grand Trunk Pacific Telegraph Co.; the Grand Trunk Pacific Development Co. (Ltd.).

Class 12. Canadian Northern Pacific Railway Co.; Canadian Northern Steamships (Ltd.); Canadian Government Merchant Marine (Ltd.); Canadian Northern Telegraph Co.; Great Northwestern Telegraph Co. of Canada; Canadian National Express Co.

Class 13. The Crown in right of the Province.

Class 14. Municipalities.

Class 15. Fishing; whaling; canning or packing of fish; kelp collecting; oyster cultivation; manufacture of fish oil or fertilizer.

Class 16. Manufacture of explosives, fireworks, fuse, or nitrogen products.

Class 17. Teaming; warehousing and storage; auto transportation; operation of coal or wood yards; retail lumber yards; wholesaling.

Class 18. The Great Northern Railway Co.; the American Railway Express Co.

29. *Creation and rearrangement of classes.*—(1) The board may—

(a) Create new classes in addition to those mentioned in section 28;

(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.

30. *Industries to be assigned.*—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.

31. *Pay rolls.*—[Employers are required to keep full and accurate particulars of their pay rolls, and furnish estimates for the year next following, together with such other information as the board may require. At or after the close of each calendar year and at other times as required verified copies of actual pay rolls must be furnished, which failing the board may make its own estimate and base its assessments thereon, which assessment

shall be binding. Such pay roll shall include only workmen and employments within the scope of this part of the act, and any wages in excess of \$2,000 per year for any workman must be deducted.]

32. *Premiums.*—[Annual assessments are to be made and collected to provide for the medical aid fund, the accident fund, reserves, and catastrophes. Assessments may be made in such manner and form as the board deems adequate and expedient, collections to be made half yearly, quarterly, or monthly or otherwise; or if sufficient funds are in hand any installment may be abated or its collection deferred. If an estimate for any class has proved insufficient, further assessments may be made or a temporary advance made out of the reserve to meet the deficiency. Due notice of any assessment must be given.]

33. *Workmen's contribution.*—[Employers required to pay assessments as above are authorized and required to retain from the wages of each workman 1 cent for each day or part of the day worked as a contribution toward the cost of medical aid. Additional costs are to be assessed against employers generally except those continuing an approved scheme under section 23. No contributions are required from the employees on board a vessel on which duty has been paid for the benefit of the sick mariners' fund.]

34. *Contribution from Province to accident fund.*—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 \$50,000, shall be paid out of the consolidated revenue fund to the board to form part of the accident fund.

35. *Board to classify rates.*—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.

36. *Temporary industries.*—(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.

(2) Every employer who makes default in complying with any requirement of the board under subsection (1) shall be guilty of an offense against this part.

37-40. *Collections.*—[Assessments not duly paid may be collected by action at law. Where a default is made in any payment or part thereof, the board may certify the fact, such certification to be filed with a registrar of a court, whereupon an order shall be entered enforceable as a judgment. If such judgment is returned unsatisfied and the employer continues in the industry, the board may apply for an order restraining the conduct of the industry until the assessments are paid. The same process applies for the collection of funds for medical aid. Liability for penalties attaches in case of default, but the board may relieve the employer in whole or in part if satisfied that the default was excusable.]

41. *Violation of regulations.*—[In case of an injury held to be due entirely to the failure of the employer to comply with the directions and regulations of the board, a contribution may be levied not exceeding one-half the benefit payable nor \$300.]

42, 43. *Accounts; adjustments.*—[Separate accounts are to be kept of each class in such fund, but for the purpose of payments the accident fund is to be deemed one and indivisible. Adjustments are to be made of assessments annually, and wherever any industry changes ownership deficiencies may be apportioned or credits awarded in accordance with the proportions of the pay rolls for the respective periods.]

44, 45. *Contractors.*—[Deductions may be made from the payment due any contractor with any municipal corporation for the assessment in respect of the work done or service operated by him.]

Both the principal and the contractor are liable for the amount of any assessment on account of work done, and collection may be made from either or partly from one and partly from the other, but unless otherwise provided in the contract, the contractor is, as between himself and his principal, primarily liable. The same rule applies in the case of subcontractors; but if in any case the contractor or subcontractor is not assessed, his workmen may, in the discretion of the board, be deemed employees of the principal.]

46. *Preferences; assessments.*—[The amount due the board by any employer on any assessment under this act or otherwise ranks above all liens, charges, and mortgages or any sort of property used in connection with the industry, except liens for wages.]

47-52. *Procedure.*—[Claimants must give notice in writing as soon as practicable after the happening of an accident; or in the case of an industrial disease, in the event of death, disablement, or suspension from employment, such notice must be given to the employer who last employed the workman in the employment to the nature of which the disease was due. Notice may be personal on any member of the firm or officer of a corporation or an agent in charge, or by registered mail. Failure to give notice is a bar to claims unless notice could not have been given for some sufficient reason, or the agent had knowledge of the injury, or if the board is of the opinion that the claim is a just one and ought to be allowed. Employers are required to report accidents within three days, giving required particulars, including the name and address of the physician by whom the workman was attended. Further reports are to be made as may be required by the board. Unexcused failures to report constitute offenses under the act.]

Claims must be filed within one year after the date of the injury, or, in fatal cases, after the death, which failing, no compensation is payable. Physicians are required to furnish such reports as the regulations of the board may direct, and to give all reasonable and necessary information and assistance to claimants. Claimants must, if requested by the board, submit to medical examinations, refusal suspending the right to benefits during the period thereof. Persistence in insanitary or injurious practices or refusing to submit to approved medical or surgical treatment authorizes reduction or suspension of compensation. The board may require proof of the existence and condition of any dependents in receipt of compensation as it may deem necessary.]

53-55. *Custody, etc., of fund.*—[Subject to provisions conferring certain powers on the auditor general and the board, the minister of finance is custodian of all moneys and securities belonging to the accident fund, and the Province is liable for the safe-keeping thereof. Monthly estimates of expenditures as approved by the auditor general are to be paid to the board. The board also has charge of the investment of any surplus, interest from investments to go to the accident fund. Provision is also made for audits and annual reports.]

56-58. [These sections relate to the power of the board as to accident prevention, inspection of premises, power to order the installation of safety devices, and to close establishments until compliance.]

59. 60. *Regulations.*—[In addition to other rules and regulations authorized, the board may make such regulations as deemed requisite for administrative purposes, the same to be effective 30 days after publication in the Gazette or such other time as the board may fix.]

61, 62. *Penalties.*—[Violations are punishable by fine not exceeding \$500, to be paid into the accident fund.]

63-78. *Workmen's compensation board.*—[A board of three members appointed by the Lieutenant governor in council for terms of 10 years each administers the act. Commissioners are eligible for reappointment. A chairman is designated by the Lieutenant governor with a salary of not less than \$5,000 nor more than \$6,500, the other commissioners to receive not less than \$4,000 nor more than \$5,000 per annum. They are to give their whole time to their duties under the act, and may not be interested in any industry to which this part of the act applies or any device or appliance which may be required or used for the prevention of accidents. If such ownership is acquired by will or operation of law, and is not disposed of within three months, the member shall cease to hold office.]

Two members constitute a quorum. The board may appoint a secretary and a chief medical officer, with such other actuaries, physicians, clerks, etc., as may be deemed necessary for carrying out the provisions of this part. The board has power to summon witnesses and compel the production and inspection of books, papers, and documents; may take depositions within and

without the Province; and may, by any member or officer, examine employers' books and accounts and take declarations. Obstruction of any examination or inquiry is an offense. The information obtained is confidential.

The board has exclusive jurisdiction to inquire into and determine all questions of fact and law arising under this part, and its decision is final and conclusive, not open to question or review in any court, nor subject to restraint by injunction, prohibition, or other process. Specifically and without limiting its powers, the board has exclusive jurisdiction to decide whether an injury arose out of and in the course of the employment, the existence and degree of disability, its permanence and its effect on earning capacity, the amount of average earnings, questions of relationship and dependency, and the scope of the act. The board may reopen, rehear, and redetermine any matter which has been dealt with by it.

If the board is of the opinion that any person entitled to compensation is leading an immoral or improper life, it may suspend compensation for such period as it deems advisable, the benefits so withheld or suspended being payable to other dependents, if any, or to such of them as the board deems advisable. If it is of opinion that a workman entitled to compensation is more likely to use his money in gambling than for the benefit of himself or dependents, the board may withhold benefits, pay the same in its discretion, or any portion thereof, to such dependents, or to a trustee for their benefit.

Decisions are to be based on the merits and justice of the case without being bound by strict legal precedent. Costs in cases of contested claims may be awarded as the board may deem reasonable. Notices which the board must send must be in writing and may be served personally or by post, the date of delivery in the ordinary course of post being deemed the date of service.]

PART II.—EMPLOYERS' LIABILITY

79-82. [These sections comprise a liability statute for such industries as are not embraced within Part I. The defense of fellow service is abrogated and contributory negligence is to be taken into account only in considering the damages to be assessed in any action at law.]

Schedule

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.
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.
Sulphur poisoning.....	Coal mining.

MANITOBA

ACTS OF 1920

CHAPTER 159.—*Compensation of workmen for injuries*¹

1. *Short title.*—This act may be cited as the workmen's compensation act.

2. *Definitions.*—(1) In this act, unless the context otherwise requires, the expression—

(a) "Accident" means a fortuitous event occasioned by a physical or natural cause and includes a willful and intentional act not being the act of the injured workman.

¹ As last amended, 1925.

(b) "Accident fund" means the fund provided for the payment of compensation, outlays, and expenses under Part I of this act.

(c) "Board" means the workmen's compensation board as created by this act.

(d) "Construction" includes reconstruction, repair, alteration, and demolition.

(e) "Dependents" means 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" includes every person having in his service under a contract for hiring or apprenticeship, written or oral, expressed or implied, any person engaged in any work in or about an industry, including the Crown in the right of the Province, as well as municipal corporations, boards, and commissions, having the management and conduct of any work or service owned by or operated for a municipal corporation or by or for the Province of Manitoba 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 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" means any of the diseases mentioned in the schedule 2 of this act and any other disease which by regulations is declared to be an industrial disease.

(i) "Industry" includes establishment, undertaking, trade, and business.

(j) "Invalid" means physically or mentally incapable of earning.

(k) "Manufacturing" includes altering, repairing, making, preparing, ornamenting, printing, finishing, packing, assembling the parts of and adapting for use or sale any article or commodity.

(l) "Medical referee" means a medical referee appointed by the board.

(m) "Member of the family" means and includes wife, husband, parent, grandparent, step-parent, child, grandchild, stepchild, 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, includes such child, and, where the workman is an illegitimate child, includes his parents and grandparents.

(n) "Outworker" means 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) "Person" includes females as well as males and any body corporate or politic.

(p) "Physician" means and includes any person registered under the medical act and lawfully and regularly engaged in the practice of his profession in Manitoba.

(q) "Regulation" means rules and regulations made by the board under the authority of this act.

(r) "Workman" includes a person, whether under the age of 21 years or not, 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, but when used in Part I shall not include an outworker or a person engaged in purely 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 commission or board having the management and conduct of any work or service owned or operated by a municipal corporation or by 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

3. Compensation.—(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, subject to the following subsections.

(2) If the injury does not disable the workman longer than three days 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 three days, no compensation other than medical aid shall be payable for the first three days of disability.

(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 disability.

(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.

(5) 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.

(6) No compensation shall be payable under this part where the accident to the workman happened elsewhere than in Manitoba, except in a case where the accident happens to an employee engaged in connection with the operation of a steamboat, ship, or vessel, or 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 and the workman elects to claim compensation hereunder.

(7) The board may award compensation under this part in respect of the permanent disability suffered by a workman, but without temporary total disability.

4. Nonresidents.—(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 nonresident 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.

5. Injuries by third parties.—[Where a third party is liable for damages on account of an injury to a workman, compensation may be claimed or action brought against such third party. In case of action, compensation is to be paid only to the extent of any difference between the recovery and the statutory benefit. The board may also require any money recovered, if less than the compensation benefit, to be deposited with the board, to be kept by it and applied to the periodical payments provided for by this part of the act. Compromise settlements in an amount less than a compensation award are valid only with the written approval of the board. The bringing of a suit is to be deemed as the filing of a claim for compensation in the event of the failure of the plaintiff to recover a judgment equal to the compensation provided by the act. If claim for compensation is made, the board is subrogated to the rights of the claimant against the third party.]

No right of action lies against the employer in any industry within the scope of this part of the act, unless the accident occurred otherwise than in the conduct of the usual or incidental operations of such employer's industry; but if the injury was due to the neglect of such employer or his workman in

another class from that of the injured employee, the compensation awarded is to be charged to the class to which the third party employer belongs. If the option provided for under this act is to be exercised by a minor, his official guardian may act without applying to any court or judge for directions in respect thereto. If an injured workman with a right of action is deemed to be in immediate need of special care or operation, the board may act in his stead, costs of the claim or suit becoming a first charge against any recovery.]

6. *Contractors*.—[When work under this act is performed by a contractor, it is the duty of the principal to see that all statements and declarations required are filed.]

7. *Members of families*.—[A member of the family of an employer is not entitled to compensation unless satisfactorily shown to be a bona fide employee, nor may his wages be considered in excess of any amount shown on the pay roll.]

8-10. *Remedy exclusive*.—[The rights to compensation provided by this part are in lieu of all other rights of recovery for injuries within the scope of the act. No suit may be brought for damages, nor does any action lie for compensation, all claims to be heard and determined by the board without the intervention of attorneys, counsel, or solicitors without the express permission of the board. Minors are sui juris for the purposes of this article. No waiver of benefits is valid.]

11, 12. *Deductions from wages*.—[No deduction may be made from the wages of an employee of any part of any sum to which the employer may become liable as a contribution to the accident fund or otherwise, under penalty.]

13. *Notice*.—[Notice of injury or death must be given as soon as practicable, not later than 30 days after the happening of the same, and in case of industrial disease the employer to be notified is the one who last employed the workman in the employment to the nature of which the disease was due. Notice is to be in writing, stating the facts and signed by a claimant or some one in his behalf. Service may be personal or by registered mail. Failure to give notice is a bar unless it appears that it could not have been given for some sufficient reason, that the employer or his representative had knowledge of the injury, or the board is of the opinion that the claim is a just one and ought to be allowed.]

14-16. *Reports; claims*.—[Employers are required to report to the board within three days after the occurrence of any accident, giving prescribed facts and any other particulars required by the board; further reports shall also be made as required. Claims, together with physicians' certificates, if any, must be filed within one year from the date of the injury or death. In the absence of wage loss pay for medical aid rendered may be granted without formal claim. Physicians are required to furnish reports from time to time in respect of the injuries treated as the board may require, and also to give all reasonable and necessary information and assistance to claimants without charge. For the certificates required by the board a fee of \$2 is allowed out of the accident fund.]

17, 18. *Medical examinations, etc.*—[Claimants of benefits must submit to medical examinations at places reasonably convenient as the board may require. Failure to submit suspends benefits unless the board otherwise orders; persistence in insanitary practices tending to imperil or retard recovery gives ground for reduction of benefits in the discretion of the board.]

19. *Exemptions*.—[Benefits are exempt from assignment, attachment, and passing by operation of the law except to a personal representative, nor are offsets allowed.]

20. *Review*.—[Periodical payments may be reviewed at any time by the board and modified according to conditions. If a beneficiary is found to be leading an immoral or improper life, or is confined to jail or a mental-disease hospital, the board may withhold or suspend payment as it deems proper. In such cases payments may go to dependents or other persons as the board deems advisable.]

21. *Minors*.—[If the injured workman is under 21 the award may be fixed by the board on its first order or on any subsequent review on the basis of the earnings of the average workman 21 years of age employed in a similar class of work, but not below the average earnings at the date of the accident or, in the case of a subsequent review, the probable average earnings at the later date.]

22. *Payments*.—[Payments are to be made periodically in such manner and form as the board deems advisable. Legal guardians may be the recipient

in case beneficiaries are minors or persons of unsound mind. Commutation may be made for lump-sum payments with the consent of the workman or dependents, but not otherwise.]

23. *Medical aid.*—(1) In addition to the other compensation provided by this part, the board shall have authority to 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 thereof.

(2) Where in a case of emergency, or for other justifiable cause, a physician is called in to treat the injured workman, if the board finds there was such justifiable cause and that the charge for the services of such physician is reasonable, it shall be paid by the board.

(3) 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 a permanent disability, the amount of the cost thereof shall be payable as compensation, in addition to the amounts hereinafter mentioned.

(4) If an autopsy is deemed by the board necessary to enable it to determine the cause of any death, the board may direct that such autopsy be made within a time to be fixed by the board, and, if the dependent or dependents refuse to permit the same, the board may reject any claim for compensation under this part. The expenses of such autopsy shall be paid out of the accident fund.

(5) 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.

(6) 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 his 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.

(7) 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.

(8) Without in any way limiting the power of the board under this section to supervise and provide medical aid in every case where the board is of the opinion that the exercise of such power is expedient, the board may 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 any competent physician may be employed and be available to injured workmen.

(9) Employers in any industries in which it is deemed proper may be required by the board to maintain 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.

(10) No account for medical services shall be recognized by the board unless same is filed with the board within six months from the discharge of the workman by the physician who gave the medical care in the case, or within six months of the date upon which the workman returned to work following the accident, whichever period is the shorter.

(11) The board shall further have authority, out of the reserve set aside in any individual case to meet compensation provided by this part, to provide for any injured workman, whose earning capacity in his previous occupation has been permanently impaired by the injury, such vocational training as may be deemed advisable for the purpose of preparing such injured workman for another occupation to which he may seem adapted and which is likely to increase his future earning capacity, and to this end the board may contract with any institution or institutions furnishing such vocational training and may adopt rules and regulations for this purpose and for the payment of such

training, and from time to time the board may review the compensation previously provided, in view of his earning capacity in his new occupation, taking into consideration all conditions and circumstances at the time of the review.

24. *Death benefits.*—Where death results from any injury the amount of compensation shall be—

(a) The necessary expenses of the burial of the workman not exceeding \$150.

(b) Where the widow or an invalid widower is the sole dependent, a monthly payment of \$30 for life.

(c) Where the dependents are a widow or an invalid widower and a child or children under the age of 16 years, a monthly payment to the widow or invalid widower of \$30, with an additional \$12 per month in respect of such child or the eldest of such children, \$10 per month in respect of the second eldest of such children, \$9 per month in respect of the third eldest of such children, and \$8 per month in respect of each of all the other children.

(d) Where the dependents are orphan children, a monthly payment of \$15 for each child under the age of 16 years. Payments in respect of a child shall cease when the child attains the age of 16 years or dies: *Provided*, That, in case the child at the time of attaining the age of 16 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 16 years shall cease when the child ceases to be an invalid or dies.

(e) Where in the opinion of the board the furnishing of further or better education to a child approaching the age of 16 years appears advisable the board in its discretion may extend the period to which compensation shall be paid in respect to such child for such additional period as is spent by such child in the furthering or bettering of his education, but in no case beyond the age of 18 years. The board, however, shall not make any levy or assessment or order any deposit to be made in any such case, until such child is approaching the age of 16 years, and the board has decided that further and better education should be furnished such child.

(f) Where there are dependents other than those mentioned in the preceding paragraphs, 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 any one such dependent \$20 per month, and not exceeding in the whole \$40 a month.

(2) In the case provided for by paragraph (f) 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 such dependents.

(3) Where the board is of the 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 his parent, the board may direct that the payment may be made to such person or be applied in such manner as the board may direct for the advantage of the child.

(4) Where a workman leaves no dependents such sum, within the limitations of this act, 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 in the opinion of the board such expenses are due.

(5) Where the workman leaves no widow or the widow subsequently dies, and it seems desirable to continue the existing household, and an aunt, sister, or other suitable person acts as foster mother in keeping up such household and maintaining and taking care of the children entitled to compensation in a manner which the board deems satisfactory, such foster mother while so doing shall be entitled to receive the same monthly payments of compensation for herself and the children as if she were the widow of the deceased, and in such case the children's part of such payments shall be in lieu of the monthly payments which they would otherwise have been entitled to receive.

25. [Relates to alien enemies during the Great War.]

26. *Cessation of payments.*—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.

27. *Remarriage of widow.*—(1) If a dependent widow marries, the monthly payment to her shall cease, but she shall be entitled in lieu of that to a lump sum equal to the monthly payments for two years.

(2) Subsection 1 shall not apply to payments to a widow in respect to her dependent child or children.

28. *Proof of condition of dependents.*—The board may from time to time require such proof of the necessities, condition, and existence 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.

29. *Permanent total disability.*—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 66⅔ per cent of his average earnings: *Provided*, That such compensation shall not be less than \$15 per week, except in cases where the average earnings of the workman are less than \$15 per week, when he shall receive as weekly compensation the total amount of such average weekly earnings.

30. *Permanent partial disability.*—(1) Where permanent partial disability results from the injury, the compensation shall be a periodical payment of 66⅔ 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 the compensation shall be payable during the lifetime of the workman.

(2) Notwithstanding the provisions of subsection (1), where, in the circumstances, the amount which the workman was able to earn before 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 such injury as an impairment of earning capacity and fix an amount to be paid to such workman as full compensation therefor and pay him such amount either in one sum or in periodical installments as directed by the board, or after estimate as to the probable cost to the accident fund for such disability, fix a monthly sum to be paid to the workman during the continuance of his disability, in full payment and discharge of all claim in respect of such disability.

(3) 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 equivalent of it shall be paid to the workman in installments or in one payment.

(4) 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.

31. *Temporary total disability.*—(1) Where temporary total disability results from the injury, the compensation shall be a periodical payment during the continuance of the temporary total disability equal to 66⅔ per cent of the workman's average earnings; provided that such compensation shall not be less than \$12.50 per week, except in cases where the average earnings of the workman are less than \$12.50 per week, when he shall receive as weekly compensation the total amount of such average weekly earnings.

(2) In any case where in the opinion of the board the period of disability appears to be unnecessarily prolonged, it may reduce temporarily or permanently the percentage of wages allowed as compensation by this section with power to restore the full percentage at any time.

32. *Temporary partial disability.*—Where temporary partial disability results from the injury, the compensation shall be the same as that prescribed by section 30, but shall be payable only so long as the disability lasts.

33. *Calculation of average earnings.*—The average earnings and earning capacity of a workman shall be determined with reference to his average earnings and earning capacity at the time of the accident, and may be calculated upon the daily, weekly, or monthly wages and 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 that his average earnings shall be deemed in any case to exceed the rate of two thousand dollars per year.

34. *Deductions.*—In fixing the amount of a periodical payment of compensation regard shall be had to any payment, allowance, or benefit which the work-

man 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 and deducted from the compensation.

35-53. *Workmen's compensation board.*—[An administrative board of three members is appointed by the lieutenant governor in council and is a body corporate and politic. The commissioner and two directors constitute the board, the commissioner to hold office during good behavior, subject to retirement at the age of 75 years; he may be removed at any time for cause. His salary is \$6,000 per annum; directors receive \$1,000 each, an additional \$15 for each meeting of the board attended in excess of 50 per year being authorized. The board must sit at least once a week, its principal office being in the city of Winnipeg, but with power to hold meetings in any part of the Province. Two members constitute a quorum, a director being authorized to act as commissioner in case the commissioner is temporarily absent. Such officers and employees as the board may deem necessary are to be appointed subject to the approval of the lieutenant governor in council, salaries to be fixed by the board. Terms of office are at its pleasure.

The board has exclusive jurisdiction as to all questions arising under this part of the act, its decisions being final and conclusive, not open to review or subject to restraint by proceedings in any court. Its authority extends to all questions of coverage, disability, earnings, dependency, etc. The board may at any time reconsider and modify its decisions or orders. Findings are to be based on the merits and justice of the case, without the necessity of following strict legal precedent. Neither the board nor any of its members is subject to an action for damages by reason of anything done by it or them as beyond their jurisdiction if the act was done in the bona fide belief that it was within their powers under the law. Costs may be allowed the successful party to a contested claim or other contested matters, enforceable in the same manner as the collection of assessments.

The board may act on reports of its officers or members or medical referees or other person appointed to make the inquiry or examination. It is authorized to make necessary regulations, subject to approval by the lieutenant governor in council. If an employee or dependent brings action in respect of any injury the board may, on the application of any party to the action, determine whether it is one abrogated by the act, and if so found the action shall be forever stayed. The comptroller general or an auditor appointed for the purpose shall audit the accounts of the board, and annual reports of its proceedings are required.]

54. *Administration fund.*—[The Province is to contribute toward the expenses of administration as the lieutenant governor in council may direct.]

55-67. *Accident fund.*—[The accident fund for the payment of compensation is to be maintained by assessments on designated classes of industries. Three railway companies make up the first three classes, the Province the fourth, the city of Winnipeg the fifth, all other municipalities of the Province the sixth, and industries set forth in Schedule 1 not otherwise included comprise the seventh class. Other industries or workmen may be admitted by the board on such terms and conditions as the board deems proper. This part applies to any public employment to which it would apply if the employer were a private person.

The board may create or rearrange classes, assign industries to the proper classes, levy and collect assessments from employers in each class, and maintain and establish funds and reserves for the payment of the benefits provided by the act. Employers must annually, and at such other times as the board may require, submit an estimate of the probable pay roll for the ensuing period as a basis of assessments. In computing the amount of such pay roll account is to be taken only of workmen and employments within the scope of this part of the act, and no individual wage in excess of \$2,000 shall be considered. If the employer fails to submit the estimate, the board may estimate and assess, subject to subsequent revision on a disclosure of facts. Municipal assessors except in cities are to make return to the board on forms provided by it showing statistics of employment for all employers of labor in the municipality in any industry or business other than farming or mercantile business; for this service the board may make remuneration out of the accident fund. Written notice of any building permit granted by any municipality, city, or town must be reported to the board within three days.

Assessments may be made in such manner and form as the board deems advisable, but notice must be given to each employer; collections may be in

half-yearly, quarterly, or monthly installments, or otherwise, or an installment may be omitted or its collection deferred if sufficient funds are in hand. If insufficient assessments have been made, additional levies may be ordered or temporary advances made from other funds. Classifications are to be on the basis of hazard, and special rates, differentials, or assessments may be made. Where an employer engages in an industry for which he has not been assessed, or only for a temporary period, security for the payment of the proper assessment may be required. Assessments may be collected by the board in an action for the amount due, with penalties and costs. Penalties are also provided for failure to make returns. Orders of the board for the payment of compensation or other money under the authority of this part of the act may be filed in the court of King's bench for Manitoba and when filed are enforceable as a judgment of the court. Separate accounts are required for each class and fund, but for the payment of compensation the accident fund is to be deemed one and indivisible. Annual adjustments are to be made of assessments, debits and credits being allowed as the case may require; adjustment shall also be made in cases of change of ownership or employers in any industry.]

68. *Contractors.*—[In case of contract with a municipal corporation, the amount of the assessments may be taken from money due the contractor in respect of the work done. If any party becomes liable for an assessment on account of the work of a contractor, he may offset the amount against any payment due such contractor. As between contractor and subcontractor, the contractor shall be deemed the principal. Both principal and contractor are liable for any assessment made under the act, the contractor being primarily liable; the same rule applies as between contractors and subcontractors.]

70. *Exclusions and inclusions.*—[The board may exclude or include any industry as regards application of this part of the act.]

71. *Custody of funds.*—[The provincial treasurer is custodian of all moneys and securities belonging to the accident fund, and the Province is liable for the safe-keeping of the same. Monthly estimates, approved by the comptroller general, are to be paid by the treasurer on the order of the board, for which monthly accounting must be rendered. Provision is also made for the investment of surplus moneys, the interest to go to the accident fund.]

72. *Advancements.*—[If at any time there is not sufficient money in hand for the payment of compensation if due, advancement may be made out of the consolidated revenue fund, subject to repayment when funds are available.]

73. *New industries.*—[Returns must be made on the basis of an estimate of the pay roll for the remainder of the year where industries are established subsequent to the annual assessment date.]

74-76. *Inspections.*—[The board or any person authorized by it may examine the books and accounts of employers and may require the production of employers' records at a designated time and place for the purpose of ascertaining the correctness of statements made with reference to the same. Right of entry to the employers' establishments is also provided for. The information obtained is confidential.]

77. *Penalties.*—[Penalties under this part are recoverable under the Manitoba summary convictions act and are payable into the consolidated revenue fund.]

78. *Mechanics' liens.*—[Where a statutory lien may arise the owner must use diligence to see that statements are filed by the employers as required under this part of the act.]

79. *Preference.*—[Assessments under this part are entitled to priority to all other debts in case of assignments, bankruptcy, etc.]

80. *Industrial diseases.*—(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 12 months previous to the date of his disability, 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 disability were the happening of the accident, subject to the modifications herein mentioned, unless at the time of entry into the employment he had willfully and falsely represented himself in writing as not having previously suffered from the disease.

(2) The board may by regulation 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.

(3) If the workman, at or immediately before the date of the disability, was employed in any process mentioned in the second column of schedule 2 hereto, 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 that employment unless the contrary is proved.

(4) Nothing in this section shall affect the right of the workman to compensation in respect of any 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.

(5) Except where the board is satisfied that the disease is 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 disability.

PART II

81-84. *Employers' liability.*—[These sections embody a liability statute for industries to which Part I does not apply, including outworkers, and other employees in industries under the operation of Part I who are excluded from its benefits.]

85. *Exclusions.*—[This act shall not apply to farm laborers or domestic or menial servants, except that any such employees may on application of their employer and approval by the board be brought under Part I of this act.]

SCHEDULE 1—(SECTION 55)

1. Lumbering; logging, river driving, rafting, booming, 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.

2. Pulp and paper mills.

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 cabinet work.

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. Retail lumber yards (no mill or factory in connection).

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 paragraph 13); manufacture of calcium carbide, carborundum, or alundum.

6. Sand, shale, clay, or gravel pits; marble works, stone cutting, or dressing; manufacture of brick, tile, terra cotta, fireproofing, paving blocks, sewer pipe, roof tile, plaster blocks, plaster boards, slate or artificial stone.

7. Quarries, stone crushing, limekilns; manufacture of cement.

8. Manufacture of glass, glass products, glassware, porcelain, or pottery.

9. 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.

10. Manufacture of small castings or forgings, metal wares, 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, storage batteries for autos, and lighting plants, cameras, sporting goods, fire-arms, windmills, ivory articles, rubber stamps, pads or stencils, machine shops, not elsewhere included in Schedule 1, the industry of carrying on a blacksmith shop.

11. Manufacture of agricultural implements, threshing machines, traction engines, wagons, carriages, sleighs, vehicles, automobiles, motor trucks, toy wagons, sleighs, or baby carriages; car shops, airplanes and hydroplanes (no flying).

12. Manufacture of gold and silverware, plate ware, watches, watchcases, clocks, jewelry, or musical instruments.

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.

14. The manufacture of fireworks, gunpowder, ammunition, nitroglycerine, dynamite, guncotton, or other high explosives.

15. Manufacture of paint, color, varnish, oil, japans, turpentine, printing ink, printers' rollers, tar, tarred, pitched, or asphalted paper.

16. Distilleries, breweries, bottling works; manufacture of spirituous or malt liquors, malt, alcohol, wine, vinegar, cider, mineral water, soda waters, or methylated spirits.

17. 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 muclage.

18. Milling; manufacture of cereals or cattle foods, warehousing or handling of grain or operation of grain elevators.

19. Manufacture or preparation and wholesale distribution of meats or meat products.

20. Packing houses, abattoirs, cold-storage warehouses, manufacture of fertilizers, glue, and all work incidental thereto (not incidental to any other industry). The operation of stockyards with railway entry.

21. Tanneries.

22. 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.

23. Sugar refineries; manufacture of dairy products, butter, cheese, condensed milk or cream, biscuits, confectionery, spices, condiments, salt, or any kind of starch; bakeries.

24. Canning or preparation of fruit, vegetables, fish, or foodstuffs; pickle factories.

25. Manufacture of tobacco, cigars, cigarettes or tobacco products.

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.

27. Manufacture of men's and women's clothing, white wear, shirts, collars, corsets, hats, caps, furs, robes, feathers, or artificial flowers.

28. Power laundries, dyeing, cleaning, or bleaching.

29. Printing, photo-engraving, engraving, lithographing, bookbinding, embossing, manufacture of stationery, paper, cardboard boxes, bags, wall paper, or papier-mâché.

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; deliveries from wholesale establishments; the shipping, receiving, and packing departments of wholesale establishments; coal, wood, lumber; and builders' supply industries.

31. The operation of coaling plants or stations.

32. Steel building and bridge construction; installation of elevators, fire escapes, boilers, engines, or heavy machinery; bridge building not included elsewhere in Schedule 1, erection of windmills.

33. Bricklaying, mason work, stone setting, concrete work, plastering, manufacture of concrete blocks; structural carpentry, lathing, installation of pipe organs; house wrecking or house moving.

34. Painting, decorating, or renovating; sheet metal work and roofing.

35. Plumbing, sanitary or heating engineering, gas and steam fitting; the work of artisans and mechanics employed for their whole time at their trade in an industry not classified herein; operation of theater stage or moving pictures; operation of passenger or freight elevators 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.

36. 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 6 feet deep for gas pipes, water pipes, or wire conduits; and all excavation work where the depth is more than 6 feet and the width is less than half the depth.

37. 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 1, construction or operation of telegraph or telephone lines, construction or operation of telephone lines and works for the purpose 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.

38. 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 1, manufacture of asphalt material and paving material; this class shall not include the making or repairing of roads in rural municipalities unless the work is done through a contractor.

39. Shipbuilding, dredging, subaqueous construction or pile driving, fishing, stevedoring, operation of and work upon wharves, operation of dry docks not included elsewhere in Schedule 1.

40. If not included elsewhere in Schedule 1, 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 incidental thereto or immediately connected therewith.

41. The trade or business, as defined by subsection (2) of section 2, of a municipal corporation, a public utilities commission, or any other commission having the management and conduct of any work or service owned by or operated for a municipal corporation or a board of school trustees, and policemen, firemen, or ferrymen employees of such a corporation.

42. 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.

43. 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.

44. 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 connection with its business when constructed or operated by the company and all other navigation, towing, operation of vessels, and marine wrecking.

45. The operation of the business of an express company which operates on or in conjunction with a railway, or sleeping, parlor, or dining cars, whether operated by the railway company or by an express, sleeping, parlor, or dining car company.

46. The operation as an industry (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. (This paragraph does not include the operation of aircraft.)

47. Auto garages, including sale of gasoline, oil, accessories, and storage of cars (not including manufacture of cars).

SCHEDULE 2—(SECTION 80)

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.
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.

NEW BRUNSWICK

ACTS OF 1918

CHAPTER 37.—*Compensation of workmen for injuries*^a

1. *Title*.—This act may be cited as the workmen's compensation act, 1918.

2. *Definitions*.—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 the regular remuneration which the workman was receiving at the time of the injury or 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; but not in any case to exceed the sum of \$1,500 per year.

Where the workman was at the date of the accident under 21 years of age and it is established to the satisfaction of the board that under normal conditions his wages would probably increase, this fact shall be considered in arriving at his average earnings or earning capacity.

(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

^a As last amended, 1924; no amendments in 1925.

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.

(o) "Outworker" shall mean a person to whom articles or materials are given 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

3. *Application.*—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:

(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.]²

4. *Extension of scope.*—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.

5. *Employers and workmen may apply.*—(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.

6. *Exclusion by board.*—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.

7. *Compensation payable.*—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.

(a) Whenever a workman is engaged in work part of which is to be performed in this Province and part in an adjoining Province or country, the work shall be considered as done and performed in this Province, and the workman shall be entitled to be paid compensation under this part, provided the employer includes such workman in his pay roll.

(b) In any case where the board is of the opinion that a person entitled to compensation under this part, is leading an immoral or improper life, the board shall have the 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.

(c) 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 sustained.

8. *Nonresident beneficiaries.*—[No benefits are payable to nonresident beneficiaries except that by an order in council it may be provided that the board may pay benefits to residents of any Province, State, or country corresponding to the amounts allowed in such jurisdiction to dependents resident in New Brunswick; but if the benefits provided by the law of such jurisdiction are less than those provided under this part, the board may reduce the amount of compensation accordingly. Reductions may also be made on the basis of cost of living, such payment being allowed as would, in the opinion of the board,

² Another order in council includes teaming, shipbuilding, printing, laundries, wholesale and retail stores (except as provided in subsection (a) of section 3 of the act), fishing, canning, plumbing, and road making, transportation, handling of hides, coal and wood merchants, hospitals, hotels, and window cleaning.

maintain dependents in a like degree of comfort as persons in the same class residing in Canada receiving the full compensation.]

9. *Rights under other laws.*—[If the injured workman or his dependents are entitled to recovery under any other law, the amount payable under this act will be only the excess of compensation benefits over the recovery under such other act; but if the employer is granted a full and effectual release from any claim or right under another law, full compensation as herein provided will be allowed.]

10, 11. *Third party liability.*—[If the injury is received under circumstances creating liability in a third party, a choice of remedies is allowed. If action is brought and less recovered than this part allows, the difference may be recovered. If compensation is claimed under the act, the board is subrogated to the rights against the third party for the whole of any outstanding part of the claim of the workman or of his dependents. This does not allow proceedings to be brought against an employer under the act; but if the responsible employer was in a different class from that in which the injured workman was employed, the award may be charged against the class of the responsible employer.]

12. *Remedy exclusive.*—[Provisions of this part are in lieu of all other remedies for injuries within its scope.]

13. *Waivers.*—[All agreements of waiver are absolutely void.]

14. *Employees' contributions.*—[No deduction may be made from the wages of a workman, nor may they contribute in any way toward indemnifying the employer against the liabilities of this part of the act.]

15. *Assignments, etc.*—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.

16. *Claim in one year.*—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.

17-35. *Workmen's compensation board.*—[A board of three members appointed by the lieutenant governor in council is to administer the act. The board is a body corporate, with a seal which shall be judicially noticed. Its members serve during good behavior, to retire at the age of 75 years unless otherwise directed by the lieutenant governor in council. Pro tempore appointments may be made as occasion arises.

One of the commissioners is to be designated as chairman and another as vice chairman; two commissioners constitute a quorum. Offices are to be maintained at the city of St. John or elsewhere as designated, but sittings may be held in any part of the Province. Public hearings must be held on application of any employer, association, workman, or dependent interested in the question before the board. The board is to appoint a secretary, a chief medical officer, and such other assistants as it deems necessary, the salaries to be paid out of the revenue of the Province. Provision is made for records, audits of accounts, and annual reports of the transactions of the board.

The board has jurisdiction to determine all questions of fact and law under this part of the act, and of the collection and management of the funds therefor. No decision or ruling is to be binding as a precedent, the intent being that each case shall be decided on its own merits. The board has the same powers as the supreme court for compelling the attendance of witnesses, procuring evidence, and the production of books, papers, and documents. It may act on the report of any of its officers, and its decisions are final and conclusive, except that an appeal lies to the appeal division of the supreme court on any question as to jurisdiction or law, but only on permission given by a judge of the supreme court on a petition presented within 15 days of the rendering of the decision from which the appeal is sought. Questions of fact from which no appeal may be taken are as to whether the injury complained of arose out of or in the course of the employment within the scope of the act, the degree of disability, its permanence and effect on earning capacity, the amount of average wages, questions of relationship and dependency, and the character of any industry as to the class to which it should be assigned for the purposes of this act. The board may of its own motion state a case in writing for the opinion of the appeal division of the supreme court on any question of law. Appeals are to be promptly decided and no costs are to be awarded.]

36. *Compensation benefits.*—(1) The compensation payable under this part to an injured workman or to the dependents of a deceased workman shall be as follows:

(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 10 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.

(b) In case of total disability continuing for more than seven days after the accident, of payment or payments equal to 55 per cent of the average earnings of the workman, but not less than \$6 per week or more than 55 per cent of \$125 per month, such payments to be continued during the life of the workman or the duration of such 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 \$2,500.

(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 \$100.

(II) Where the sole dependent is a widow or invalid widower, payments during the life of such widow or widower at the rate of \$30 per month.

(III) Where the dependents are a widow or invalid widower and one or more children, payments at the rate of \$30 per month, with an additional [payment] of \$7.50 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).

(V) When the dependents are children only, each child shall receive the sum of \$15 per month until, if a boy, he attains the age of 16 years or dies; or if a girl, she attains the age of 18 years or dies.

(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 workmen, 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, it 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 female children shall cease when the child attains the age of 18 years or dies; in case of male children when the child attains the age of 16 years or dies.

37. *Other benefits.*—(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.

38. *Forms of payment; special surgical, etc., treatment.*—(1) 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.

39. *Medical, etc., aid.*—(a) 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 and transportation as may be necessary as a result of the injury.

(b) In this act "medical aid" shall mean the medical and surgical aid and hospital and skilled nursing services and transportation as above mentioned.

(c) In the industries within the scope of part one of this act, 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.

(d) All questions as to the necessity, character, and sufficiency of any medical aid furnished or to be furnished shall be determined by the board.

(e) The fees or charges for such medical aid shall not be more than would be properly or reasonably charged to the workman if he were 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.

(f) It shall not be lawful, except as hereinafter provided in clause (g), for any employer directly or indirectly to collect or receive or demand from any workman any contribution toward the expense of medical aid, and every person contravening this provision shall, for every contravention be liable to a penalty not exceeding \$50 and shall also be liable, upon the order of the board, to reimburse the workman the amount of any amount so collected, received, or obtained.

(g) 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 workman, which, in the opinion of the board, is at least as favorable to the workmen as that herein provided for, the board may, after investigating the facts and considering the wishes of both workmen and employer, approve of such arrangements, and as long as such approval continues, such arrangements may be continued in lieu of the medical aid hereinbefore provided for, and if the injury is within the scope of Part I of the act, 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. But medical aid so furnished or provided shall be subject at all times to the supervision and control of the board.

(h) 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 expenses thereof as may be deemed just.

(i) Every employer shall furnish to any workman injured in his employment, who is in need of it, immediate conveyance and transportation to a hospital, or a physician, or to the workman's home, such transportation to be paid for by the board out of the general accident fund, and any employer failing so to do shall be subject to a penalty not exceeding \$20, to be collected upon the order of the board.

(j) 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 prohibited by this act, shall be determined by the board.

(k) Every physician, surgical [surgeon], hospital official, or nurse 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.

(l) In case of any workman employed as a master, mate, engineer, seaman, sailor, steward, or 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 mariners' fund, under Part V of the Canada shipping act, being chapter 113 of the Revised Statutes of Canada, 1906, the above sections shall not apply to such workmen during the period in respect of which such duty has been paid or is payable.

40-43. *Claims; reports.*—[Persons entitled to compensation are required to file with the board an application therefor with a certificate of the attending physician, if any, and other proofs as required by the board. Physicians are to render such assistance as may be necessary, and to furnish reports to the board as it may require. Employers must report accidents to the board within three days, giving prescribed data and other particulars that the board may ask for; subsequent reports must also be made as required. Employees must submit their claims within 14 days after any accident or notify the board of the accident during that time or so soon thereafter as the claim accrues.

Payments are to be made in accordance with the directions of the board, those to minors to persons found qualified to administer the payment, whether the legal guardian or not. The board may reopen and readjust any claim or award at any time for cause, and may require proof from time to time of the existence and condition of dependents to whom payments are being made.]

44-61. *Accident fund.*—[The board is to divide the industries within the scope of this part of the act into classes, which it may rearrange according to its judgment. Assessments are to be made annually to provide funds in each class sufficient to meet all compensation claims payable during the succeeding year. Employers must furnish an estimate of the probable amount of their pay roll as the basis of such assessments. Tax assessors are to make returns to the board showing industrial data for the use of the board. The board is to be notified of the granting of any building permit and of the operation of portable sawmills. Separate accounts are to be kept for each class and fund, but for the purpose of paying compensation the accident fund is a unit. Additional levies may be made for the purposes of reserves, contingent funds, sinking funds, or equalization funds. The board may also, if it thinks expedient, collect a sufficient amount for any industry or class to provide capitalized reserves for future years.

Subclassifications, differentials, and special hazard ratings may be made, also provision for reinsurance if authorized by the lieutenant governor in council. Due notice must be given, but regardless of notice or demand it is the duty of every employer to pay the full amount of any assessment. Recovery may be by action for the amount unpaid, with costs. If the employer neglects to furnish the estimate required, the board may make its own estimate. Levies may be collected in installments or as the board may deem expedient, or if sufficient funds are in hand any installment may be abated or its collection deferred. Further assessments may be made as necessary, or temporary advances to make up any deficiency that may arise in any fund. Provision is also made for temporary industries, from which security may be required, until final audit after the cessation of the undertaking. A penalty not exceeding 12 per cent per annum shall be added in case of delinquent assessments. In case of a liability accruing during a period of delinquency the board may assess, in addition to other penalties and liabilities, the full amount or capitalized value of the benefit payable in respect of such accident; but if the default is regarded as excusable, the employer may be relieved in whole or in part from such liability.]

62. 63. *Contractors.*—[In case of work done under contract with a municipality it may withhold the assessments for such work from any sum due the contractor. Both contractor and principal may be held for the assessments where work is done through a contractor, but as between the parties themselves the contractor is primarily liable in the absence of provisions to the contrary. The same rule applies in the case of contractors and subcontractors. Contractors or subcontractors not assessed with respect to work carried on by them may be considered as employees of the principal, but in the absence of any provision to the contrary the principal may recover from the contractor and the contractor from the subcontractor a proportionate part of such assessment with respect to the specific work done.]

64-72. *Protection and adjustment of assessments.*—[Where the mechanics' lien act will apply it is the duty of the owner to see that any assessment in respect of the work or service is paid. Assessments are to be included among the debts which are given priority in cases of insolvency, assignment, or death and are a first lien on all property, real, personal, or mixed, used in or in connection with the industry with respect of which the employer is assessed, subject only to claims for taxes. Assessments in default may be certified and the certificate filed with the clerk of any county court or registrar of the supreme court, whereupon it becomes enforceable as a judgment.]

On or before April 1 of each year adjustment is to be made of the assessments for the preceding calendar year, further assessments or refunds to be made according to the conditions of the case. Employers must furnish verified copies of their pay rolls, with due and proper deduction where the wages of any workman exceed the rate of \$125 per month. Distribution of assessments is to be made where industries change hands during the year, and the board or any member or officer thereof may examine books and accounts and make other inquiry to ascertain the accuracy of statements made as to pay rolls. Entrance to premises must be allowed at all reasonable hours for this purpose, and for safety inspections, but no information thus obtained may be divulged or used except in the performance of duties under the board.]

73. *Investments.*—[The board may invest any part of the accident fund in approved securities, no part of the fund to be subject to any municipal or other tax.]

74-77. *Regulations.*—[The board may make necessary regulations subject to approval by the lieutenant governor in council, may prescribe penalties recoverable under the summary convictions act or by action by the board in any court of competent jurisdiction, such penalties when collected to be a part of the accident fund.

If an association makes rules for the prevention of accidents in any industry, the board may approve such rules, whereupon they will be binding on all employers in the class, subclass, or group represented, regardless of membership in the association. The board may also pay the salary and necessary expenses of any inspector, engineer, or expert appointed under the authority of such an association, or may make allowances to it to meet its expenses, such salaries and allowances to be payable from the accident fund for the class or group represented.]

78. *Industrial diseases.*—(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 12 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) 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.

79 [Authorizes a proclamation fixing the date of operation under the various provisions of the act.]

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

FEBRUARY 5, 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 17, 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 1st day of August, A. D. 1919, viz: Persons employed in the woods

in logging, cutting of timber, pulp wood, firewood, railroad ties or sleepers, or river driving, rafting, booming, or the transportation of logs, timber, pulp wood, firewood, railroad ties, or sleepers.

NOVEMBER 5, 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.

REGULATION 18.—INDUSTRIAL DISEASES SCHEDULE

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 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.

Sulphur poisoning or its sequelæ: Any process involving the use of sulphur or its preparations or compounds.

Ammonia poisoning or its sequelæ: Any process involving the use of ammonia or its preparations or compounds.

Carbon bisulphide or its sequelæ: Any process involving the use of carbon bisulphide.

Carbonic acid gas: Any process involving the use of carbonic acid gas.

Ankylostomiasis: Mining.

Glanders: Care of any equine animal suffering from glanders, handling the carcasses of any such animal.

Compressed air illness: Any process carried on in compressed air.

Infection by handling sugar: Any process involving the refining of sugar.

NOVA SCOTIA

ACTS OF 1915

CHAPTER 1.—*Compensation of workmen for injuries*¹

1. *Title.*—This act may be cited as the workmen's compensation act.

2. *Definitions.*—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.

(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 a receiver, liquidator, executor, administrator, and any person appointed by a court or a judge, who has authority to carry on an industry, municipal corporations, and the Crown as

¹ As last amended 1923; no later amendments.

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.

(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; a receiver, liquidator, or other person, appointed by a court or a judge with power to manage or carry on the business of a company for winding up or other purposes, shall not be deemed a workman.

(o) "Teaming" shall include all kinds of work done by workmen with teams, carts (including handcarts), drays, trucks, cabs, carriages, automobiles, and other vehicles.

(p) "Stevedoring" shall mean the loading or unloading of vessels or railway cars.

(q) The word "widow" and the words "invalid widower" in section 38 refer to the widow or invalid widower of a workman whose death results from an accident compensable under Part I.

PART I

3. *Industries covered.*—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 4 and 5, this part shall not apply to the following:

- (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.

4. *Admission of other industries.*—(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.

5. *Exclusions authorized.*—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 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.

6. *Compensation to be paid.*—(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 a 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.

(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.

7. *Application of law.*—(1), (2), (a) [Every contract establishing the relationship of employer and workman, unless the contrary is expressed in an agreement in writing signed by the parties, will be deemed to contain a covenant accepting the compensation provisions of Part I, to the exclusion of every other right of action, statutory or otherwise, on the part of the employee or his heirs, assigns, etc.; while the employer covenants to apply for the admission of his industry to inclusion within the scope of that part, agreeing also to make compensation for injuries received by the workman employed in such industry in case of injury while employed outside the Province.]

(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 Newfound-

land, or to the making of fishing trips or voyages from ports or places in 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.

(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.

(b) Section 13 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.

(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.

(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.

(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.

8. *Other relief.*—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 merchant 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.

9. *Fishing.*—(1) 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.

(2) The owners of or persons operating the ship referred to in subsection (1) hereof shall be deemed to be employers within the meaning of this part.

(3) Members of the crew of such ship who are remunerated for their services in the manner mentioned in subsection (1) hereof shall, for the purposes of assessments under this part, be deemed to earn wages at the rate of \$780 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 \$780 a year.

(4) Assessments paid or payable in respect of such industry shall be borne wholly by the employers.

10. *Nonresident beneficiaries.*—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.

11, 12. *Third party liability.*—[In case another than the employer is liable in damages for an injury, the workman or his dependents may proceed against such party, and if less is recovered than a benefit under this part, the claimant will be entitled to the difference. If compensation is claimed, the board is subrogated to the rights of the claimant against the third party; but in no case may an action be brought against an employer who is within the scope of this part, but if such employer liable for the injury is in another class from the injured workman, the compensation awarded may be charged against such class.]

13, 14. *Remedy exclusive.*—[The remedy afforded by this part is exclusive where applicable; waivers are absolutely void.]

15. *Deductions from wages.*—[Any deductions from employees' wages of any sum which the employer is obligated to pay under this act are unlawful.]

16. *Assignments, etc.*—[Unless with the approval of the board, no compensation payments may be assigned or attached, nor may they pass by operation of law, except to a personal representative, nor are they subject to set-offs.]

17. *Claims.*—[Claims must be made within one year after the injury or death, and the right thereto established within 15 months. If medical aid was rendered within 30 days after an injury, but no disability arose, and disability of a serious and permanent nature does arise after 12 months, the board may, if satisfied that the disability was due to the injury, extend the above limitations in its discretion.]

18. *Medical aid.*—(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 30 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.

(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. The board, for the purpose of approving of any such arrangement, may take into consideration contributions, voluntarily or by agreement with workmen, made by the employer to any relief or other association of which at least the majority of workmen of such employer are members. Any arrangement or practice in force on December 31, 1919, and which has since been continued for providing medical aid for workmen in any industry, although at the expense of workmen, may be temporarily continued unless otherwise ordered by the board pending the adoption of such arrangement as may meet with the approval of the board, and while such temporary arrangement or practice is so continued the board shall not be liable to furnish medical aid to any workmen entitled to medical aid under such arrangement or practice.

(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.

19-37. *Workmen's compensation board.*—[An administrative board of three members, to be appointed by the governor in council, to hold office during good behavior, is provided for. The governor designates a chairman and a vice chairman and determines salaries. Vacancies may be filled pro tempore, but the presence of two members is sufficient to constitute a quorum; service terminates at age 75.

The board has like power as the supreme court to compel the attendance of witnesses, the production of books, papers, etc.; has offices in the city of Halifax, but may sit elsewhere as convenient for dispatch of business; is to appoint a secretary, medical officer, and such other employees as necessary for carrying out the provisions of this act, terms to be during the pleasure of the board; and may act on the report of its officers, one of the commissioners, or other person appointed to make an inquiry. It has jurisdiction to inquire into and determine all questions of law and fact arising in connection with the payment of compensation and the collection and management of funds therefor and the investment of such funds.

Appeals lie to the supreme court from any final decision as to jurisdiction or on any question of law; the board may also submit of its own motion any question of law. Otherwise its findings are final and conclusive, and specifically as to whether an injury arose out of and in the course of employment, the degree and permanence of disability, its effect on earning power, the amount of average earnings, questions of relationship and dependence, classifications of employment, and the rights of employees to compensation under this part. No costs will be awarded in any appeal. Accounts are to be audited by an auditor appointed by the governor in council, annual reports made to the provincial secretary, and all administration expenses paid out of the accident fund; an annual contribution to this end may be made out of the provincial treasury, not exceeding \$25,000, as the governor in council may direct.]

38. *Compensation for death.*—(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 \$30.

(c) Where the dependents are a widow or an invalid widower and one or more children, a monthly payment of \$30, with an additional monthly payment of \$7.50 for each child under the age of 16 years, not exceeding in the whole \$60. A widow entitled to compensation by reason of the death of her husband, or an invalid widower entitled to compensation by reason of the death of his wife, shall not be entitled to any further compensation as a dependent of any other workman whose death results from an accident, and any compensation payable to such widow or invalid widower, in any capacity other than that of a widow or invalid widower, shall cease when such widow or invalid widower becomes entitled to compensation as a widow or invalid widower.

(d) Where the dependents are children, a monthly payment of \$15 to each child under the age of 16 years, not exceeding in the whole \$60.

(e) Where no compensation is payable under (b), (c), or (d), and persons other than those mentioned in the foregoing clauses are 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 \$30 per month to a parent or parents, and not exceeding in the whole \$45 per month.

(f) Where compensation is payable to or for a child under (c) or (d) or under section 40, subsection (2), no additional compensation shall be payable with respect to such child by reason of the subsequent death from an injury of any person upon whom such child was wholly or partly dependent.

(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 expense 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.

(5) The foregoing subsection (4) shall not apply to compensation payable under clauses (b), (c), or (d) of subsection (1): *Provided, however*, That the dependents of a workman whose death results from an injury received while in the employ of an incorporated company shall not be entitled to compensation in excess of that provided by the foregoing subsection (4) if—

(a) Such workman at the time of the accident was an officer and also a shareholder of such incorporated company, or

(b) If a majority of the shares of such incorporated company was owned at the time of the accident directly or indirectly by such workman or by the workman and any members of his family, or by any members of his family.

(6) Where death results from an injury, or after an injury from any cause, 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 48.

(7) 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.

39. *Remarriage of widow.*—(1) If a dependent widow marries, her right to compensation under (b) or (c) of subsection (1) of section 38 shall cease, but she shall be entitled to \$20 a month for a period of 25 months from the date of the marriage, or, in the discretion of the board, to be paid an amount equal to such payments in one or more amounts, payable during the said 25 months; and upon payment of same all payments of compensation to her shall cease.

(2) Subsection (1) shall not apply to payments to a widow in respect of a child.

40. *Term of payments.*—(1) Payments in respect of a child shall cease when the child attains the age of 16 years or dies. 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.

(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.

41. [Transitory.]

42. *Permanent total disability.*—(1) 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.

(2) The compensation awarded under this section shall not be less than an amount equal to \$5 per week, unless the workman's average earnings are less than \$5 per week, in which case he shall receive compensation in an amount equal to his average earnings.

43. *Permanent partial disability.*—(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.

(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 diminished, the board may, nevertheless, recognize an impairment of earning capacity.

44. *Temporary disability.*—(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.

(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.

45. *Earnings computed, how.*—“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.

46. *Other benefits.*—(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.

(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.

47-50. *Procedure.*—[Claimants of benefits must file application therefor with the board, together with physicians' certificates, if any, and other proofs as required by the board. Physicians and surgeons must furnish reports as required, and give all reasonable and necessary information and assistance to claimants.]

Employers must report all disabling accidents within three days, giving prescribed data, and such other information as the board may direct; also other reports as the board requires. Payments are to be made as to the board seems most convenient; if to minors or persons of unsound mind, to a suitable person, whether the guardian or not. Payments are discontinued during the term of a recipient's confinement in an insane asylum, jail, or prison, but may be paid dependents. If in prison for an indictable offense, the compensation may be entirely forfeited, in the discretion of the board. If a child under 16 is committed to an institution, benefits may be paid to the institution, in the discretion of the board.

Periodical payments may be commuted in whole or in part to a lump sum, and lump sums converted into periodical payments. If, in the opinion of the board, the accident fund would be conserved by special medical or surgical treatment, the same may be furnished at the cost of the fund.

The board may reopen, review, and redetermine any claim or decision at any time on grounds of change in conditions and circumstances. If a beneficiary is found to be leading an immoral or improper life, compensation may be withheld or suspended and may be paid to other dependents as the board deems advisable. And if a workman entitled to compensation is likely to misuse his money in gambling or otherwise, the board may withhold or suspend payment, or make payment to a wife or children or other person dependent on the injured workman; or payments may be made to a trustee for the benefit of the workman and his dependents. Payments to a parent may be withheld in case of the death of child under 14 unlawfully employed.]

51. *Minors.*—Where the workman was at the date of the accident under 21 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.

52. *Medical examinations.*—(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.

53. *Accident fund.*—The compensation provided for in this act shall be paid out of a fund to be called "the accident fund."

54. *Classes of industries.*—For the purpose of creating and maintaining the accident fund, all industries within the scope of this part shall, subject to sections 55 and 56, be divided into the following classes:

Class 1. Lumbering, logging, planing, 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.

55. *Adjustment of classes.*—The board may by regulation rearrange any of the classes mentioned in section 54 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.

56. *Duty of board.*—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.

57-73. *Assessments.*—[Annual assessments are to be made on the estimated pay roll of employers in the various classes; or if an estimate is refused, the board may make its own estimate; it may fix a minimum of \$5 as the annual contribution of any employer. Separate accounts are to be kept of each class and reserve fund, but for the purpose of paying compensation, the accident fund is to be deemed one and indivisible. In addition to the amounts required to pay current claims, assessments may be made for contingent funds, sinking funds, reserves, catastrophe funds, and for capitalized reserves to meet payments accruing in future years, in the discretion of the board. In case of changes made in accordance with the provisions of section 56, proper adjustments of funds are also to be made. If employers fail to make payments, the board may take action for recovery of the same with costs. In cases of temporary employments, the board may require security to be given for the payment of the assessment found due. If payments are in default and a judgment therefor is returned unsatisfied, the board may apply for an injunction restraining the employer from carrying on an industry within the scope of this part until all assessments are paid.

Notice is to be given the employer in due time and form, but employers are nevertheless obligated to make payment of the full amount of every assessment.

Subclassifications, differentials, and rates proportionate to hazard may be established; and if any assessment is found insufficient, further assessments and levies may be made, or temporary advances drawn from reserves. Assessments may be collected half-yearly, quarterly, or monthly; or if sufficient funds are in hand, an assessment may be abated or its collection deferred.

Annual adjustments are to be made on the basis of the actual pay roll for the year, with added payments or credits, as the case requires. If an industry changes hands during the year, assessments are to be adjusted proportionately to the time of ownership. Only that part of the pay roll is to be considered as pertains to employees under this part, and the board may by regulation exclude wages or salaries in excess of an amount fixed by the regulation.

Employers are required to furnish estimates of their pay rolls whenever required, and at the close of each calendar year, or as required by the board, to furnish certified copies or statements of the same, properly verified. Assessors and boards of assessors, on the completion of their annual assessments, must make a return to the board of the names and addresses of all employers, with the usual number of employees if known, except employers in a farming or mercantile business. Authorities issuing building permits must also notify the board of the fact.

Employers must keep accurate records of all wages paid employees, subject to examination by the board or its officers. Refusal, neglect, or failure to furnish verified copies of pay rolls, or to keep or produce for inspection on demand an accurate record, authorizes the board to assess a penalty and to make its own estimate, which shall be final and conclusive for the purpose of assessments except as the board may revise or change the same. Persons not employers must make statements as to the subject on request of the board, and if any workmen have been employed, a statement of the nature of the industry must be furnished, and other information as required by the board. In case of default, a percentage may be added to any assessment; and in case of an accident during the period of default, the board may, in addition to other penalty, assess the full amount of the capitalized value of the compensation found payable; but if it is satisfied that the default was excusable, the board may relieve the employer in whole or in part of such liability.

In case of default in the payments of assessments of other amounts recoverable as assessments, the board may certify the facts to the clerk of the county court or a prothonotary of the supreme court, whereupon entry as of judgment will be made, enforceable by execution as any other judgment of the court.

The board, its members, officers, and appointees may examine the books and accounts of employers as to the correctness of the statements required, and may take affidavits, affirmations, or declarations as to matters connected with the examinations and inquiries authorized.]

74. Inspections.—[The board, its members and officers, may inspect the premises of contributing employers with regard to precautions for the prevention of accidents, or for any other purpose which the board may deem necessary to aid in determining the employer's contributions to the accident fund.]

75. Information confidential.—[No officer or member of the board may divulge, except in the performance of his duties, any information obtained by him in connection with any inspection or inquiry under this part.]

76, 77. Contractors.—[In case of work done for a municipality or public service commission, it may pay the assessments and withhold the amount from moneys due the contractor on account of such work. Both contractor and principal, or either of them, may be held where work is done through a contractor; or the levy may be partly against one and partly against the other; but as between the two, in the absence of any agreement to the contrary, the contractor is to be primarily liable, the same rule applies in the case of contractors and subcontractors. Contractors and subcontractors who have not been assessed as to work carried on by them may be classed as employees, but in the absence of a contrary agreement, the principal may recover from the contractor and the latter from a subcontractor a proportionate part of such assessment, and may withhold from sums payable on account of the work an amount to cover the same.]

78. Mechanics' liens.—[Where work is done by an employer for which he might have a lien under the mechanics' lien act, it is the duty of the owner to see that any payments due by the employer to the accident fund are paid.]

79. Preferences.—[Assessments are to be included among those debts given priority under the assignments act, the companies' winding up act, and the trustee act of the Province, and are a first lien on all property of the employer of whatever sort used in connection with or produced in or by the industry with respect to which the assessment was made; the lien extends also to added percentages and judgments in case of default.]

80-82. Rules, etc.—[The board may make regulations for the administration of the act, prescribe forms for pay rolls, reports, etc., and prescribe penalties

for breach of the same, recoverable under the summary penalties act, or in other proceedings.]

83. *Rules of associations.*—[If any association makes rules for the prevention of accidents in an industry or industries represented by the association, the board may approve the same, whereupon they become binding on all employers in the class or group, whether members of the association or not. The board may pay the expenses of any engineer, inspector, or expert employed by such association for the purpose of accident prevention, and may make allowance from the accident fund to meet the expenses of the association.]

84. *Industrial diseases.*—(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 12 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.

85. *Exempt occupations.*—This part shall not apply to farm laborers or domestic or menial servants or their employers: *Provided, however,* That the board, upon the application of an employer, may, upon such terms and conditions as the board may impose, admit the industry in which such laborers or servants are employed, and in case of such admission and while such admission is in force, such industry and the workmen and servants engaged therein shall be within the scope of this part and shall be subject to all the provisions of this part and of regulations made by the board.

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.

ONTARIO

ACTS OF 1914

CHAPTER 25.—*Compensation of workmen for injuries*¹

1. *Title*.—This act may be cited as the workmen's compensation act.

2. *Definitions*.—(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.

(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 com-

¹ As last amended, 1926.

pany 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

3. *Compensation.*—(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.

4. *Employers liable.*—Employers in the industries for the time being included in schedule 2 shall be liable individually to pay the compensation.

5. *Payments to fund.*—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.

6. *Accidents outside Province.*—(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.

(2a) No compensation shall be payable under this part, whether the workman is resident within or without Ontario, where the accident happens outside Ontario and the employer's place or chief place of business is situate outside Ontario and the workman is entitled to compensation under the law of the place where the accident happens, unless—

(a) The workman's place of employment is within Ontario and he is at the time of the accident without Ontario merely for some casual or incidental purpose connected with his employment within Ontario; or

(b) 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.

(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.

7. *Election.*—[If compensation is payable under the law of the place of injury, the workman or his dependents must elect whether to take under that law or the law of Ontario. In the absence of notice of election it will be presumed that election has been made not to claim under this part. Such notice must be given to the party liable to pay compensation within three months from the date of the injury or death, or thereafter if the board allows.]

8. *Nonresident beneficiaries.*—[No benefits are to be paid nonresident beneficiaries unless by the law of the place of residence dependents of a workman injured therein would receive benefits while residing in Canada: nor may benefits exceed in amount those provided by the law of such other country. Notwithstanding, the board may award compensation, or a sum in lieu thereof, to a nonresident dependent as it may deem proper. A war-time clause barred residents of an enemy country. Special provision is also made for the dependents of workmen employed by railway companies, obliged by the nature of their work to remove from Canada to another jurisdiction.]

9. *Third party liability.*—[Where a third party is liable for the injury to a workman he may proceed against such party or claim compensation; if the former, and less is recovered than under this part, the difference is payable as compensation. If compensation is claimed, the employer or the board is subrogated to the right of action against such third party. No one under schedule 1 may proceed against an employer under that schedule; but if the employer liable for the injury is in a different class from that of the injured workman, the compensation is to be charged against the class to which the responsible employer belongs.]

10. *Contractors.*—(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.

(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.

(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.

11. *Members of employers' family.*—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.

12. *Insurance of employer.*—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.

13. *Suits forbidden.*—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.

14. *Beneficiary leaving Province.*—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.

15. *Remedy exclusive.*—[The provisions of this part are in lieu of all other rights of action in cases covered thereby.]

16. *Waivers.*—[Every agreement to waive the provision of this part is absolutely void.]

17. *Agreements.*—[Where payments are to be made by employers individually, no agreement as to the amount is binding on the beneficiary unless approved by the board, except for temporary disability of less than four weeks, and here the board may set aside an agreement on application or on its own motion. Agreements may be made only with respect of injuries that have happened and for which a right of compensation has accrued.]

18. *Deductions.*—[Penalty is provided for employers deducting any sum from the wages of workmen on account of indemnities provided for by this part.]

19. *Attachments.*—[No award may be attached, assigned, or changed unless with the approval of the board; nor may benefits pass by operation of law except to a personal representative, nor any set-off be made against them.]

20. *Notice.*—[Notice of an accident must be given the employer as soon as practicable after its happening, and before the workman has voluntarily left the employment; also to the board if compensation is payable from the accident fund. Claims must be submitted within six months after injury or death. Failure or defect as to notice and claim is not a bar if in the opinion of the board the employer was not prejudiced thereby, or where the payment is to be made out of the fund and the board is of the opinion that the claim is just and should be allowed. Ordinary language is sufficient, and service may be personal or by registered mail.]

21, 22. *Medical examinations.*—[Claimants must submit to medical examination if required by the employer, but only in accordance with the regulations of the board. The board may also require examination by a medical referee. Failure to submit or obstructing examination suspends the right to compensation during its continuance. Where either employer or employee furnishes the other with a medical report, the board may, on the application of such other party, refer the matter to a medical referee, whose certificate as to physical condition and fitness for work will be conclusive unless the board otherwise directs.]

22a. *Special medical treatment.*—[If the board is of opinion that a special operation or treatment would be in the interest of the accident fund and avoid heavy payment for permanent disability, such treatment may be provided at the expense of the accident fund.]

23. *Review.*—[Any periodical payment may be reviewed by the board at the request of either party, or on its own motion where payments are from the accident fund.]

24. *Minors.*—[Where the injured workman was under 21, and a review takes place more than six months after the injury, the award may be based on the probable earnings at the time of the review.]

25-28. *Commutations.*—[Payments by employers may be commuted to lump sums with the consent of the beneficiary and the approval of the board; the

board may commute payments from the accident fund. Payments may go directly to the beneficiary or be applied as he may direct, or may be invested or paid to trustees, or used partly in one way and partly in another, as the board may determine. The board may also advance a lump sum from the accident fund where circumstances appear to warrant. Where periodical payments have continued at least six months, the board may authorize an employer to purchase an immediate annuity equal to 75 per cent of the value of the periodical payments, and in other cases of such amount as the board deems reasonable. Where such employer is insured, the board may direct a commutation after six months and before the expiration of 12 months, the sum to be paid by the insurance company to the board. The board may likewise require an employer to pay a sum to it, to be applied to periodical payments, subject to added liability if the sum paid was insufficient, or refund if excessive.]

29, 30. *Insurance*.—[Where an employer is individually liable, the board may require him to insure his liability, which failing, it may procure such insurance and collect the costs from him as assessments are enforced. The board may also require benefits in any case to be paid to it by the insurer, in which case the right to benefits will be passed upon by the board, and also the question of such payment.]

31-31b. *Security for payments*.—[Where death or permanent disability, total or partial, results, an employer individually liable may be required to pay a capital sum sufficient to meet future payments if invested at 5 per cent interest; or security for future payments may be required. Employers under schedule 2 may likewise be required to make deposits of money from which the board may pay compensation for accidents to workmen as they occur. The board is authorized to take the necessary steps to collect the additional sums required to meet increased benefits as provided for by amending acts.]

32. *Suspension*.—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.

33. *Compensation for death*.—(1) Where death results from an injury, the amount of the compensation shall be—

(a) The necessary expenses of the burial of the workman, not exceeding \$125.

(b) Where the widow or an invalid husband is the sole dependent, a monthly payment of \$40.

(c) Where the dependents are a widow or an invalid husband and one or more children, a monthly payment of \$40, with an additional monthly payment of \$10, to be increased upon the death of the widow or invalid husband to \$15, for each child under the age of 16 years.

(d) Where the dependents are children, a monthly payment of \$15 to each child under the age of 16 years.

(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.

(1a) Where the workman leaves no widow or the widow subsequently dies and it seems desirable to continue the existing household and an aunt, sister, or other suitable person acts as foster mother in keeping up such household and maintaining and taking care of the children entitled to compensation in a manner which the board deems satisfactory, such foster mother while so doing shall be entitled to receive the same monthly payments of compensation for herself and the children as if she were widow of the deceased, and in such case the children's part of such payments shall be in lieu of the monthly payments which they would otherwise have been entitled to receive.

(1b) In addition to any other compensation provided for the widow, or where the workman leaves no widow, the foster mother, as in subsection (1a) described, shall be entitled to a lump sum of \$100.

(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 exceed 66⅔ 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, but this subsection shall not operate to reduce the total monthly compensation below the rate of \$12.50 per week where the dependents are a widow or an invalid husband and one or more children.

34. *Remarriage 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 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.

35. *Payments to children.*—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.

36. *No dependents.*—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.

37. *Permanent total disability.*—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 66⅔ per cent of his average weekly earnings during the previous 12 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.

38. *Permanent partial disability.*—(1) Where permanent partial disability results from the injury the compensation shall be a weekly payment of 66⅔ 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.

39. *Temporary total disability.*—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.

40. *Temporary partial disability.*—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.

40a. *Minimum benefits.*—The amount of compensation to which an injured workman shall be entitled for temporary total or permanent total disability under the provisions of the workmen's compensation act shall not be less

than \$12.50 per week, or, where his average earnings are less than \$12.50 per week, the amount of such earnings, and for temporary partial or permanent partial disability a corresponding amount in proportion to the impairment of earning capacity.

41. *Computing earnings.*—(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 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 12 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 workmen 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.

42. *Other benefits.*—(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.

(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.

43. *Time of payments.*—The board may whenever 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.

43a. *Lump sums.*—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.

43b. *Widow leading immoral life.*—[The board may suspend a widow's payments, or divert them to other dependents, where it is found that she is a common prostitute, or is living in the relation of man and wife with a man to whom she is not married.]

44. *Minors.*—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.

44a. *Medical aid.*—(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, and shall be entitled to such artificial member or members and apparatus as may be necessary as a result of the injury and to have the same kept in repair for a period of one year.

(2) In this act "medical aid" shall mean the medical and surgical aid and hospital and skilled nursing services above mentioned and the artificial member or members and apparatus and repair.

(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 expenses thereof as may be deemed just.

(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.

(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.

44b. *Reports by physicians.*—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.

44c. *Rehabilitation.*—[The board is authorized to expend not over \$100,000 in any calendar year to aid in getting injured workmen back to work, or lessening handicaps resulting from injuries. The cost is to be met in schedule 1 cases from the accident fund, and in schedule 2 cases, by the employers themselves, to be collected as compensation or expenses of administration.]

45-67. *Workmen's compensation board.*—[A board of three members, constituting a body corporate, is appointed by the lieutenant governor in council for

the purpose of administering Part I of the act. Permanent appointment is to be made of one member as chairman; a vice chairman is also to be appointed to act in case of the absence of the chairman. Pro tempore appointments may be made as occasion requires. Terms of commissioners are during good behavior, retirement to take place at age 75. Salaries are \$10,000 for the chairman, \$8,500 for the vice chairman, and \$7,500 for the third member; two members constitute a quorum.

The board has like powers with the supreme court as to compelling attendance of witnesses and the production of books, papers, etc. Commissioners must give full time to their duties and may not be interested in industry, employers' liability, or accident insurance or safety devices. Offices are to be in Toronto but meetings may be held in any part of Ontario. Times of meeting and the nature of proceedings are to be such as to serve the proper and speedy dispatch of business. A secretary, medical officer, and other officers, clerks, and assistants necessary for the administration of the act may be appointed, tenure to be at the pleasure of the board.

The board is to have exclusive jurisdiction as to all questions arising under this part, and its action or decision will be final and conclusive, and not open to question or review by the courts or subject to restraint by injunction or otherwise. Specifically it is to decide whether any industry or part thereof falls within the scope of schedule 1 or of schedule 2, or whether any part of an industry is a part, branch, or department of an industry within the meaning of Part I. It may at any time amend, alter, or rescind any order or decision made by it. Costs may be awarded in contested cases, payment to be enforceable as compensation awards. The board may act on reports of a member, officer, or appointee, such persons to have the powers of the commission as to witnesses, etc.

Orders directing the payment of compensation by employers individually liable may be certified to a clerk of any county or district court, and when filed with him become enforceable as a judgment of the court: the clerk is entitled to a fee of \$1 for his services. Subject to approval by the lieutenant governor in council, the board may make such regulations for carrying out the provisions of this part as it deems expedient; penalty for contravention of a regulation is a fine not to exceed \$50.

If an action is brought against an employer by a workman or his dependent, the board may determine whether such action may be brought or whether the remedy is under Part I, which determination will be final.

Provision is made for annual reports of transactions and an audit of accounts; also for annual examinations by the superintendent of insurance or an officer of his department.]

68. *Contribution by the Province.*—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.

69. *Accident fund.*—(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.

(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.

70-72. *Reserves.*—[Reserve funds are to be maintained for each class, not necessarily uniform in amount, nor at all times equal to the capitalized value of future payments, unless the board thinks it necessary to do so; but they are to be sufficient to meet all payments without recourse to the special reserve, and without unduly or unfairly burdening employers in any class in future years. If money for payments is not available at any time without recourse to the reserves, such recourse may be had and a special assessment made to recoup the same; or money may be advanced from the consolidated revenue fund of the Province, to be similarly recouped.]

73. *Industries to be classified.*—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 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 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.

74-76a. *Adjustments of classes.*—[The board has jurisdiction and authority to rearrange classes, transfer industries in whole or in part, establish other classes, or add industries not already included. Subclasses may also be established according to degrees of hazard. Separate accounts are to be kept for each class and subclass; but for the purpose of paying compensation, the accident fund is a unit. In case of excessive losses in any industry due, in the opinion of the board, to lack of care or safety provisions, it may add to the sum of the employer's contribution to the accident fund, or exclude the industry from its class, whereupon the employer will be individually liable, and the industry will be included in schedule 2. Small industries, having not more than a stated number of workmen, may be thus withdrawn from schedule 1, but without effecting exclusion from schedule 2; but employers or workmen in such industries may give notice of election to be included under schedule 1, which election will be operative; or any part of an industry may be so added on the application of the employer. Additions may likewise be made to schedule 2 for such time and on such terms as the board may fix.]

77. *Regulations in force.*—[Regulations or orders made by the board are not in force until approved by the lieutenant governor in council and one month after publication in the Ontario Gazette.]

78. *Employers' statements.*—[Employers are required to furnish annually verified statements as to the actual pay roll for the year last past and an estimate for the succeeding year. Accounts and records are to be kept as the board may require, open to inspection by its officers. If the employer fails to furnish the required estimate, the board may make its own estimate and levy accordingly, and if it later appears that the estimate was too low, an added assessment may be made. Failure to comply also entails a penalty not exceeding \$500, and a percentage or interest additional.]

78a. *Assessors' returns.*—[Municipal assessors, on the completion of their roll, are to make return to the board, showing employers' names, addresses, employees, nature of business, etc.; farming and mercantile business are excluded. Payment for such service may be made from the accident fund.]

79-82. *Inspections, etc.*—[The board, a member, or officer, may examine the books and accounts of employers, take declarations and affirmations, and inspect premises for safety. Penalties for obstruction are provided. No information thus obtained may be divulged except in the performance of duty or under authority of the board.]

83. *Penalties.*—[Penalties under this part are recoverable under the summary convictions act of the Province.]

84-98a. *Assessments.*—[The board is to make annual assessments to cover the estimated compensation payments for the current year, expenses, and reserves. Individual wages in excess of \$2,000 are to be deducted from any pay roll. The assessments need not be uniform, but may be fixed in relation to the hazard of the industries included within any class or subclass, within which uniformity is required. A system of merit rating is authorized. Notice of assessments is to be given, with times for payment; revision is to be made on the basis of experience if any assessment is found to have been too low; or supplementary assessments may be made where the sum realized is insufficient. If a deficiency occurs in any class because of the failure of some employers to pay their share, or in case of a disaster it would unfairly burden the employers in that class to make up the deficiency themselves, the employers in all classes may be assessed, but this may be deferred until the making of the next annual assessment. A special or disaster fund may also be provided for.

If the deficiencies above referred to are subsequently made good by the defaulting employers, the amount shall be apportioned and credited among the other employers according to the amounts paid by them in this behalf. If an employer is not assessed in any year, he is nevertheless liable for the amount for which he should have been assessed, and payment may be enforced and

properly credited. Defaulting employers also continue liable for payments in default, even though the deficiency has been made up. The lieutenant governor in council may require supplementary assessments to be made when in his opinion the state of the accident fund or of the reserves makes the action necessary.

Failure to pay assessments entails liability to the payment of an added percentage by way of penalty. Employers who fail to transmit pay rolls or other statements, or to pay assessments when due, may be charged, in addition to other penalties, with the full cost of compensation for any accident to their workmen occurring during the period of such default; the board may relieve from such liability, in whole or in part, if it is of opinion that the default was excusable. A certificate of an assessment remaining unpaid may be certified by the secretary of the board and filed with the clerk of the municipality, whereupon it may be enforced as a judgment of the court, or after 30 days the collection may be put in the hands of municipal collectors for collection as taxes, with 5 per cent additional for costs of collection.

If a new industry is established after the assessment for the year has been made the employer must notify the board and submit an estimate of his pay roll for the remainder of the year. In cases of temporary industries the employer may be required to give security for a sum sufficient to meet his assessment. If a right to a lien under the statute exists, the owner must see that the contributions due the accident fund are made by the employer, or be himself liable.

Assessments are to be classed with those debts given preference by the various statutes on assignments, trustees and the winding up of companies, the basis to be the lump sum for which periodical payments may be commuted, not over \$500 in respect of any individual claim.]

99. *Reports of accidents.*—[Employers must report within three days the happening of any accident which disables a workman from earning full wages or necessitates medical treatment, giving prescribed data and such other details as the board may require. Default entails penalty of fine and may also entail liability for the compensation awarded in respect of the accident.]

100. *Industrial diseases.*—(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 12 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 12 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 12 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 12 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 12 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.

(7a) (1).—“Silicosis” shall mean silicosis of the lungs (a fibroid condition of the lungs caused by the inhalation of silica dust).

(2) A person shall for the purposes of this act be deemed to have or to have had silicosis—

(a) In the auto-primary stage, when it is found by the board that the earliest detectable specific physical signs of silicosis are or have been present, whether or not capacity for work is or has been impaired by such silicosis.

(b) In the primary stage, when it is found by the board that definite and specific physical signs of silicosis are or have been present, and that capacity for work is or has been impaired by that disease, though not seriously and permanently.

(c) In the secondary stage, when it is found by the board that definite and specific physical signs of silicosis are or have been present, and that capacity for work is or has been seriously and permanently impaired by that disease or when it is found by the board that tuberculosis with silicosis is or has been present.

(7b) Nothing in this act shall entitle a workman or his dependents to compensation, medical aid, or payment of burial expenses for disability or death from silicosis unless the workman has been actually exposed to silica dust in his employment in Ontario for periods amounting in all to at least five years preceding his 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.

101. *Employer's associations.*—(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.

(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.

102. *Committee.*—(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 employees, to watch over their interests in matters to which this part relates.

(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.

103. *Contribution by employers in Schedule 2.*—Employers in industries for the time being included 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 assessment shall apply (*mutatis mutandis*) to assessments made under the authority of this section.

104. *Application of Part 1.*—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.]

100. *Exclusions.*—This act shall not apply to the industry of farming or to domestic or menial servants or their employers.

SCHEDULE 1.—INDUSTRIES THE EMPLOYEES IN WHICH ARE LIABLE TO CONTRIBUTE TO THE ACCIDENT FUND

(As altered and amended)

Class 1.—Lumbering; logging, river driving, rafting, booming; robbing, 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 saw mills; 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 work 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; manufacture of fireworks, gunpowder, ammunition, nitroglycerin, dynamite, gun cotton, or other high explosives, torpedoes, fuses, or cartridges.

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; quarries, stone crushing, limekilns; manufacture of cement, glass, glass products, glassware, porcelain, or pottery.

Class 7.—Rolling mills; steelworks; manufacture of heavy forgings, including ship anchors.

Class 8.—Foundries; gas or electric welding; manufacture of stoves, furnaces, cast hot-water boilers, radiators, or metal sanitary ware, water fixtures, or bedsteads.

Class 9.—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; manufacture of gold or silver ware, plated ware, watches, watchcases, clocks, jewelry, or musical instruments.

Class 11.—Manufacture of agricultural implements, threshing machines, wagons, carriages, sleighs, vehicles, automobiles, motor trucks, motor cycles, bicycles, tricycles, toy wagons or sleighs, baby carriages, or airplanes; car shops.

Class 12.—Manufacture of paint, color, varnish, oil, japans, turpentine, printing ink, printers' rollers; manufacture of salt; 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; manufacture of nonhazardous chemicals, drugs, medicines, dyes, extracts, pharmaceutical or toilet preparations, soaps, candies, perfumes, noncorrosive acids or chemical preparations; shoe blacking or polish, yeast, baking powder or mucllage; tar, or tarred, pitched, or asphalted paper.

Class 13.—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 14.—Manufacture or preparation of meats or meat products or glue; packing houses, abattoirs; manufacture of fertilizers not incidental to any other industry.

Class 15.—Distilleries, breweries; manufacture of spirituous or malt liquors, malt, alcohol, wine, vinegar, cider, mineral water, soda waters, or methylated spirits; sugar refineries; manufacture of dairy products, butter, cheese, condensed milk or cream, biscuits, confectionery, chewing gum, spices, condiments, or any kind of starch; bakeries; canning or preparation of fruit, vegetables, fish or foodstuffs; pickle factories; manufacture of tobacco, cigars, cigarettes, or tobacco products.

Class 16.—Tanneries; manufacture of leather goods and products, belting, whips, saddlery, harness, trunks, valises, trusses, imitation leather, boots, shoes, gloves, rubber goods, rubber shoes, tubing, tires, or hose.

Class 17.—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, hair cloth and other hair goods; work in manila or hemp.

Class 18.—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; covering of umbrellas; power laundries; dyeing, cleaning, or bleaching.

Class 19.—Printing, photo-engraving, engraving, lithographing, bookbinding, embossing; manufacture of stationery, paper, cardboard boxes, bags, wallpaper, or papier-mâché.

Class 20.—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; coal, wood, lumber yard, and builders' supply businesses.

Class 21.—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 6 feet deep, for gas

pipes, water pipes, or wire conduits; excavation work not otherwise classified where the depth is more than 6 feet and the width is less than half the depth.

Class 22.—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 23.—Steel building and bridge construction; installation of elevators, fire escapes, boilers, engines, or heavy machinery; the erection of windmills; construction or operation of railways or canals; construction or operation of dry docks; construction of piers, wharves, breakwaters, or other harbor improvements; stevedoring; operation of and work upon wharves; dredging, subaqueous construction or pile driving; fishing; loading or unloading of cars; all industries, trades, businesses, and occupations mentioned in section 73 of the act, not otherwise classified and not included in Schedule 2.

Class 24.—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, decoration, 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; operation of theaters licensed under the theaters and cinematographs act, and operation of places for exhibitions by moving-picture machines licensed under the theaters and cinematographs act.

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
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.
Silicosis.....	Mining.
Stone workers' or grinders' phthisis.	Quarrying, cutting, crushing, grinding, or polishing of stone, or grinding or polishing of metal.
Pneumoconiosis.....	Quarrying, cutting, crushing, grinding, or polishing of stone, or grinding or polishing of metal.
Benzol poisoning.....	Any process involving the use of benzol.

QUEBEC

ACTS OF 1926

CHAPTER 32.—*Workmen's compensation act*

1. *Short title.*—This act may be cited as the workmen's compensation act, 1926.

DIVISION I.—COMPENSATION

2. *Scope of law.*—Accidents happening by reason of or in the course of their work to apprentices, workmen, and employees engaged—

In the work of building or in factories, manufactories, or workshops.

In stone, wood, or coal yards.

In lumbering operations, including the floating of timber.

In any transportation business by land or by water, or in loading or unloading.

In any gas or electrical business.

In the business of building, repairing, or maintenance of public roads, railways, or tramways, waterworks, drains, sewers, dams, wharves, docks, elevators, bridges, or other similar work.

In mines or quarries.

In any industrial enterprise or yard in which explosives are manufactured, used, or kept, or in which machinery is used, moved by power other than that of men or of animals; but only if such accident is caused by such machine or discharge of such explosives—

Shall entitle the injured person or his representatives to compensation as hereinafter determined.

3. *Public and mercantile employees.*—The government of the Province of Quebec and public and private corporations shall, on the same footing as individuals, be subject to these provisions whenever they come within one of the cases enumerated in section 2.

These provisions shall likewise apply to commercial establishments, but only for accidents caused through an elevator, or machinery moved by power other than that of men or animals, to those in charge of same, or which happen in a workshop which is part of the enterprise.

4. *Exemptions.*—A workman who usually works alone shall not be subject to liability under this act from the fact of one or more other workmen casually working with him, or from the fact of the members of his family, who live with him, habitually working with him.

This act shall not apply to agricultural industries, nor to navigation by means of sails, nor to domestic service.

5. *Benefits.*—1. In the cases provided for in section 2, the person injured shall be entitled—

(a) In case of total and permanent incapacity, to a life rent equal to two-thirds of his yearly wages.

(b) In case of permanent and partial incapacity, to a life rent equal to one-half of the sum by which his yearly wages have been reduced in consequence of the accident.

(c) After a permanent and partial incapacity, if the incapacity be aggravated by another accident, to a life rent equal to two-thirds of the sum by which his yearly wages are again reduced by such aggravation.

These rents shall be due from the day on which the permanent nature of the incapacity is established.

2. In case of temporary incapacity which has lasted less than seven days, to medical attendance.

If the temporary incapacity has lasted seven days or more, to an allowance equal to half his daily wages at the time, starting from the seventh day after the accident.

Such allowance shall be payable at the times and place where payment is usually made in the enterprise, but the interval between each payment shall not exceed 10 days; it shall not exceed \$25 a week, nor be less than \$8 a week save where the wages of the person injured are less than this, in which case it shall not exceed the amount of his daily wages.

3. *Death*.—When the accident results in death, a pension shall be paid, starting from the death, to the representatives, hereinafter designated, of the deceased, in the order in which they are enumerated, and each degree excluding those following:

(a) To the surviving consort, not divorced nor separated from bed and board at the time of the death, provided the marriage took place before the accident, a life rent equal to 20 per cent of the yearly wages of the deceased.

If the deceased has left legitimate or legitimized children under 16 years of age, the life rent to the consort shall be increased in the following proportions:

For one child, 10 per cent of the yearly wages of the deceased.

For two children, 20 per cent of the yearly wages of the deceased.

For three children, 30 per cent of the yearly wages of the deceased.

For four or more children, 40 per cent of the yearly wages of the deceased.

The rent shall be proportionally reduced as the children of the deceased reach the full age of 16 years.

In the event of remarrying, the consort shall lose the right to his or her share of the rent, but shall continue to receive that allotted to the children.

Where the widow who is receiving a rent remarries, she shall receive a final allowance equal to the rents for 12 months.

(b) To each child who is without father and mother, a rent equal to 20 per cent of the yearly wages, until he reaches the full age of 16 years, the total of such rents not to exceed 60 per cent of the yearly wages.

(c) If there be no consort surviving, or children, qualified to receive under the preceding subparagraphs (a) and (b), each of the ascendants and descendants of whom the deceased was the principal support shall receive a rent, payable to the ascendants for life and to the descendants until the age of 10 years, equal to 10 per cent of the yearly wages of the deceased, the total amount of the rents so allowed not to exceed 30 per cent of the yearly wages, and each rent, as the case may be, being reduced proportionally.

6. *Medical, etc., aid*.—Accidents which are provided for by this act shall in addition entitle the injured person or his representatives, as the case may be—

(1) For a period not to exceed six months, to all medical, surgical, and pharmaceutical and hospital charges according to a tariff approved by the lieutenant governor in council, as well as to charges of transporting the injured person to the nearest hospital. Wherever there is more than one hospital, the injured person may select one of his own choice;

(2) To the supplying and normal renewing, during the same period, of prosthetic and orthopedic appliances, the use whereof is deemed necessary; and

(3) In case of death, to the actual funeral expenses, but to the extent of \$100 only.

The employer must procure for the injured person whose mother tongue is French or English the services of a physician and, if required, of nurses speaking his language. Should he fail to do so, the injured person may provide them himself at the expense of the employer. The employer and the head of the enterprise, or the insurance company, as the case may be, may be sued directly by the physicians and hospital establishments having had

the care of the injured person, but, if there is no agreement to the contrary, only to the extent of the sums fixed by the tariff.

7. *Payments exempt.*—The rents, allowances, and compensation due under this act shall be inalienable and exempt from seizure,

The rents shall be payable monthly at the domicile of the person entitled thereto or at any other place in the Province indicated by him.

8. *Computing wages.*—The yearly wages upon which the rent is based shall be, in the case of a workman engaged in the business during the 12 months next before the accident, the actual remuneration allowed him during such time, whether in money or in kind.

In the case of a workman employed less than 12 months before the accident, such wages shall be the actual remuneration which he has received since he was employed in the enterprise, plus the average remuneration received by workmen of the same class during the time necessary to complete the 12 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 remainder of the year.

In the case where the workman receives a fixed wage, any remuneration he may have received for overtime shall not be taken into account in calculating his yearly wages.

The yearly wages to be considered in calculating the rent shall not be less than \$600, nor more than \$2,000.

9. *Burden of liability.*—The rents, allowances, and compensation established by this act shall be at the charge of the injured person's immediate employer; but the head of the industry or enterprise for which such employer is acting as a contractor, subcontractor or otherwise, shall be jointly and severally liable with such employer, in favor of the injured person or his representatives, for the payment of such rents, allowances and compensation.

If the judgment fixing a compensation is not complied with within fifteen days, the beneficiaries may sue the debtor's guaranty insurance company directly, to recover the amount of the judgment. The action against the insurance company shall be subject to a prescription of six months from the date of the judgment.

The head of the industry or enterprise, after having paid, may recover the amount so paid from the party responsible.

10. *Accident reports.*—Every accident occasioning inability to work shall be reported to the minister of public works and labor by the employer or the authorized representatives of such employer within 30 days. This provision shall not apply to the government of the Province of Quebec.

The report shall be in writing and contain all information required by the minister.

Immediately after settlement of the compensation, the employer shall report in writing to the minister and answer all the questions put in this connection.

Failure, without reasonable excuse, to make such reports shall render the employer liable to a fine of not less than \$25 and not more than \$100, payable to the Crown, and recoverable in the usual manner with costs, and, in default of payment of the fine and costs, the employer, and in the case of a corporation, the president and the manager thereof, shall be liable to an imprisonment for not more than 30 days.

The fine and imprisonment may be repeatedly imposed until the party condemned has furnished the minister with the required reports.

The injured person and the attendant physician may give a like notice.

11. *Notice of accident.*—Notice of an accident shall be given to the employer within 30 days, by the injured person or his representatives, and by the physicians who attended him.

In default of such notice, the person injured, his representatives and the physicians are deprived of their right of action, unless they prove that they have been prevented from giving such notice for reasons deemed sufficient by the judge or the court.

12. *Insurance.*—With the exception of the Crown, public corporations and railways under the control of the Parliament of Canada, no one may engage in the enterprises, operations or business mentioned in sections 2 and 3 of this act, without having previously obtained from a fixed premium or a mutual insurance company, approved by the lieutenant governor in council, a policy of insurance by which the insurer undertakes to perform the obligations im-

posed upon the insured by this act, for any accidents of which his workmen or employees may be the victims by reason of or in the course of their work.

Such a policy of insurance may, however, be replaced by a deposit, in the office of the minister of public works and labor, or of the corporations, persons, or officers designated by order-in-council, of a surety-bond, a sum of money or securities, or any other guarantee deemed sufficient to answer for the solvency of the person making such deposit and for the payment of the rents, allowances, and compensation for which he may be liable under this act.

The persons who fail to comply with the obligation imposed upon them by this section shall be liable to a fine of not less than \$500 and not more than \$1,000, payable to the Crown, and recoverable in the usual manner with costs; and, in default of paying the fine imposed and the costs, the person in default, and, in the case of a corporation, the president and manager thereof, shall be liable to an imprisonment of not less than eight days and not more than 30 days.

The fine and imprisonment may be repeatedly imposed until the party in default has complied with the provisions of this section.

13. *Discharge of employer.*—The debtor may at any time free himself from the duty of effecting the rental payments for which he is liable, by paying the capital of such rents to an insurance company, approved by the lieutenant governor in council, which shall in his place undertake the duty of effecting the rental payments at a rate fixed by order in council.

When the capital of the rents does not exceed \$500, it shall be paid over to the injured person or to his representatives, and the payment of such capital shall free the debtor from the duty of effecting the rental payments.

14. *Deductions from wages.*—1. It is forbidden for employers, or owners of industries and enterprises to make any retention of any part of the salary or wages of their workmen or employees for purposes of insurance against accidents happening by reason of or in the course of their work, even with the consent of such workmen or employees.

2. Any agreement under which such a retention is made or authorized shall be null and of no effect.

3. In any case where such retention is made, the workman, apprentice, or employee, in the three months following the termination of his contract of employment, may recover, before any court of competent jurisdiction, the amount so unlawfully withheld from his salary or wages.

Subsections 1, 2, and 3 of this section shall not apply to employees who, individually and in good faith, take out supplementary policies of insurance and who give written orders to their employers to pay the premiums out of their wages or salaries.

DIVISION II.—LIABILITY

15. *Third-party liability.*—Apart from the action granted under this act, the injured person or his representatives shall retain, against the authors of the accident, other than the employer, his servants or agents, the right to claim compensation for the damage caused, in accordance with the rules of common law.

The compensation granted them shall free to that extent the employer and the owner of the industry or enterprise from the obligations put upon them. Such action against the third parties responsible may even be exercised by the employer and the owner of the industry or enterprise, at their own risk, in the place and stead of the injured person or his representatives, if such injured person or representatives neglect to avail themselves of it, within a delay of 15 days, after being put in default in writing.

16. *Remedy exclusive.*—Damages resulting from accidents happening by reason of or in the course of the work shall only entitle, as against the employer and the owner of the industry or enterprise, the injured person or his representatives in the cases provided for in this act to the compensation which it fixes.

17. *Medical examinations.*—The injured person shall be bound, not oftener than once a month, at the expense of the employer, if the latter 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 rents, allowances, and 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.

18. *Waivers.*—Every agreement contrary to the provisions of this act shall be absolutely null.

DIVISION III.—PROCEDURE

19. *Jurisdiction of courts.*—The superior court, the circuit court, and the magistrate's court shall have jurisdiction in every action or contestation in virtue of this act, in accordance with the jurisdiction given to them, respectively, by the Code of Civil Procedure.

20. *Procedure by petition.*—The fixing and recovery of the rents, allowances, and compensation under this act shall be effected, notwithstanding article 117 of the Code of Civil Procedure, by a summary petition to one of the judges of the court of competent jurisdiction, whereof notice must be given to the adverse party at least six clear days before its presentation.

The judge before whom the parties appear shall have the widest powers respecting the fixing of the compensation provided by this act, the summoning of witnesses and of any experts, as well as the taxation of all costs and the general conducting of the inquiry, and he may in particular:

(a) If he considers that no rights are prejudiced, render judgment immediately; or

(b) Adjourn the case to a date which shall not be distant more than 15 days and shall then proceed, in or out of term, to hear and decide the matter summarily, and without having the evidence of witnesses taken in writing; or

(c) At the request of any party, if he considers that the ends of justice will be better served, refer the case to the superior court and order the issue of a writ in the usual manner. The proceedings on such writ are summary and subject to the provisions of the code of civil procedure respecting summary matters.

In any case, no more than one expert witness may be produced on each side, on the initiative of the parties.

Decisions rendered by the judge in virtue of the foregoing provisions shall have the same effect as a judgment of the court.

The defendant, unless he wishes to invoke questions of law and special facts, is not obliged to plead in writing to the petition, all the allegations whereof he is deemed to have denied.

One of the parties in all cases may exact the taking of the evidence in shorthand, but the expense thereof shall be borne by him.

Settlements, arrangements, compromises, and payments effected without the sanction of the judge or of the court, saving the case of subsection 2 of section 5 and the cases of section 6, are null de jure.

21. *Fees.*—The advocates and attorneys representing the injured person or his representatives shall be entitled, as well in appeal as in the court of first instance, to the taxable costs only, adjudged against the opposing party; they can not receive from their clients any retainer nor any fee or commission whatever, either directly or indirectly, arising out of the application of this act, under pain of being guilty of contempt of court. They shall in addition be obliged to return all sums collected contrary to this prohibition.

22. *Same.*—Shall be null de jure and of no effect; all obligations contracted by the injured person or his representatives to remunerate the services of an intermediary who undertakes to secure to the said injured person or to his representatives the benefit of the provisions of this act.

Sums paid contrary to this provision may be recovered before any court of competent jurisdiction.

23. *Appeal.*—Whenever the amount in dispute exceeds \$200, a final appeal shall lie, as to the question of law only, to the court of king's bench, before five judges, from judgments of the judge or of the court of first instance.

The appeal shall be taken within 15 days from the rendering of such judgment; such appeal shall be heard, with precedence over other cases, at the first sitting of the court after the inscription and without a printed factum or record.

24. *Provisional weekly allowance.*—The court of first instance or a judge of such court may, upon petition, at any stage of the case, whether before judgment or while an appeal is pending, grant a provisional weekly allowance to the person injured or to his representatives.

25. *No trial by jury.*—There shall, even in the cases provided for in section 29 here below, be no trial by jury in any action taken in virtue of this act.

26. *Limitation.*—The petition to recover any compensation provided for under this act shall, as against all persons, be subject to a prescription of one year from the date of the accident.

27. *Revision.*—A petition to revise the amount of the compensation, based on the alleged aggravation or diminution of the disability of the person injured or upon his death as the result of the accident, may be taken during the two years next after the date of the final judgment.

28. *Common-law rights.*—This act shall not do away with any of the common-law rights of action belonging to any persons who can not avail themselves of its provisions.

29. *Actions begun under act.*—Cases begun under this act may, if it be afterwards established that its provisions do not apply in the circumstances, be continued and adjudged as an ordinary action at common law, provided that the petition be so drawn up to permit thereof; and, for such purpose, the judge or the court may allow all lawful amendments.

30. *Workmen outside Province.*—Workmen, apprentices, and employees who are engaged in this Province to go and work outside, or their representatives, shall not be entitled to the benefits of this act if they are entitled to the compensation provided for under the law of the place where the accident occurred.

31. *Employers not covered.*—Employers to whom this act does not apply may place themselves under its provisions, if they enter into a written agreement for such purpose with their apprentices, workmen, and employees individually.

During the period agreed upon, the respective legal rights and obligations of the signatories of the said agreement with regard to accidents happening by reason of or in the course of the work shall be governed by these provisions to the exclusion of any other law.

32. *Application of act.*—This act shall not apply to cases begun before the date of the coming into force of this act, nor to accidents which happened before such date.

33. *Repeals.*—Chapters 274 and 275 of the Revised Statutes, 1925, are repealed.

34. *Act in effect.*—This act shall come into force on the 1st day of April, 1927.

Assented to March 24, 1926.

YUKON TERRITORY

ORDINANCES OF 1917

CHAPTER 1.—*Compensation of workmen for injuries*

SECTION 1. *Title.*—This ordinance may be cited as “The workmen’s compensation ordinance.”

SEC. 2. *Definition.*—(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.

(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.

SEC. 3. Less than five employees.—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. Compensation, payable, when.—(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.

(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.

SEC. 5. Suits.—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. Disputes.—[Questions as to liability, amount, tern, beneficiaries, or apportionment of benefits, if not settled by agreement, are to be settled by a judge of the territorial court.]

SEC. 7. Wrong remedy.—[If an action for damages is brought within the period fixed for taking proceedings under this ordinance, and it is determined that the remedy was under this ordinance, the suit will be dismissed; but if the plaintiff shall so choose, the court in which the action was brought shall make an award of compensation under this ordinance, with liberty to deduct therefrom any costs caused by the bringing of the action. In such cases the court gives a certificate stating the amount, distribution, etc., of the benefits, the same to have the effect of a judgment or award under this ordinance.]

SEC. 8. Notice and claim.—[Notice must be given as soon as practicable, and claim made within six months and action commenced within nine months of an injury or death; but no defect or inaccuracy will relieve the employer if it is found that he was not prejudiced thereby, or that it was occasioned by mis-

take or other reasonable cause, or that the facts were known to the employer or an agent or representative. Notice is to be in ordinary language; service may be personal or by registered mail, addressed to the employer, or one of several employers.]

SEC. 9. *Separate actions.*—[If separate actions are brought by two or more persons claiming to be beneficiaries under this ordinance, such actions may be consolidated and tried as one, either on application of any party or on direction of the judge.]

SEC. 10. *Contractors.*—[Contractors letting work to subcontractors are liable to the employees of the latter except as to accidents occurring elsewhere than on the premises on which the contractor undertook to do the work or which are otherwise under his control.]

SEC. 11. *Preference.*—[Awards are a first charge on any sum payable to an employer by insurers in respect of the amount payable to any workman on account of an injury, and the judge may direct the insurers to pay such sum into a chartered bank in the name of the clerk of the court, to be applied in accordance with the terms of this ordinance.]

SEC. 12. *Third-party liability.*—[Where a third party is liable for the injury the injured workman may, at his option, proceed against such party or against his employer, but not against both. If compensation is claimed, the employer is entitled to be indemnified by the third person.]

SEC. 13. *Contractors not employees.*—No contractor or subcontractor shall be entitled to receive compensation under this ordinance, but shall be deemed to be an employer.

SEC. 14. *Assignments, etc.*—No claim for compensation due under this ordinance shall be assignable, and all compensation due hereunder shall be exempt from execution, garnishee, and attachment.

SEC. 15. *Waivers.*—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.

SEC. 16. *Defenses barred.*—It shall not be a defense to a claim under this ordinance that the workman assumed the risk of the employment or that the injury or death was approximately caused by the contributory negligence of the workman.

FIRST SCHEDULE

SECTION 1. *Death.*—The amount of compensation under this ordinance shall be—

(a) In the event of the death of a workman resulting from injury his dependents shall be entitled to receive the sum of \$2,500.

(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 \$500: *Provided*, That the burial expenses, not exceeding the sum of \$150, shall be a first charge on the said amount.

SEC. 2. *Total disability.*—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 \$3,000.

SEC. 3. *Partial disability.*—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:

For the loss of a thumb, \$500.

For the loss of an index finger, \$300.

For the loss of any finger other than the index finger or thumb, \$200.

For the loss of a great toe, \$300.

For the loss of any other toe than the great toe, \$150.

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, \$1,500.

For the loss of an arm, \$2,000.

For the loss of a foot, \$1,500.

For the loss of a leg, \$2,000.

For the loss of an eye, \$1,500.

For the loss of an ear, \$250.

For the loss of the nose, \$600.

SEC. 4. Temporary disability.—For other injuries causing temporary disability the employer shall pay to the workman weekly during the period of such disability, 50 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.

SEC. 5. Loss of both hands, etc.—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.

SEC. 6. Amputation.—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.

SEC. 7. Disabilities not in schedule.—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 \$3,000.

SEC. 8. Same.—To illustrate: If said workman were of a class that would entitle him to \$3,000 under this schedule if he were totally and permanently disabled and his injury would be such as to reduce his earning capacity 25 per cent, he would be entitled to receive \$750, it being the amount that bears the same relation to \$3,000 that 25 per cent does to 100 per cent. Should such workman receive an injury that would impair his earning capacity 75 per cent he would be entitled to receive \$2,250, it being the amount that bears the same relation to \$3,000 that 75 per cent does to 100 per cent.

SEC. 9. Higher rates, when.—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.

SEC. 10. Settlements.—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.

SEC. 11. Medical examinations; refusing treatment.—(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 obstructs 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.

SEC. 12. *Payments in case of death.*—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.

SEC. 13. *Dependents.*—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.

SEC. 14. *Investments.*—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.

SEC. 15. *Deposits in bank.*—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.

SEC. 16. *Medical examinations.*—[Workmen receiving benefits must submit to medical examination by a physician provided by the employer or insurer; or, if such physician is objected to or the certificate is unsatisfactory, a workman may submit to an examination by a practitioner appointed by the judge, whose certificate shall be final as to the employee's condition. Refusal or obstruction of examination suspends payments.]

SEC. 17. *Review.*—[Weekly payments may be reviewed at the request of either party and modified according to existing conditions. In the absence of agreement questions in dispute are to be settled by the judge.]

SEC. 18. *Assignments, etc.*—[Unless with the approval of a judge, no benefit may be assigned or attached, nor may payments pass by operation of law except to a personal representative, nor may not set-off be made against the same.]

SEC. 19. *Comity.*—[Nonresident dependents receive no benefits unless by the law of the place of residence dependents of residents of the Territory would be entitled to benefits if resident therein; and in any case not more shall be paid than the amount payable in like case under the law of the place of residence.]

SECOND SCHEDULE

SECTIONS 1-7. *Procedure.*—[In cases of dispute, a judge, on application in writing, will fix a date for hearing evidence and notify the parties, and after such investigation as he deems necessary will render a decision which shall be final and conclusive. The clerk is to prepare the necessary papers, the fee for which is to be nominal; costs may be awarded as the judge deems reasonable. An order when entered by the clerk may be enforced as a judgment. A special register of proceedings under the ordinance is to be kept. Proceedings are to be nontechnical, and rights are to be determined without pleadings or formality except as the judge may deem necessary for the proper conduct of the matters in hand.]

DOMINION OF CANADA

ACTS OF 1918

CHAPTER 15.—*Compensation of workmen for injuries*¹

1. (1) *Law of place of injury.*—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 courts as the governor in council shall from time to time direct.

(2) *Payments, made, to whom.*—Any compensation awarded to any employee or the dependents of any deceased employee of His Majesty by any board,

¹ As last amended 1925.

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.

(3) *Payments from consolidated revenue fund.*—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; or the minister of finance may from time to time take such amount of money as may be authorized by the governor in council from the consolidated revenue fund and deposit such money with the board, officers, authority, or court authorized by the law of any Province to determine compensation cases, from which deposit such board, officers, authority, or court may pay any compensation and costs awarded under the provisions of this act. In any Province where the general administration expenses of maintaining such board, officers, or other authority or court are paid by the Province or by contributions from employers, or by both, the minister of finance may pay, out of any unappropriated money in the consolidated revenue fund of Canada, such portion of such expenses as is fair and reasonable and is authorized by the governor in council.

2. *Regulations.*—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.

3. *Medical, etc., aid.*—For the purposes of this act the term "compensation" shall be deemed to include medical and hospital expenses. This section shall be deemed to have come into operation on the 24th day of May, 1919.

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