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UNITED STATES DEPARTMENT OF LABOR  
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Occupational-Disease Legislation  
in the United States, 1936  
With Appendix for 1937

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## PREFACE

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One of the most serious flaws of accident compensation systems in the United States is the failure of most State legislation to include injuries due to occupational diseases. At present, the systems in operation in 16 States, as well as those of the Federal Government and of Hawaii, Puerto Rico, and the Phillipine Islands, compensate for at least some types of occupational disease. A few make the coverage complete. The other 30 States having accident compensation systems make no such provisions. Their laws, as applied, distinguish between injuries due to sudden physical violence and those resulting from the slow ravage of disease. Thus, a miner crushed by falling rock receives compensation, but a miner who becomes a hopeless invalid because of the gradual filling of his lungs with coal dust and rock dust is excluded from compensation benefits. This is illogical and unfair. The arguments usually made for such a distinction are that in practice the inclusion of occupational diseases under workmen's compensation would involve difficulties of diagnosis and might add unreasonably to the cost of the system. The experience of those States which have actually taken the step of making all types of industrial injuries subject to compensation benefits is evidence that these objections are not very serious, or at least are not insurmountable. The subject has been discussed by experts at the national conferences on labor legislation called by the Secretary of Labor. Each of these conferences recommended that compensation acts should cover injuries due to occupational disease as well as those of a traumatic character. Silicosis and asbestosis—diseases resulting from dust inhalation—have been given particular consideration, a special conference on this subject having been held by the Secretary of Labor in April 1936.

This report deals with the history and development of occupational-disease legislation in the United States. It gives the provisions of existing laws for those jurisdictions where such laws exist, and it is to be hoped that this information will be of service to legislators and to all others who are concerned with the drafting of legislation on this subject.

ISADOR LUBIN,  
*Commissioner of Labor Statistics.*

DECEMBER 2, 1936.

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## Occupational-Disease Legislation in the United States, 1936

### Introduction

The establishment of the principle of compensation for occupational diseases has found much slower acceptance in this country than has that of compensation for industrial accidents. At the present time workmen's compensation laws are in operation in 46 of the 48 States, but of this number only 16 States<sup>1</sup> compensate for occupational diseases. Coverage for occupational diseases is also extended, however, to employees under the workmen's compensation laws of the District of Columbia, Hawaii, Puerto Rico, and the Philippine Islands, and to employees covered by the Federal Employees' Compensation Act and the Longshoremen's and Harbor Workers' Act. Thus, while the subject was little considered in the workmen's compensation laws as first adopted in the United States, by a better understanding of the subject the laws have gradually been liberalized, so that now 22 jurisdictions by one method or another compensate for occupational diseases. In the remainder of the jurisdictions, occupational diseases are excluded from compensation by express language of the act, by interpretation of the courts, or otherwise. Mention should perhaps be made of the courts' interpretation by which a disease contracted gradually is classed as an accidental injury and compensation is awarded accordingly, as has occurred in the State of Maryland.

### Trends in Legislation

The attention given to the general subject of compensation for occupational diseases, and especially to the specific disease of silicosis, has been widespread among the States in the past 2 years.

In Kentucky the law provided that personal injury should not include diseases (except where the disease is the natural and direct

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<sup>1</sup> California, Connecticut, Illinois, Kentucky, Massachusetts, Minnesota, Missouri, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Rhode Island, West Virginia, Wisconsin.

result of a traumatic injury by accident) nor the results of a pre-existing disease, but should include injuries or death due to inhalation in mines of noxious gases or smoke and also injuries or death due to the inhalation of any kind of gas. The law was enlarged in 1934 (ch. 89) to provide that any employers and their employees engaged in the operation of glass-manufacturing plants, quarries, and sand mines, or in the manufacture, treating, or handling of sand, may voluntarily subject themselves to the law, as regards the disease of silicosis caused by the inhalation of silica dust.

West Virginia, by a special act passed in 1935 (ch. 79), provides for payment of compensation to employees within the State who contract silicosis. A special workmen's compensation fund is set up from the premiums and other funds paid by employers electing to come under the provisions of the article. Employers who elect to make individual and direct compensation to their employees having silicosis, or the dependents of such employees, do so subject to the regulations issued by the compensation commissioner. An employee is entitled to compensation when the disease is due to the nature of an occupation or process in which he was employed at any time within 1 year previous to such disease, and when claim therefor has been made within 1 year after the last exposure to silicon dioxide dust in harmful quantities, provided, however, that the exposure shall have been over a period of not less than 2 years in the same employment in the State. A silicosis medical board, to be appointed by the commissioner, and to consist of three physicians having special knowledge of pulmonary diseases, is provided for.

Silicosis and asbestosis were included in the schedule list of compensable disease in North Carolina by an act of 1935 (ch. 123). The act provides that an employer shall not be liable for any compensation for asbestosis, silicosis, or lead poisoning, unless disablement or death results within 3 years after the last exposure to such disease, or, in case of death, unless death follows continuous disability from such disease, commencing within the period of 3 years. For the other occupational diseases on the schedule, claims must be filed within 1 year from disablement or death. The law provides for the compulsory examination of employees engaged or to be engaged in an occupation which exposes them to the hazards of asbestosis or silicosis. Compensation for disability or death from silicosis or asbestosis is not payable unless the employee has been exposed to the inhalation of dust of silica or silicates or asbestos in employment for at least 2 years, and no part of the 2-year period may have been more than 10 years prior to the last exposure.

In 1936 the New York Legislature enacted special legislation providing compensation for and looking toward the prevention of silicosis and other dust diseases (ch. 887). The law provides that there shall be added to the industrial code effective regulations governing the installation, operation, and maintenance of dust-removal systems in all industries and operations in which silica dust or other harmful dust hazard is present, and that such other regulations as will effectively control the incidence of silicosis and similar diseases shall be promulgated. Compensation will not be payable for partial disability due to silicosis or other dust diseases, but will be payable for temporary or permanent total disability or for death. An employer

is liable for the payment of compensation for these diseases when the disability results within 1 year after the last injurious exposure, or, in case of death, within 5 years following continuous disability from this cause. In enacting the article relating to the prevention of silicosis and other dust diseases, it was declared to be the policy of the legislature to prohibit, through any lawful means available, any requirement as a prerequisite of employment which compels an applicant for employment in any occupation coming within the purview of the article to undergo a medical examination. Special provision was also made for the prevention of dust hazard in the construction of public works.

The Nebraska workmen's compensation law was extended in 1935 (ch. 57) to cover occupational diseases contracted in the smelting or metal-refining industries. It is specifically provided that only diseases peculiar to these industries are covered, and that the disability must commence during the period of employment or 2 years from the termination of such employment. The law may not be construed to include contagious or infectious disease contracted during the course of employment, or death due to natural causes which occurs during working time.

A new and enlarged occupational-disease law was enacted by Illinois in 1936. Prior to that time only employees engaged in certain dangerous processes and employments had been afforded protection. By the terms of the 1936 law, the coverage is for "injury to health or death by reason of a disease contracted or sustained in the course of the employment and proximately caused by the negligence of the employer." The employer may elect whether or not he will come under its provision, but if he fails to do so, certain rights accrue to the employee. The employer may choose between two courses: (1) Liability for damage by suit, limited to those cases of disease proximately caused by the employer's own negligence; or (2) liability for compensation payments and medical benefits in all cases of true occupational disease actually attributed to the employment. Compensation for silicosis and asbestosis is especially considered under the new law. Disablement, as defined in the legislation, is compensable if it occurs within 1 year after the last day of exposure, for any occupational disease except those resulting from inhalation of silica dust or asbestos dust; in the latter cases the period is extended to 3 years from the last day of exposure.

Rhode Island's occupational-disease law adopted in 1936 (chs. 2290, 2358) extends the coverage for compensation beyond the diseases ordinarily designated under such legislation. For example, hernia, as well as disability arising from frostbite, is listed as an occupational disease.

### Method of Coverage

There are three usual methods of covering occupational diseases in the workmen's compensation acts: First, by naming the specific occupational diseases which are compensable; second, by the inclusion of all occupational diseases by blanket provisions; and, third, by using the word "injury" instead of "accident" in the law.

The first method is that used in the workmen's compensation laws of several European countries, particularly England, Germany, and

Switzerland. In the United States six jurisdictions (Minnesota, New Jersey, North Carolina, Ohio, Rhode Island, and Puerto Rico) list the specific occupational diseases compensable. Of these jurisdictions, Minnesota lists 23 diseases; New Jersey, 10; North Carolina, 25; Ohio, 21; Rhode Island, 31; Puerto Rico, 15; while New York, which formerly compensated 27 specific diseases, retained the schedule in the legislation but amended the law in 1935 (ch. 254) to provide a general coverage of "any and all occupational diseases." In three States (Kentucky, Nebraska, and West Virginia) coverage is limited to one or two diseases contracted in certain employments.

Some jurisdictions, 10 in all,<sup>2</sup> follow the second method of allowing for compensation; that is, incorporation of blanket provisions in the laws to cover occupational disease. Exemplifying this kind of legislation is the act of Connecticut, which defines occupational disease as "a disease peculiar to the occupation in which the employee was engaged and due to causes in excess of the ordinary hazards of employment as such." Illinois makes blanket provision for compensation for industrial diseases, fixes amounts of compensation for disability, injury, or death from occupational diseases, and specifies that the industrial commission shall administer the terms of the occupational-disease act separately from that covering workmen's compensation due to injury.

The third method is of special interest in the consideration of the general subject of occupational diseases—the use of the word "injury" instead of "accident" in the law. California and Wisconsin specify that the word "injury" is to include occupational disease. The Massachusetts Legislature adopted the word "injury" in lieu of the term "accident", and the courts have held that an injury may be anything that disables a man for work. In the case of *H. P. Hood & Sons v. Maryland Casualty Co.* (92 N. E. 329) the court declared that an infection which a stableman had received from glanders was as much a bodily injury as though he had received a broken leg or arm by the kick of a horse. The Massachusetts court in another case (*Johnson v. London Guarantee & Accident Co.*, 104 N. E. 735) held that a claim for lead poisoning would be allowed as for personal injuries.

From an examination of the printed reports of the proceedings of the annual conventions of the International Association of Industrial Accident Boards and Commissions it is apparent that the administrators of workmen's compensation laws are in agreement that the complete coverage of all occupational diseases is far better than the "schedule" coverage plan. In 1929,<sup>3</sup> at the Buffalo, N. Y., meeting of the association, the following resolution was adopted:

Whereas the experience of several States, including especially the States of California, Connecticut, North Dakota, and Wisconsin, reliably indicates that the cost of including all occupational injuries and disabilities is insignificant and would add not exceeding approximately 1 percent to the present insurance cost of accident disabilities: Therefore be it

*Resolved*, That this association hereby recommends to the several States and Provinces the inclusion of all occupational injuries and disabilities in their compensation laws, and it does hereby place itself on record as favoring such legislation.

<sup>2</sup> Connecticut, District of Columbia, Hawaii, Illinois, Missouri, New York, North Dakota, Philippine Islands, the Federal Employees' Compensation Act, and the Longshoremen's and Harbor Workers' Compensation Act.

<sup>3</sup> See Bureau of Labor Statistics Bull. No. 511, p. 325.

The legislative committee of this association, at the meeting at Asheville, N. C., in 1935, presented a draft of two provisions covering the compensation of occupational diseases. The association accepted the report of the committee with the direction that it be sent to the various States for their study and consideration.

Consideration was given to occupational diseases by a group of experts who gathered in Washington, D. C., on February 14 and 15, 1934, at the conference on labor legislation called by the Secretary of Labor.<sup>4</sup> The committee on workmen's compensation recommended that the term "injuries" should include occupational diseases. It was also a part of the recommended report that a "blanket" coverage of occupational diseases was preferable to the "schedule" coverage. A second conference was called by the Secretary of Labor in 1935<sup>5</sup> at Asheville, N. C., and a third in Washington, D. C., in 1936.<sup>6</sup> At these sessions the subject of workmen's compensation was considered, and the recommendations of the first conference on the subject of occupational diseases were approved.

At the conference on silicosis, which met in Washington on February 26, 1936, it was decided that a larger representation was necessary, so the Secretary of Labor called a national conference for April 14, 1936. Representatives of labor and industry gathered at this meeting to discuss the problems incident to the prevention and control of silicosis and other occupational dust hazards. Committees were named to study and analyze the hazard in industry and present recommendatory measures. These committees included the committee on prevention of silicosis through medicine and engineering control; committee on economic, legal, and insurance features; and the committee on the regulatory and administrative aspect of the problem.

More and more attention has been directed by legislators in recent years to this vital matter. In addition to the active consideration of the subject in the form of statutory legislation, a noticeable interest has been displayed by several States in the appointment of committees to study the general field of occupational diseases, and in particular silicosis. In 1 year—1935—Maryland, Michigan, and New Hampshire created investigative commissions to consider the subject in general, while California appointed a committee to consider silicosis. Each of these bodies was directed to report its findings to the legislature and recommend appropriate legislation. From present indications it would appear that renewed interest in the field of occupational diseases will be shown in the legislative assemblies meeting in 1937, when all but four of the States will hold regular sessions.<sup>7</sup>

Of special interest in the consideration of the subject of occupational diseases is the existence in 21 States of a provision requiring the reporting of occupational diseases. These States are Alabama, Arizona, Connecticut, Georgia, Illinois, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Rhode Island, and Wisconsin.

<sup>4</sup> See *Monthly Labor Review*, April 1934, p. 781.

<sup>5</sup> See *Monthly Labor Review*, November 1935, p. 1261.

<sup>6</sup> See *Monthly Labor Review*, December 1936, p. 1438.

<sup>7</sup> For additional data see Women's Bureau (U. S. Department of Labor) Bulletin No. 147: *Summary of State Reports of Occupational Diseases With a Survey of Preventive Legislation, 1932 to 1934.*

(The text of the laws has been punctuated and capitalized in accordance with the rules laid down by the Government Printing Office for Government publications and does not follow in all cases the official State editions.)

## CALIFORNIA

### DEERING'S GENERAL LAWS, 1931

#### ACT 4749

**SECTION 3. Definitions.**—\* \* \* (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.

## CONNECTICUT

### GENERAL STATUTES, 1930

**SECTION 5223. Definitions.**—\* \* \* The words "personal injury" or "injury", as the same are used in this chapter, shall be construed to include only accidental injury which may be definitely located as to the time when and the place where the accident occurred, and occupational disease as herein defined. The words "occupational disease" shall mean a disease peculiar to the occupation in which the employee was engaged and due to causes in excess of the ordinary hazards of employment as such. The words "arising out of and in the course of his employment", as used in this chapter, shall mean an accidental injury happening to an employee or an occupational disease of such employee originating while he shall have been engaged in the line of his duty in the business or affairs of the employer upon the employer's premises, or while so engaged elsewhere upon the employer's business or affairs by the direction, express or implied, of the employer. A personal injury shall not be deemed to arise out of the employment unless causally traceable to the employment other than through weakened resistance or lowered vitality. \* \* \*

**SEC. 5234. Compensation for death.**—Compensation shall be paid on account of death resulting from accident or an occupational disease within 2 years from the date of the accident or the first manifestation of a symptom of the occupational disease, as the case may be, \* \* \*.

**SEC. 5245. Notice required.**—No proceedings for compensation under the provisions of this chapter shall be maintained unless a written notice of claim for compensation shall be given within one year from the date of the accident or from the first manifestation of a symptom of the occupational disease, as the case may be, which caused the personal injury, provided, if death shall have resulted within two years from the date of the accident or first manifestation of a symptom of the occupational disease, a dependent or dependents may make claim for compensation within said two-year period, and provided no claim on account of an occupational disease shall be made by an employee or his dependents against the employer in whose employ the disease is claimed to have originated, except while the employee is still in such employ or within three years after leaving such employ. Such notice shall state in simple language the date and place of the accident and the nature of the injury resulting therefrom, or the date of the first manifestation of a symptom of the occupational disease and the nature of such disease, as the case may be, the name and address of the employee and of the person in whose interest compensation is claimed. In case of a fatal injury, notice may be given by any one of the dependents under the

provisions of this chapter or by the legal representative of the deceased employee. If there shall have been a hearing or a written request for a hearing or an assignment for a hearing within one year from the date of the accident, or from the first manifestation of a symptom of the occupational disease, as the case may be, or in the event that a voluntary agreement shall have been submitted within said period of one year, no want of such notice of claim shall be a bar to the maintenance of proceedings; \* \* \*

DISTRICT OF COLUMBIA  
UNITED STATES CODE, 1934

TITLE 33

**SECTION 902. Definitions.**—When used in this chapter \* \* \* (2) The term “injury” means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury, and includes an injury caused by the willful act of a third person directed against an employee because of his employment.

HAWAII  
REVISED LAWS, 1935

**SECTION 7480. Employments covered.**—\* \* \* If a workman receive personal injury by accident arising out of and in the course of the employment or by disease proximately caused by the employment, or resulting from the nature of the employment, his employer or the insurance carrier shall pay compensation in the amounts and to the person or persons hereinafter specified.

ILLINOIS  
ACTS OF 1936  
(Third Special Session)

HOUSE BILL NO. 10

**SECTION 1. Title.**—This Act shall be known and may be cited as the “Workmen’s Occupational Diseases Act”.

**SEC. 2. Liability of employer.**—There shall be no liability of any employer for compensation or damages for or on account of any injury to health, disease, or death therefrom, other than for the compensation herein provided or for damages as provided in section 3 of this Act: *Provided*, That this section shall not affect any right to compensation under the “Workmen’s Compensation Act”.

**SEC. 3. Rights of employees in case employer has not elected to come under the act.**—Where an employee in this State sustains injury to health or death by reason of a disease contracted or sustained in the course of the employment and proximately caused by the negligence of the employer, unless such employer shall have elected to provide and pay compensation as provided in section 4 of this Act, a right of action shall accrue to the employee whose health has been so injured for any damages sustained thereby; and in case of death, a right of action shall accrue to the widow of such deceased person, his lineal heirs or adopted children, or to any person or persons who were, before such loss of life, dependent for support upon such deceased person, for a like recovery of damages for the injury sustained by reason of such death not to exceed the sum of ten thousand dollars (\$10,000.00): *Provided*, That violation by any employer of any effective rule or rules made by the industrial commission pursuant to the Health and Safety Act, enacted by the Fifty-ninth General Assembly at the third special session, or violation by the employer of any statute of this State, intended for the protection of the health of employees, shall be and constitute negligence of the employer within the meaning of this section; *Provided further*, That every such action for damage for injury to the health shall be commenced within three (3) years after the last day of the last exposure to the hazards of the disease and that every such action for damages in case of death shall be com-

menced within one (1) year after the death of such employee and within five (5) years after the last day of the last exposure to the hazards of the disease: *Provided further*, That in any action to recover damages under this section, it shall not be a defense that the employee either expressly or impliedly assumed the risk of the employment, or that the contraction or sustaining of the disease or death was caused in whole or in part by the negligence of a fellow servant or fellow servants, or that the contraction or sustaining of the disease or death resulting was caused in whole or in part by the contributory negligence of the employee, where such contributory negligence was not wilful.

SEC. 4. *Election by employer.*—(a) Any employer in this State may elect to provide and pay compensation according to the provisions of this Act, for disability or death resulting from occupational diseases, and such election, when effective, shall apply to all cases in which the last day of the last exposure as defined in this Act to the hazards of the occupational disease claimed upon shall have occurred on or after the effective date of such election, and shall relieve such employer of all liability under section 3 of this Act and all other liability with respect to injury to health or death therefrom by reason of any disease contracted or sustained in the course of the employment.

(b) Election by any employer, pursuant to paragraph (a) of this section, shall be made by filing notice of such election with the industrial commission. Such employer shall either furnish to his employees personally or post in a conspicuous place in the place of employment, a copy of such notice of his election.

(c) Every employer who has elected pursuant to paragraphs (a) and (b) of this section to provide and pay compensation shall, from and after the effective date of such election be, remain and operate under all provisions of this Act except section 3 hereof, with respect to all his employees except those who have rejected in due time as provided in paragraph (d): *Provided, however*, that on October 1, 1937, and on each October first for four years thereafter, any employer who shall have elected pursuant to paragraphs (a) and (b) of this section to provide and pay compensation under this Act, may elect not to provide and pay compensation under this Act by filing notice of such election not to provide and pay compensation under this Act with the industrial commission at least sixty days prior to the October first upon which such election is to be effective and by either giving to his employees personally or posting in a conspicuous place in the place of employment a copy of such notice of such election not to provide and pay compensation at least sixty days prior to such October first; and such election not to provide and pay compensation shall apply to all cases in which the last day of the last exposure, as defined in this Act, to the hazards of the disease claimed upon shall have occurred on or after the October first on which such election shall have become effective: *Provided further*, That any employer having elected, pursuant to this paragraph not to provide and pay compensation may at any time thereafter again elect pursuant to paragraphs (a) and (b) to provide and pay compensation, but having thus elected for the second time to provide and pay compensation such employer shall, from and after the effective date of such last said election, be, remain and operate under all provisions of this Act, except section 3 hereof, with respect to all employees except those who have rejected in due time as provided in paragraph (d) of this section, and such employer may not again withdraw.

(d) If any employer elects, pursuant to paragraphs (a) and (b) of this section, then every employee of such employer, who may be employed at the time of such election by such employer, shall be deemed to have accepted all the compensation provisions of this Act and shall be bound thereby unless within thirty (30) days after such election, he shall file a notice to the contrary with the industrial commission, whose duty it shall be immediately to notify the employer, and until such notice is given to the employer, the measure of liability of such employer shall be determined according to the compensation provisions of this Act; and every employee of such employer, hired after such employer's election, as a part of his contract of hiring shall be deemed to have accepted all of the compensation provisions of this Act, and shall have no right of rejection.

(e) The compensation herein provided for shall be the full, complete and only measure of the liability of the employer bound by election under this Act and such employer's liability for compensation and medical benefits under this Act shall be exclusive and in place of any and all other civil liability whatsoever, at common law or otherwise, to any employee or his legal representative

on account of damage, disability or death caused or contributed to by any disease contracted or sustained in the course of the employment.

SEC. 5. *Definitions.*—For the purposes of this Act:

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: *Provided*, Nothing contained herein shall be construed to apply to any work, employment or operations done, had or conducted by farmers and others engaged in farming, tillage of the soil, or stock raising, or to those who rent, demise or lease land for any such purposes, or to any one in their employ or to any work done on a farm or country place, no matter what kind of work or service is being done or rendered.

The term “employee” as used in this Act, shall be construed to mean:

*First*—Every person in the service of the State, county, city, town, township, incorporated village or school district, body politic or municipal corporation therein, under appointment or contract of hire, express or implied, oral or written, except any totally blind person, 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 five hundred thousand according to the last Federal or State census, and except any member of a fire insurance patrol maintained by a board of underwriters in this State. *However*, any employee, his personal representative, widow, children, 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, underwriters’ fire patrol 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, widow, children, beneficiaries or heirs under this Act. *And, provided further*, That one employed by a contractor who has contracted with the State, or a county, city, town, township, incorporated village, school district, body politic or municipal corporation therein, through its representatives, shall not be considered as an employee of the State, county, city, town, township, incorporated village, school district, body politic or municipal corporation which made the contract.

*Second*—Every person in the service of another under any contract of hire, express or implied, oral or written, including aliens, and minors who, for the purpose of this Act, except section 3 hereof, 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 totally blind person or any person who is not engaged in the usual course of the trade, business, profession or occupation of his employer.

“Disablement” means the event of becoming disabled from earning full wages at the work in which the employee was engaged when last exposed to the hazards of the occupational disease by the employer from whom he claims compensation, or equal wages in other suitable employment; and “disability” means the state of being so incapacitated.

No compensation shall be payable for or on account of any occupational disease unless disablement, as herein defined, occurs within one (1) year after the last day of the last exposure to the hazards of the disease, except in cases of occupational disease caused by the inhalation of silica dust or asbestos dust and, in such cases, within three (3) years after the last day of the last exposure to the hazards of such disease.

SEC. 6. *Definition of occupational disease.*—In this Act the term “occupational disease” means a disease arising out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where the said diseases follow as an incident of an occupational disease as defined in this section.

A disease shall be deemed to arise out of the employment, only if there is apparent to the rational mind upon consideration of all the circumstances, a direct causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed

as a natural incident of the work as a result of the exposure occasioned by the nature of the employment and which can be fairly traced to the employment as the proximate cause, and which does not come from a hazard to which workmen would have been equally exposed outside of the employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. The disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.

**SEC. 7. Compensation payable in case of death.**—The amount of compensation which shall be paid for an occupational disease sustained by 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 disablement, a sum equal to four times the average annual earnings of the employee, but not less in any event than two thousand five hundred dollars and not more in any event than four thousand dollars. *Provided*, That when an award has been made under this paragraph, where the deceased left at the time of his death a widow and one child under sixteen years of age him surviving, the compensation payments and death benefits to the extent the same were increased because of the existence of said child, insofar as same have not been paid, shall cease and become extinguished when said child arrives at the age of eighteen years, if said child is physically and mentally competent at that time.

Any right to receive compensation hereunder shall be extinguished by the remarriage of a widow, if the deceased did not leave him surviving any child or children whom he was under legal obligations to support at the time of said disablement.

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 disablement 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 two thousand five hundred dollars, and not more in any event than four thousand dollars. Any compensation payments other than necessary medical, surgical or hospital fees or services shall be deducted in ascertaining the amount payable on death.

(c) If no amount is payable under paragraph (a) or (b) of this section and the employee leaves any parent or parents, child or children, who at the time of disablement were partially dependent upon the earnings of the employee, then such proportion of a sum equal to four times the average annual earnings of the employee as such dependency bears to total dependency, but not less in any event than one thousand dollars and not more in any event than three thousand seven hundred fifty dollars. Any compensation payments other than necessary medical, surgical or hospital fees or services shall be deducted in ascertaining the amounts payable on death.

(d) If no amount is payable under paragraphs (a), (b), or (c) of this section and the employee leaves any grandparent, grandchild or grandchildren or collateral heirs dependent at the time of the disablement to the employee upon his earnings to the extent of fifty per centum or more of total dependency, 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 more in any event than three thousand seven hundred fifty dollars. Any compensation payments other than necessary medical, surgical or hospital fees or services shall be deducted in ascertaining the amounts payable on death.

(e) If no amount is payable under paragraphs (a), (b), (c) or (d) of this section, a sum not to exceed one hundred and fifty dollars for burial expenses to be paid by the employer to the undertaker or to the person or persons incurring the expense of burial, and the further sum of three hundred dollars, which shall be paid within sixty days 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. Said special fund shall be deposited the same as are state funds and any interest accruing thereon shall be added thereto every six months. It shall be subject to audit

the same as state funds and accounts and shall be protected by the general bond given by the state treasurer. It shall be considered always appropriated for the purposes of disbursements as provided in section 8, paragraph (f), of this Act, and shall be paid out and disbursed as therein provided and shall not at any time be appropriated or diverted to any other use or purpose: *Provided*, That whenever any sum is paid into the said fund and subsequently it develops that compensation is payable under paragraphs (a), (b), (c) or (d) of this section, the industrial commission shall order the refund of any sum paid into the said fund, and the state treasurer as custodian of said fund shall immediately refund the sum paid to him in accordance with the order of the industrial commission upon receipt by him of a certified copy of said order.

The industrial commission shall, within ten days after the rendition of any award providing for payments into said special fund provided for in paragraph (e) of this section, mail a certified copy thereof to the state treasurer. If said award be not paid within thirty days after the date said award has become final, the state treasurer shall proceed to take judgment thereon in his own name as ex-officio custodian of said fund as is provided for other awards by this Act and take the necessary steps to collect said award. The industrial commission shall immediately, upon learning of any death because of which payments into said fund may become due under paragraph (e) of this section, notify the state treasurer thereof and the state treasurer, if payments be not made into said fund within sixty days following said death on account of which it may be due, shall within sixty days after the receipt of said notice institute proceedings in his own name before the industrial commission for the collection thereof, and in said proceedings the industrial commission may order the burial fund provided for in this Act paid to the person, corporation or organization who has paid or become liable for the payment of same. In all such proceedings so instituted by the state treasurer it shall not be a defense that notice of the disablement was not given the employer as provided in this Act or that the demand for payment was not made within six months or that written claim for compensation was not filed with the industrial commission within one year. Any person, corporation or organization who has paid or become liable for the payment of burial expenses of said deceased employee may in his or its own name institute proceedings before the industrial commission for the collection thereof. *Provided further*, That at no time shall there be paid into said special fund on account of any one death a sum to exceed three hundred dollars.

(f) All compensation, except for burial expenses provided in this section to be paid in case occupational disease results in death, shall be paid in installments equal to the percentage of the average earning 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 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 occupational disease 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 disablement 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 two thousand five hundred dollars is provided, such minimum shall be increased in the following cases to the following amounts:

Three thousand dollars in case of one child under the age of 16 years at the time of the death of employee.

Three thousand one hundred dollars in case of two children under the age of 16 years at the time of the death of employee.

Three thousand two hundred dollars in case of three or more children under the age of 16 years at the time of the death of the employee.

2. Whenever four times the average annual earnings of the deceased employee as provided in paragraph (a) of this section amounts to more than two thousand five hundred dollars and to less than four thousand dollars, the amount so payable under said paragraph shall be increased as follows:

In case such employee left surviving him one child under the age of sixteen years the amount so payable shall be increased three hundred fifty dollars.

In case such employee left surviving him two children under the age of sixteen years the amount so payable shall be increased four hundred fifty dollars.

In case such employee left surviving him three or more children under the age of sixteen years the amount so payable shall be increased six hundred dollars.

3. Whenever in paragraph (a) of this section a maximum of four thousand dollars is provided, such maximum shall be increased in the following cases to the following amounts:

Four thousand four hundred fifty dollars in case of one child under the age of sixteen years at the time of the death of the employee.

Four thousand eight hundred dollars in case of two children under the age of sixteen years at the time of the death of the employee.

Five thousand five hundred dollars in case of three or more children under the age of sixteen years at the time of the death of the employee.

4. Whenever four times the average annual earnings of the deceased employee as provided in paragraph (a) of this section amounts to four thousand dollars and not more than four thousand four hundred dollars and the deceased employee left surviving him one child under the age of sixteen years the amount payable shall be four thousand four hundred dollars.

Whenever four times the average annual earnings of the deceased employee as provided in paragraph (a) of this section amounts to four thousand dollars and not more than four thousand seven hundred dollars and the deceased employee left surviving him two children under the age of sixteen years the amount payable shall be four thousand seven hundred dollars.

Whenever four times the average annual earnings of the deceased employee as provided in paragraph (a) of this section amounts to four thousand dollars and not more than five thousand dollars and the deceased employee left surviving him three or more children under the age of sixteen years the amount payable shall be five thousand dollars.

(i) In case the employee is under sixteen years of age at the time of the last day of the last exposure and is then illegally employed, the amount of compensation payable under paragraphs (a), (b), (c), (d) and (e) of this section shall be increased fifty percentum. *Provided, however,* That nothing herein contained shall be construed to repeal or amend the provisions of an Act concerning child labor, approved June 26, 1917, as subsequently amended relating to the employment of minors under the age of sixteen years.

(j) Whenever the dependents of a deceased employee are aliens not residing in the United States or Canada, the amount of compensation payable shall be limited to the beneficiaries described in paragraphs (a), (b) and (c) of this section and shall be fifty percentum of the compensation provided in paragraphs (a), (b) and (c) of this section except as otherwise provided by treaty.

SEC. 8. *Compensation payable in case of disability.*—The amount of compensation which shall be paid to the employee for disability from an occupational disease not resulting in death shall be:

(a) In cases of silicosis, or silicosis complicated with tuberculosis, or asbestosis, or asbestosis complicated with tuberculosis, 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 said diseases for a period not exceeding six months from date of disablement.

In all other cases, 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 effect a cure from the effects of the disease. The employee may in any case elect to secure his own physician, surgeon and hospital services at his own expense. Any occupational disease resulting in the amputation of an arm, hand, leg or foot, or the enucleation of any eye, the employer shall furnish an artificial of any such member lost by occupational disease 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 fifty percentum of the earnings, but not less than \$7.50 nor more than \$15.00 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 occupational disease, 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 more than thirty days from the day of the disablement, then compensation shall commence on the day after the disablement.

(c) For any serious and permanent disfigurement to the hand, head, face or neck, 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 occupational disease, leaving heirs surviving, as provided in said paragraph (a), section 7: *Provided*, That no compensation shall be payable under this paragraph where compensation is payable under paragraphs (d), (e) or (f) of this section: *And provided further*, That when the disfigurement is to the hand, head, face or neck as a result of any occupational disease for which compensation is not payable under paragraphs (d), (e) or (f) of this section, compensation for such disfigurement may be had under this paragraph.

(d) If, after the disablement has been sustained, the employee as a result thereof becomes partially incapacitated from pursuing his usual and customary line of employment, he shall, except in the cases covered by the specific schedule set forth in paragraph (e) of this section, receive compensation, subject to the limitations as to time and maximum amounts fixed in paragraphs (b) and (h) of this section, equal to fifty percentum of the differences between the average amount which he earned before the last day of the last exposure and the average amount which he is earning or is able to earn in some suitable employment or business after the disablement.

(e) For disabilities in the following schedule, the employee shall receive compensation for the period of temporary total incapacity for work resulting from such occupational disease, in accordance with the provisions of paragraphs (a) and (b) of this section, for a period not to exceed sixty-four weeks, and shall receive in addition thereto compensation for a further period subject to limitations as to amounts as in this section provided, for the specific loss herein mentioned, as follows, but shall not receive any compensation for such disabilities under any other provision of this Act.

1. For the loss of a thumb, or the permanent and complete loss of its use, fifty percentum of the average weekly wage during seventy weeks.

2. For the loss of a first finger, commonly called the index finger, or the permanent and complete loss of its use, fifty percentum of the average weekly wage during forty weeks.

3. For the loss of a second finger, or the permanent and complete loss of its use, fifty percentum of the average weekly wage during thirty-five weeks.

4. For the loss of a third finger, or the permanent and complete loss of its use, fifty percentum of the average weekly wage during twenty-five weeks.

5. For the loss of a fourth finger, commonly called the little finger, or the permanent and complete loss of its use, fifty percentum of the average weekly wage during twenty 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 of the amount 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, or for the permanent and complete loss of its use, fifty percentum of the average weekly wage during thirty-five weeks.

9. For the loss of each toe other than the great toe, or for the permanent and complete loss of its use, fifty percentum of the average weekly wage during twelve weeks.

10. The loss of the first phalange of any toe shall be considered to be the equal to the loss of one-half of such toe, and compensation shall be one-half of the amount above specified.

11. The loss of more than one phalange shall be considered as the loss of the entire toe.

12. For the loss of a hand, or the permanent and complete loss of its use, fifty percentum of the average weekly wage during one hundred and seventy weeks.

13. For the loss of an arm, or the permanent and complete loss of its use, fifty percentum of the average weekly wage during two hundred and twenty-five weeks.

14. For the loss of a foot or the permanent and complete loss of its use, fifty percentum of the average weekly wage during one hundred and thirty-five weeks.

15. For the loss of a leg, or the permanent and complete loss of its use, fifty percentum of the average weekly wage during one hundred and ninety weeks.

16. For the loss of the sight of an eye, or for the permanent and complete loss of its use, fifty percentum of the average weekly wage during one hundred and twenty weeks.

16½. For the total and permanent loss of the hearing of one ear, fifty percentum of the average weekly wage during fifty weeks and for the total and permanent loss of hearing of both ears, fifty percentum of the average weekly wage during one hundred twenty-five weeks.

16¾. For the loss of a testicle, fifty percentum of the average weekly wage during fifty weeks, and for the loss of both testicles, fifty percentum of the average weekly wage during one hundred fifty weeks.

17. For the permanent partial loss of use of a member or sight of an eye, but not including the hearing of an ear, fifty percentum of the average weekly wage during that proportion 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.

17½. In computing the compensation to be paid to any employee who, before the disablement for which he claims compensation, had before that time sustained the loss by amputation or partial loss by amputation of any member, including hand, arm, thumb or finger, leg, feet, or any toes, such loss or partial loss of any such member shall be deducted from any award made for the subsequent disablement, and for the permanent total loss of use or the permanent partial loss of use of any such member or the sight of an eye for which compensation has been paid then such loss shall be taken into consideration and deducted from any award for the subsequent disablement.

18. The specific case of loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof, suffered by occupational disease, or the permanent and complete loss of use thereof, suffered by occupational disease, 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 previously in any manner suffered the loss or permanent and complete loss of the use of any of said members, and in a subsequent independent disablement loses another or suffers the permanent and complete loss of the use of any one of said members, the employer for whom the disabled employee was working at the time of the last day of the last exposure 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 disablement.

19. In a case of specific loss under the provisions of this paragraph and the amount of which loss has been determined under the provisions of this Act, and the subsequent death of such employee from other causes than such occupational disease, leaving a widow and/or lineal dependents surviving before payment in full for such specific loss, then and in that event the balance remaining

due for such specific loss shall be payable to such dependents, in the proportion which such dependency bears to total dependency.

(f) In case of complete disability, which renders the employee wholly and permanently incapable of work, compensation equal to fifty percentum of his earnings but not less than \$7.50 nor more than \$15.00 per week, commencing on the day after the disablement, 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 occupational disease, leaving heirs surviving as provided in said paragraph (a), section 7, and thereafter a pension during life annually, in the specific case of total and permanent disability equal to 12 percentum, and in other cases of total and permanent disability equal to 8 percentum, 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 occupational disease, leaving heirs surviving, as provided in said paragraph (a), section 7. Such pension shall be paid 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 last day of the last exposure, payments under such award shall cease; if such employee returns to work, or is able to do so, and earns or is able to earn part but not as much as before the last day of the last exposure, such award shall be modified so as to conform to an award under paragraph (d) of this section: *Provided, further*, That if such award is terminated or reduced under the provisions of this paragraph, such employee shall have the right at any time within one year after the date of such termination or reduction to file a petition with the commission for the purpose of determining whether any disability exists as a result of the occupational disease and the extent thereof: *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 in any manner incurred loss or the permanent and complete loss of 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 on the last day of the last exposure, will equal the amount payable for permanent and complete disability as provided in this paragraph of this section.

The custodian of said special fund provided for in paragraph (e) of section 7 shall be joined with the employer as a party respondent in the application for adjustment of claim. Said application for adjustment of claim shall state briefly and in general terms the approximate time and place and manner of the loss of the first member. The industrial commission shall mail a copy of said application to the custodian of said special fund and shall mail to said custodian all notices of hearing that are mailed to the employer and employee.

In its award the commission or the arbitrator shall specifically find the amount the employee shall be weekly paid, the number of weeks' compensation which shall be paid by the employer, the date upon which payments shall begin out of the fund provided for in paragraph (e) section 7 of this Act, the length of time said weekly payments shall continue, the date upon which the pension payments shall commence and the monthly amount of said payments. A certified copy of said award and the judgment of any court of competent jurisdiction affirming same shall be, by the industrial commission, sent to the state treasurer by registered mail. It shall be the duty of the said state treasurer, thirty days after the date upon which payments out of said fund shall be commenced as provided in said award, and every month thereafter, to mail to the said employee direct, or at the option of said treasurer, to some bank in the county in which he resides for delivery to him, a check or draft payable out of said special fund, for all compensation accrued to that date at the rate fixed in said award. Said check or draft on the back thereof shall designate the style and docket number of the cause and the period of time for which it pays, and shall be accompanied by a duplicate receipt, on a form to be supplied by the industrial commission, which receipt shall be executed in duplicate by the employee and returned to the treasurer, who shall retain one thereof and shall mail one to the said industrial commission. Said draft, check or receipts shall be a full and complete acquittance to the said State treasurer for the payment out

of said fund, and no other appropriation or warrant except the certified copy of said award and judgment of said court shall be necessary to warrant payment out of said fund. The said fund shall be always considered as appropriated for the purpose of making payments according to the terms of said awards.

(g) In case death occurs as a result of occupational disease 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 \$500.00.

(h) In no event shall the compensation to be paid exceed fifty per centum of the average weekly wage, or exceed \$15.00 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 disablement. In case an employee shall be mentally 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 mental incompetent, claim and exercise any such right or privilege with the same force and effect as if the employee himself had been mentally 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 mentally incompetent employee is without a conservator or 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 last exposure, or if this shall not be feasible, then the installments shall be paid weekly; all payments of compensation to be made not later than two weeks after the interval for which compensation is payable.

2. *Provided*, That any payments of compensation by the employer to an employee 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 only such occupational diseases and disabilities therefrom 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 employee himself.

(j) 1. Wherever in this section there is a provision for fifty per centum such per centum shall be increased five per centum for each child of the employee, including children who have been legally adopted, under 16 years of age at the time of the disablement to the employee until such per centum shall reach a maximum of sixty-five per centum.

2. Wherever in this section a weekly minimum of \$7.50 is provided, such minimum shall be increased in the following cases to the following amounts:

\$11.00 in the case of an employee having one child under the age of 16 years at the time of the disablement of the employee;

\$12.00 in case of an employee having two children under the age of 16 years at the time of the disablement of the employee;

\$13.00 in case of an employee having three children under the age of 16 years at the time of the disablement of the employee;

\$14.00 in case of an employee having four or more children under the age of 16 years at the time of the disablement of the employee.

3. Wherever in this section a weekly maximum of \$15.00 is provided, such maximum shall be increased in the following cases to the following amounts:

\$16.00 in case of an employee with two children under the age of 16 years at the time of the disablement of the employee.

\$18.00 in case of an employee with three children under the age of 16 years at the time of the disablement of the employee.

\$20.00 in case of an employee with four or more children under the age of 16 years at the time of the disablement of the employee.

(k) In case the employee is under sixteen years of age at the time of the last day of the last exposure and is illegally employed, the amount of compensation payable under paragraphs (b), (c), (d), (e) and (f) of this section shall be increased fifty per centum. *Provided, however*, That nothing herein contained shall be construed to repeal or amend the provisions of an Act concerning child

labor, approved June 23, 1917, as subsequently amended relating to the employment of minors under the age of sixteen years.

**SEC. 9. Lump-sum payment.**—Any employer or employee or beneficiary who shall desire to have such compensation, or any unpaid part thereof, paid in a lump sum, may petition the commission, asking that such compensation be so paid, and if, upon proper notice to the interested parties and a proper showing made before such commission or any member thereof, it appears to the best interest of the parties that such compensation be so paid, the commission may order the commutation of the compensation to an equivalent lump sum, which commutation shall be an amount which will equal the total sum of the probable future payments capitalized at their present value upon the basis of interest calculated at three per centum per annum with annual rests: *Provided*, That in cases indicating complete disability no petition for a commutation to a lump sum basis shall be entertained by the commission until after the expiration of six months from the date of the disablement, and where necessary, upon proper application being made, a guardian, conservator or administrator, as the case may be, may be appointed for any person under disability who may be entitled to any such compensation, and an employer bound by the terms of this Act and liable to pay such compensation, may petition for the appointment of the public administrator, or a conservator, or guardian, where no legal representative has been appointed or is acting for such party or parties under disability.

Subject to the provisions herein above in this paragraph contained, where no dispute exists as to the fact that the occupational disease arose out of and in the course of the employment and where such disease results in death or in the amputation of any member or in the enucleation of an eye, then and in such case the arbitrator or commission may, upon the petition of either the employer or employee, enter an award providing for the payment of compensation for such death or disability in accordance with the provisions of section 7 or paragraph (e) of section 8 of this Act.

**SEC. 10. Basis of computation.**—The basis for computing the compensation provided for in sections 7 and 8 of this Act shall be as follows:

(a) The compensation shall be computed on the basis of the annual earnings which the disabled person received as salary, wages or earnings if in the employment of the same employer continuously during the year next preceding the last day of the last exposure.

(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 last day of the last exposure uninterrupted by absence from work due to illness or any other unavoidable cause.

(c) If such person has not been engaged in the employment of the same employer for the full year immediately preceding the last day of the last exposure, 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 employees who earn either no wage or less than the earnings of adult day laborers in the same line of employment in that locality, the yearly wage shall be reckoned according to the average annual earnings of adults of the same class in the same (or if that is impracticable then of neighboring) employments.

(g) Earnings, for the purpose of this section, shall be based on the earnings for the number of hours commonly regarded as a day's work for that employment, and shall exclude overtime earnings. The earnings shall not include any sum which the employer has been accustomed to pay the employee to cover any special expense entailed on him by the nature of his employment.

(h) In computing the compensation to be paid to any employee, who, before the disablement for which he claims compensation, was disabled and drawing compensation under the terms of this Act, the compensation for each subsequent disablement shall be apportioned according to the proportion of incapacity and disability caused by the respective disablements which he has 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. *Autopsy authorized.*—(a) Whenever, after the death of an employee, any party in interest files an Application for Adjustment of Claim under this Act, and it appears that an autopsy may disclose material evidence as to whether or not such death was due to the inhalation of silica or asbestos dust, the industrial commission, upon petition of either party, may order an autopsy at the expense of the party requesting same, and if such autopsy is so ordered, the commission shall designate a competent pathologist to perform the same, and shall give the parties in interest such reasonable notice of the time and place thereof as will afford a reasonable opportunity to witness such autopsy in person or by a representative.

It shall be the duty of such pathologist to perform such autopsy as, in his best judgment, is required to ascertain the cause of death. Such pathologist shall make a complete written report of all his findings to the industrial commission (including laboratory results described as such, if any). The said report of the pathologist shall contain his findings on post-mortem examination and said report shall not contain any conclusion of the said pathologist based upon the findings so reported.

Said report shall be placed on file with the industrial commission, and shall be a public record. Said report, or a certified copy thereof, may be introduced by either party on any hearing as evidence of the findings therein stated, but shall not be conclusive evidence of such findings, and either party may rebut any part thereof.

(b) Where an autopsy has been performed at any time with the express or implied consent of any interested party, and without some opposing party, if known or reasonably ascertainable, having reasonable notice of and reasonable opportunity of witnessing the same, all evidence obtained by such autopsy shall be barred upon objection at any hearing: *Provided*, That this paragraph shall not apply to autopsies by a coroner's physician in the discharge of his official duties.

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, either within or without the State of Illinois, for the purpose of determining the nature, extent and probable duration of the occupational disease and the disability therefrom suffered 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*, An employer requesting such an examination, of an employee residing within the State of Illinois, shall pay in advance of the time fixed for the examination sufficient money to defray the necessary expenses of travel by the most convenient means to and from the place of examination, and the costs of meals necessary during the trip, and if the examination or travel to and from the place of examination causes any loss of working time on the part of the employee, the employer shall reimburse him for such loss of wages upon the basis of his average daily wage. *Provided, however*, That such examination shall be made in the presence of a duly qualified medical practitioner or surgeon provided and paid for by the employee, if such employee so desires.

In all cases where the examination is made by a physician or surgeon engaged by the employer, and the employee has no physician or surgeon present at such examination, it shall be the duty of the physician or surgeon making the examination at the instance of the employer to deliver to the employee, or his representative, a statement in writing of the examination and findings to the same extent that said physician or surgeon reports to the employer and the same shall be an exact copy of that furnished to the employer, said copy to be furnished the employee, or his representative, as soon as practicable but not later than the time the case is set for hearing. Such delivery shall be made in person either to the employee or his representative, or by registered mail

to either, and the receipt of either shall be proof of such delivery. If such physician or surgeon refuses to furnish the employee with such statement to the same extent as that furnished the employer, said physician or surgeon shall not be permitted to testify at the hearing next following said examination. 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 physicians or surgeons treating an employee who is likely to die, and treating him at the instance of the employer, to have called in another physician or surgeon to be designated and paid for by either the employee or by the person or persons who would become his beneficiary or beneficiaries, to make an examination before the death of such employee.

In all cases where the examination is made by a physician or surgeon engaged by the employee, and the employer has no physician or surgeon present at such examination, it shall be the duty of the physician or surgeon making the examination at the instance of the employee, to deliver to the employer, or his representative, a statement in writing of the examination and findings to the same extent that said physician or surgeon reports to the employee and the same shall be an exact copy of that furnished to the employee, said copy to be furnished the employer, or his representative, as soon as practicable but not later than the time the case is set for hearing. Such delivery shall be made in person either to the employer, or his representative, or by registered mail to either, and the receipt of either shall be proof of such delivery. If such physician or surgeon refuses to furnish the employer with such statement to the same extent as that furnished the employee, said physician or surgeon shall not be permitted to testify at the hearing next following said examination.

**SEC. 13. Compensation, when denied.**—No compensation shall be payable under this Act for any condition of physical or mental ill-being, disability, disablement, or death for which compensation is recoverable on account of accidental injury under the "Workmen's Compensation Act".

**SEC. 14. Travel expenses; duties of certain employees of commission.**—The members of the industrial commission, arbitrators and other employees whose duties require them to travel, shall have reimbursed to them their actual traveling expenses and disbursements made or incurred by them in the discharge of their official duties while away from their place of residence in the performance of their duties under this Act.

The secretary, or assistant secretary, of the commission shall furnish certified copies, under the seal of the commission, of any such records, files, orders, proceedings, decisions, awards and other documents on file with the commission as may be required. Certified copies so furnished by the secretary or assistant secretary shall be received in evidence before the commission or any arbitrator thereof, and in all courts, provided that the original of such certified copy is otherwise competent and admissible in evidence. The secretary or assistant secretary shall perform such other duties as may be prescribed from time to time by the commission.

The security supervisor, under the direction of the industrial commission, shall perform such duties as may be prescribed from time to time by the commission.

**SEC. 15. Administration of act.**—The industrial commission shall have jurisdiction over the operation and administration of the compensation provisions of this Act, and said commission shall perform all the duties imposed upon it by this Act, and such further duties as may hereafter be imposed by law and the rules of the industrial commission not inconsistent therewith.

**SEC. 16. Powers of industrial commission.**—The industrial commission shall make and publish rules and orders for carrying out the duties imposed upon it by law, which rules and orders shall be deemed prima facie reasonable and valid; and the process and procedure before the commission shall be as simple and summary as reasonably may be. The commission upon application of either party may issue *dedimus potestatem* directed to a commissioner, notary public, justice of the peace or any other officer authorized by law to administer oath[s], to take the depositions of such witness or witnesses as may be necessary in the judgment of such applicant. Such *dedimus potestatem* may issue to any of the officers aforesaid in any state or territory of the United States. When the deposition of any witness resident of a foreign country is desired to be taken, the *dedimus* shall be directed to and the deposition taken before a consul, vice consul or other authorized representative of the government of the United States of America, whose station is in the country where the witness whose

deposition is to be taken resides: *Provided*, That in countries where the government of the United States has no consul or other diplomatic representative, then depositions in such case shall be taken through the appropriate judicial authority of that country; or where treaties provide for other methods of taking depositions, then the same may be taken as in such treaties provided. The commission shall have the power to adopt necessary rules to govern the issue of such *dedimus potestatem*. The commission, or any member thereof, or any arbitrator designated by said commission shall have the power to administer oath[s], subpoena and examine witnesses, to issue subpoenas *duces tecum*, requiring the production of such books, papers, records and documents as may be evidence of any matter under inquiry, and to examine and inspect the same and such places or premises as may relate to the question in dispute. Said commission, or any member thereof, or any arbitrator designated by said commission, shall on written request of either party to the dispute, issue subpoenas for the attendance of such witnesses and production of such books, papers, records and documents as shall be designated in said applications, providing, however, that the parties applying for such subpoena shall advance the officer and witness fees provided for in suits pending in the Circuit Court. Service of such subpoenas shall be made by any sheriff or constable or other person. In case any person refuses to comply with an order of the commission or subpoenas issued by it or by any member thereof, or any arbitrator designated by said commission or to permit an inspection of places or premises, or to produce any books, papers, records, or documents, or any witness refuses to testify to any matters regarding which he may be lawfully interrogated, the County Court of the county in which said hearing or matter is pending, on application of any member of the commission or any arbitrator designated by the commission, shall compel obedience by attachment proceedings, as for contempt, as in a case of disobedience of the requirements of a subpoena from such court or refusal to testify therein.

The records kept by a hospital, certified to as true and correct by the superintendent or other officer in charge, showing the medical and surgical treatment given an employee in such hospital, shall be admissible without any further proof as evidence of the medical and surgical matters stated therein, but shall not be conclusive proof of such matters.

The commission at its expense shall provide a stenographer to take the testimony and record of proceedings at the hearings before an arbitrator, committee of arbitration, or the commission and said stenographer shall furnish a transcript of such testimony or proceedings to either party requesting it, upon payment to him therefor of ten cents per one hundred words for the original and eight cents per one hundred words for each copy of such transcript.

The commission shall have the power to determine the reasonableness and fix the amount of any fee of compensation charged by any person, including attorneys, physicians, surgeons and hospitals, for any service performed in connection with this Act, or for which payment is to be made under this Act or rendered in securing any right under this Act.

SEC. 17. *Duties of industrial commission.*—The commission shall cause to be printed and shall furnish free of charge upon request by any employer or employee such blank forms as it shall deem requisite to facilitate or promote the efficient administration of this Act, and the performance of the duties of the commission; it shall provide a proper record in which shall be entered and indexed the name of any employer who shall file a notice of election under this Act, and the date of the filing thereof; and a proper record in which shall be entered and indexed the name of any employee who shall file a notice of election, and the date of the filing thereof; and such other notices as may be required by this Act; and records in which shall be recorded all proceedings, orders and awards had or made by the commission, or by the arbitration committees, and such other books or records as it shall deem necessary, all such records to be kept in the office of the commission. The commission, in its discretion, may destroy all papers and documents except notices of election and waivers which have been on file for more than five years where there is no claim for compensation pending, or where more than two years have elapsed since the termination of the compensation period.

SEC. 18. *Questions determined by commission.*—All questions arising under this Act, if not settled by agreement of the parties interested therein, shall, except as otherwise provided, be determined by the industrial commission.

SEC. 19. *Disputed questions; how decided.*—Any disputed questions of law or fact shall be determined as herein provided.

(a) It shall be the duty of the industrial commission upon notification that the parties have failed to reach an agreement, to designate an arbitrator: *Provided*, That if the compensation claimed is for a partial permanent or total permanent incapacity or for death, then the dispute may, at the election of any party, be determined by a committee of arbitration consisting of three members, which election for determination by a committee shall be made by any petitioner filing with the commission his election in writing with the petition or by any other party filing with the commission his election in writing within five days of notice to him of the filing of the petition, and thereupon it shall be the duty of the industrial commission upon any of the parties having filed such election for a committee of arbitration as above provided, to notify the parties to appoint their respective representatives on the committee of arbitration. The commission shall designate an arbitrator to act as chairman, and if either side, whether by mere omission or because of disagreement among parties on that side, fails to appoint its member on the committee within seven days after notification as above provided, the commission shall appoint a person to fill the vacancy and notify the parties to that effect. The party filing his election for a committee of arbitration shall with his election deposit with the commission the sum of twenty dollars, to be paid by the commission to the arbitrators selected by the parties as compensation for their services as arbitrators and upon a failure to deposit as aforesaid, the election shall be void and the determination shall be by an arbitrator designated by the commission. The members of the committee of arbitration appointed by either side or one appointed by the commission to fill a vacancy by reason of the failure of one of the parties to appoint, shall not be a member of the commission or an employee thereof.

(1) The application for adjustment of claim filed with the industrial commission shall state:

(a) The approximate date of the last day of the last exposure and the approximate date of the disablement.

(b) The general nature and character of the illness or disease claimed.

(c) The name and address of the employer by whom employed on the last day of the last exposure and if employed by any other employer after such last exposure and before disablement the name and address of such other employer or employers.

(d) In case of death, the date and place of death.

(e) Amendments to applications for adjustment of claim which relate to the same disablement or disablement resulting in death originally claimed upon may be allowed by the industrial commission or an arbitrator thereof, in their discretion, and in the exercise of such discretion, they may in proper cases order a trial *de novo*; such amendment shall relate back to the date of the filing of the original application so amended.

(f) Whenever any claimant misconceives his remedy and files an application for adjustment of claim under this Act and it is subsequently discovered, at any time before final disposition of such cause, that the claim for disability or death which was the basis for such application should properly have been made under the Workmen's Compensation Act, then the provisions of section 19 paragraph (a-1) of the Workmen's Compensation Act having reference to such application shall apply.

Whenever any claimant misconceives his remedy and files an application for adjustment of claim under the Workmen's Compensation Act and it is subsequently discovered, at any time before final disposition of such cause that the claim for injury or death which was the basis for such application should properly have been made under this Act, then the application so filed under the Workmen's Compensation Act may be amended in form, substance or both to assert claim for such disability or death under this Act and it shall be deemed to have been so filed as amended on the date of the original filing thereof, and such compensation may be awarded as is warranted by the whole evidence pursuant to the provisions of this Act. When such amendment is submitted, further or additional evidence may be heard by the arbitrator or industrial commission when deemed necessary: *Provided*, That nothing in this section contained shall be construed to be or permit a waiver of any provisions of this Act with reference to notice or demand, but notice or demand if given shall be deemed to be a notice or a demand under the provisions of this Act if given within the time required herein.

(b) The arbitrator or committee of arbitration shall make such inquiries and investigations as he or they shall deem necessary and may examine and inspect all books, papers, records, places, or premises relating to the questions

in dispute and hear such proper evidence as the parties may submit. The hearings before the arbitrator or committee of arbitration shall be held in the vicinity where the last exposure occurred, after ten days' notice of the time and place of such hearing shall have been given to each of the parties or their attorneys of record. The arbitrator or committee of arbitration may find that the disabling condition is temporary and has not yet reached a permanent condition and may order the payment of compensation up to the date of the hearing, which award shall be reviewable and enforceable in the same manner as other awards, and in no instance be a bar to a further hearing and determination of a further amount of temporary total compensation or of a compensation for permanent disability, but shall be conclusive as to all other questions except the nature and extent of said disability. The decision of the arbitrator or committee of arbitration shall be filed with the industrial commission, which commission shall immediately send to each party or his attorney a copy of such decision, together with a notification of the time when it was filed, and unless a petition for review is filed by either party within fifteen days after the receipt by said party of the copy of said decision and notification of time when filed, and unless such party petitioning for a review shall within twenty days after the receipt by him of the copy of said decision, file with the commission either an agreed statement of the facts appearing upon the hearing before the arbitrator or committee of arbitration or if such party shall so elect, a correct transcript of evidence of the proceedings at such hearings, then the decision shall become the decision of the industrial commission and in the absence of fraud shall be conclusive: *Provided*, That such industrial commission or any member thereof may grant further time not exceeding thirty days, in which to petition for such review or to file such agreed statement or transcript of evidence. Such agreed statement of facts or correct transcript of evidence, as the case may be, shall be authenticated by the signatures of the parties or their attorneys, and in the event they do not agree as to the correctness of the transcript of evidence it shall be authenticated by the signature of the arbitrator designated by the commission.

(c) The industrial commission may appoint, at its own expense, a duly qualified, impartial physician to examine the employee and report to the commission. The fee for this service shall not exceed five dollars and traveling expenses but the commission may allow additional reasonable amounts in extraordinary cases.

(d) If any employee shall persist in insanitary or injurious practices which tend either to imperil or retard his recovery or shall refuse to submit to such medical surgical or hospital treatment as is reasonably essential to promote his recovery the commission may in its discretion, reduce or suspend the compensation of any such employee.

(e) If a petition for review and agreed statement of facts or transcript of evidence is filed, as provided herein, the industrial commission shall promptly review the decision of the arbitrator or committee of arbitration and all questions of law or fact which appear from the said statement of facts or transcript of evidence, and such additional evidence as the parties may submit. After such hearing upon review, the commission shall file in its office its decision thereon, and shall immediately send to each party or his attorney a copy of such decision and a notification of the time when it was filed.

Such review and hearing may be held in its office or elsewhere as the commission may deem advisable: *Provided*, That the taking of testimony on such hearing may be had before any member of the commission and in the event either of the parties may desire an argument before others of the commission, such argument may be had upon written demand therefor filed with the commission at least five days before the date of the hearing, in which event such argument shall be had before not less than a majority of the commission: *Provided*, That the commission shall give ten days' notice to the parties or their attorneys of the time and place of such taking of testimony and of such argument.

In any case the commission in its decision may in its discretion find specially upon any question or questions of law or fact which shall be submitted in writing by either party, whether ultimate or otherwise. Any party may, within twenty days after receipt of notice of the commission's decision, or within such further time not exceeding thirty days, as the commission may grant, file with the commission either an agreed statement of the facts appearing upon the hearing, or, if such party shall so elect, a correct transcript of evi-

dence of the additional proceedings presented before the commission, in which report the party may embody a correct statement of such other proceedings in the case as such party may desire to have reviewed, such statement of facts or transcript of evidence to be authenticated by the signature of the parties or their attorneys, and in the event that they do not agree, then the authentication of such transcript of evidence shall be by the signature of any member of the commission. If a reporter does not for any reason furnish a transcript of the proceedings before the arbitrator in any case for use on a hearing for review before the industrial commission, within the limitations of time as fixed in this section, the industrial commission may, in its discretion, order a trial *de novo* before the industrial commission in such case upon application of either party. The applications for adjustment of claim and other documents in the nature of pleadings filed by either party, together with the decisions of the arbitrator and of the industrial commission and the statement of facts or transcripts of evidence herein provided for shall be the record of the proceedings of said commission, and shall be subject to review as hereinafter provided.

(f) The decision of the industrial commission acting within its powers according to the provisions of paragraph (e) of this section shall, in the absence of fraud, be conclusive unless reviewed as in this paragraph hereinafter provided: *Provided, however,* That the arbitrator or the commission may on his or its own motion, or on the motion of either party, correct any clerical error or errors in computation within fifteen days after the date of any award by such arbitrator or any decision on review of the commission, and shall have the power to recall the original award on arbitration or decision on review, and issue in lieu thereof such corrected award or decision. Where such correction is made the time for appeal or review herein specified shall begin to run from the date of the receipt of the corrected award or decision.

1. The Circuit Court of the county where any of the parties defendant may be found, except in such cases as arise in a proceeding in which, under paragraph (b) of this section, the decision of the arbitrator or committee of arbitration has become the decision of the industrial commission, shall by writ of certiorari to the industrial commission have power to review all questions of law and fact presented by such record; provided no additional evidence shall be heard in the Circuit Court. Such writ by writ of certiorari shall be commenced within twenty days of the receipt of notice of the decision of the commission. Such writ of certiorari and writ of *scire facias* shall be issued by the clerk of such court upon praecipe returnable on a designated return day, not less than ten or more than sixty days from the date of issuance thereof, and the praecipe shall contain the last known address of other parties in interest and their attorneys of record who are to be served by *scire facias*. Service upon any member of the industrial commission or the secretary or the assistant secretary thereof shall be service upon the commission, and service upon other parties in interest and their attorneys of record shall be by *scire facias*, and such service shall be made upon said commission and other parties in interest by mailing notices of the commencement of the proceedings and the return day of the writ to the office of the said commission and to the last known place of residence of other parties in interest or their attorney or attorneys of record. The clerk of the court issuing the writ of *scire facias* shall on the day of issue mail notice of the commencement of the proceedings which shall be done by mailing a copy of the writ of certiorari to the office of the industrial commission, and a copy of the writ of *scire facias* to the other parties in interest or their attorney or attorneys of record, and the clerk of said court shall make certificate that he has so sent said notices in pursuance of this section, which shall be evidence of service on the commission and other parties in interest.

The industrial commission shall not be required to certify the record of their proceedings to the Circuit Court, unless the party commencing the proceedings for review in the Circuit Court as above provided, shall pay to the commission the sum of ten cents per one hundred words of testimony taken before said commission and six cents per one hundred words of all other matters contained in such record, and it shall be the duty of the commission, upon such payment, to prepare a true and correct typewritten copy of such testimony and a true and correct copy of all other matters contained in such record, and certified to by the secretary or assistant secretary thereof.

In its decision on review the industrial commission shall determine in each particular case the amount of the probable cost of the record to be filed as a

return to the writ of certiorari in that case and no praecipe for a writ of certiorari may be filed and no writ of certiorari shall issue unless the party seeking to review the decision of the industrial commission shall exhibit to the clerk of the said Circuit Court a receipt showing payment of the sums so determined to the industrial commission.

2. No such writ of certiorari shall issue unless the one against whom the industrial commission shall have rendered an award for the payment of money shall upon the filing of his praecipe for such writ file with the clerk of said court a bond conditioned that if he shall not successfully prosecute said writ, he will pay the said award and the costs of the proceedings in said court. The amount of the bond shall be fixed by any member of the industrial commission and the surety or sureties of said bond shall be approved by the clerk of said court.

The State and every county, city, town, township, incorporated village, school district, body politic or municipal corporation having a population of five hundred thousand or more against whom the industrial commission shall have rendered an award for the payment of money shall not be required to file a bond to secure the payment of said award and the costs of the proceedings in said court to authorize said court to issue such writ of certiorari.

The court may confirm or set aside the decision of the industrial commission. If the decision is set aside and the facts found in the proceedings before the commission are sufficient, the court may enter such decision as is justified by law, or may remand the cause to the industrial commission for further proceedings and may state the questions requiring further hearing, and give such other instructions as may be proper.

Judgments and orders of the Circuit Court under this Act shall be reviewed only by the Supreme Court upon a writ of error which the Supreme Court in its discretion may order to issue, if applied for within thirty days after the rendition of the Circuit Court judgment or order sought to be reviewed. The writ of error when issued shall operate as a supercedas.

The bond filed with the praecipe for the writ of certiorari as provided in this paragraph shall operate as a stay of judgment or order of the Circuit Court until the time shall have passed within which an application for a writ of error can be made, and until the Supreme Court has acted upon the application for a writ of error, if such application is made.

It shall be the duty of the clerk of any court rendering a decision affecting or affirming an award of the commission promptly to furnish the commission with a copy of such decision, without charge.

The decision of a majority of the members of the committee of arbitration or of the industrial commission, shall be considered the decision of such committee or commission, respectively.

(g) Either party may present a certified copy of the award of the arbitrator, or a certified copy of the decision of the industrial commission when the same has become final, when no proceedings for review are pending, providing for the payment of compensation according to this Act, to the Circuit Court of the county where the last exposure occurred or either of the parties are residents, whereupon said court shall render a judgment in accordance therewith; and in case where the employer refuses to pay compensation according to such final award or such final decision upon which such judgment is entered, the court shall in entering judgment thereon, tax as costs against him the reasonable costs and attorney fees in the arbitration proceedings and in the court entering the judgment for the person in whose favor the judgment is entered, which judgment and costs taxed as herein provided shall, until and unless set aside, have the same effect as though duly rendered in an action duly tried and determined by said court, and shall with like effect, be entered and docketed. The Circuit Court shall have power at any time upon application to make any such judgment conform to any modification required by any subsequent decision of the Supreme Court upon appeal, or as the result of any subsequent proceedings for review, as provided in this Act.

Judgment shall not be entered until fifteen days' notice of the time and place of the application for the entry of judgment shall be served upon the employer by filing such notice with the industrial commission, which commission shall, in case it has on file the address of the employer or the name and address of its agent upon whom notices may be served, immediately send a copy of the notice to the employer or such designated agent.

(h) An agreement or award under this Act providing for compensation in installments, may at any time within eighteen months after such agreement

or award be reviewed by the industrial commission at the request of either the employer or the employee, on the ground that the disability of the employee has subsequently recurred, increased, diminished or ended; and on such review compensation payments may be reestablished, increased, diminished or ended: *Provided*, That the commission shall give fifteen days' notice to the parties of the hearing for review: *And, provided, further*, Any employee, upon any petition for such review being filed by the employer, shall be entitled to one day's notice for each one hundred miles necessary to be traveled by him in attending the hearing of the commission upon said petition, and three days in addition thereto, and such employee shall, at the discretion of the commission, also be entitled to five cents per mile necessarily traveled by him within the State of Illinois in attending such hearing, not to exceed a distance of 300 miles, to be taxed by the commission as costs and deposited with the petition of the employer: *Provided, further*, That when compensation which is payable in accordance with an award or settlement contract approved by the industrial commission, is ordered paid in a lump sum by the commission, no review shall be had as in this paragraph mentioned.

(i) Each party, upon taking any proceedings or steps whatsoever before any arbitrator, committee of arbitration, industrial commission or court, shall file with the industrial commission his address, or the name and address of any agent upon whom all notices to be given to such party shall be served, either personally or by registered mail, addressed to such party or agent at the last address so filed with the industrial commission: *Provided*, That in the event such party has not filed his address, or the name and address of an agent, as above provided, service of any notice may be had by filing such notice with the industrial commission.

(j) Whenever in any proceeding testimony has been taken or a final decision has been rendered, and after the taking of such testimony or after such decision has become final, the employee dies, then in any subsequent proceeding brought by the personal representative or beneficiaries of the deceased employee, such testimony in the former proceeding may be introduced with the same force and effect as though the witness having so testified were present in person in such subsequent proceedings and such final decision, if any, shall be taken as final adjudication of any of the issues which are the same in both proceedings.

(k) In any cases where there has been any unreasonable or vexatious delay of payment or intentional underpayment of compensation, or proceedings have been instituted or carried on by the one liable to pay the compensation, which do not present a real controversy, but are merely frivolous or for delay, then the commission may award compensation additional to that otherwise payable under this Act equal to fifty per centum of the amount payable at the time of such award. Failure to pay compensation in accordance with the provisions of section 8, paragraph (i) of this Act, shall be considered unreasonable delay.

SEC. 20. *Report of commission.*—The industrial commission shall report in writing to the Governor on the 30th day of June, annually, the details and results of its administration of this Act, in accordance with the terms of this Act, and may prepare and issue such special bulletins and reports from time to time as in the opinion of the commission seems advisable.

SEC. 21. *Assignment.*—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. And the compensation allowed by any award or decision of the commission shall be entitled to a preference over the unsecured debts of the employer, wages excepted, contracted after the date of the disablement of an employee. 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, and subject to the provisions of paragraph (e) of section 8 of this Act relative to specific loss: *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. *Fraudulent contracts.***—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 disablement shall be presumed to be fraudulent.

**SEC. 23. *Waiver of compensation.***—No employee, personal representative, or beneficiary shall have power to waive any of the provisions of this Act in regard to the amount of compensation which may be payable to such employee, personal representative, or beneficiary hereunder except after approval by the industrial commission: *Provided, however,* That any employee who prior to the taking effect of this Act has contracted silicosis or asbestosis but is not disabled therefrom, may within sixty days after the taking effect of this Act, file with the industrial commission a request for permission to waive full compensation on account of disability or death resulting from silicosis or asbestosis, or any direct result thereof, supported by medical evidence satisfactory to the industrial commission, that he has actually contracted silicosis or asbestosis but is not disabled therefrom, and if the industrial commission shall approve such waiver, the compensation payable, for such resulting disability or death of such employee, after further exposure in the employment of any employer who has elected pursuant to paragraphs (a) and (b) of section 4 of this Act, shall be fifty per centum of the compensation which but for such waiver would have been payable by any such employer.

**SEC. 24. *Notice to the employer.***—No proceedings for compensation under this Act shall be maintained unless notice has been given to the employer of disablement arising from an occupational disease as soon as practicable after the date of the disablement.

In case of mental incapacity of the employee or any dependents of a deceased employee who may be entitled to compensation, under the provisions of this Act, the limitations of time in this section of this Act provided shall not begin to run against said mental incompetents until a conservator or guardian has been appointed. No defect or inaccuracy of such notice shall be a bar to the maintenance of proceedings on arbitration or otherwise by the employee unless the employer proves that he is unduly prejudiced in such proceedings by such defect or inaccuracy. Notice of the disabling disease may be given orally or in writing: *Provided,* No proceedings for compensation under this Act shall be maintained unless claim for compensation has been made within six (6) months after the occurrence of the disablement from the occupational disease: *Provided further,* that in any case, unless application for compensation is filed with the industrial commission within one (1) year after the date of the disablement, or within one (1) year after the date of the last payment of compensation, if any has been paid, the right to file such application shall be barred.

**SEC. 25. *Presumption of exposure.***—An employee shall be conclusively deemed to have been exposed to the hazards of an occupational disease when for any length of time however short, he is employed in an occupation or process in which the hazard of the disease exists.

The employer liable for the compensation in this Act provided shall be the employer in whose employment the employee was last exposed to the hazard of the occupational disease claimed upon regardless of the length of time of such last exposure: *Provided,* That in cases of silicosis or asbestosis, the only employer liable shall be the last employer in whose employment the employee was last exposed during a period of sixty (60) days or more after the effective date of this Act, to the hazard of such occupational disease, and, in such cases, an exposure during a period of less than sixty (60) days, after the effective date of this Act, shall not be deemed a last exposure.

The insurance carrier liable shall be the carrier whose policy was in effect covering the employer liable on the last day of the exposure rendering such employer liable in accordance with the provisions of this Act.

**SEC. 26. *Duties of electing employer.***—(a) Any employer electing to provide and pay the compensation provided for in this Act shall:

(1) File with the commission a sworn statement showing his financial ability to pay the compensation provided for in this Act, the affidavit to which statement shall be signed and sworn to by the president or vice president and secretary or assistant secretary of said employer if it be a corporation, or by all of the partners if it be a co-partnership, or by the owner if it be neither a co-partnership nor a corporation, or if any such employer fails to file such a sworn statement, or if the sworn statement of any such employer does not satisfy the commission of the financial ability of the employer who has filed it, the commission shall require such employer to,

(2) Furnish security, indemnity or a bond guaranteeing the payment by the employer of the compensation provided for in this Act, or

(3) Insure his entire liability to pay such compensation in some insurance carrier authorized, licensed, or permitted to do such insurance business in this State: *Provided*, All policies of such insurance carriers insuring the payment of compensation under this Act shall cover all the employees and all such employer's compensation liability in all cases in which the last day of the last exposure to the occupational disease involved is within the effective period of the policy, anything to the contrary in said policy notwithstanding: *Providing, further*, That no policy of insurance in effect at the time of the enactment of this Act, covering the liability of an employer for workmen's compensation, shall be construed to cover the liability of such employer under this Act for any occupational disease unless such liability is expressly accepted by the insurance carrier issuing such policy and is endorsed thereon; the insurance or security in force to cover compensation liability under this Act shall be separate and distinct from the insurance or security under the "Workmen's Compensation Act" and any insurance contract covering liability under either Act need not cover any liability under the other; nothing herein contained shall apply to policies of excess liability carriage secured by employers who have qualified under subparagraphs 1 or 2 of paragraph (a) of this section, or

(4) Make some other provision, satisfactory to the industrial commission, for the securing of the payment of compensation provided for in this Act, and

(5) Upon becoming subject to this Act and thereafter as often as the commission may in writing demand, file with the commission in form prescribed by it evidence of his compliance with the provisions of this section.

(b) The sworn statement of financial ability, or security, indemnity or bond, or amount of insurance, or other provisions, filed, furnished, carried, or made by the employer, as the case may be, shall be subject to the approval of the commission, upon the approval of which, the commission shall send to the employer written notice of its approval thereof. A certificate of compliance with the provisions of subparagraphs 2 and 3 of paragraph (a) of this section shall within five days after the effective date of said policy be delivered by the insurance carrier to the industrial commission. Said policy shall remain in full force and effect until thirty days after receipt by the industrial commission of notice of its cancellation or expiration and shall cover all compensation liability occurring during said time.

(c) Whenever the industrial commission shall find that any corporation, company, association, aggregation of individuals, reciprocal or interinsurers exchange, or other insurer effecting workmen's compensation insurance in this State shall be insolvent, financially unsound, or unable fully to meet all payments and liabilities assumed or to be assumed for compensation insurance in this State, or shall practice a policy of delay or unfairness toward employees in the adjustment, settlement, or payment of benefits due such employees, the said industrial commission may after reasonable notice and hearing order and direct that such corporation, company, association, aggregation of individuals, reciprocal or interinsurers exchange, or insurer, shall from and after a date fixed in such order discontinue the writing of any such workmen's compensation insurance in this State. Subject to such modification of said order as the commission may later make on review of said order, as herein provided, it shall thereupon be unlawful for any such corporation, company, association, aggregation of individuals, reciprocal or interinsurers exchange, or insurer to effect any workmen's compensation insurance in this State. All orders made by the industrial commission under this section shall be subject to review by the courts, said review to be taken in the same manner and within the same time as provided by section 19 of this Act for review of awards and decisions of the industrial commission, upon the party seeking said review filing with the clerk

of the court to which said review is taken a bond in an amount to be fixed and approved by the judge of the court to which said review is taken, conditioned upon the payment of all compensation awarded against said person taking said review pending a decision thereof: *Provided*, That upon said review the circuit court shall have power to review all questions of fact as well as of law.

(d) The failure or neglect of an employer to comply with any of the provisions of paragraph (a) of this section or the failure or refusal of an insurance carrier to comply with any order of the industrial commission pursuant to paragraph (c) of this section, shall be deemed a misdemeanor punishable by a fine of not less than one hundred dollars nor more than five hundred dollars, for each day of such refusal or neglect until the same ceases. Each day of such refusal or neglect shall constitute a separate offense. *Provided*, That the penalty provided for in this paragraph shall not attach and shall not begin to run until the final determination of the order of the commission.

In all prosecutions under this section the venue may be in any county wherein said employer or insurance carrier has property or maintains a principal office. Upon the failure or refusal of any employer or insurance carrier to comply with the orders of the industrial commission under this section, or the order of the court on review after final adjudication, it shall be the duty of the industrial commission immediately to report said failure or refusal to the Attorney General and it shall be the duty of said Attorney General within thirty days after receipt of said notice, to institute prosecutions and promptly prosecute all reported violations of this section.

SEC. 27. *Benefit associations not affected.*—(a) This Act shall not affect or disturb the continuance of any existing insurance, mutual aid, benefit, or relief association or department, whether maintained in whole or in part by the employer or whether maintained by the employees, the payment of benefits of such association or department being guaranteed by the employer or by some person, firm or corporation for him: *Provided*, The employer contributes to such association or department an amount not less than the full compensation herein provided, exclusive of the cost of the maintenance of such association or department and without any expense to the employee. This Act shall not prevent the organization and maintaining under the insurance laws of this State of any benefit or insurance company for the purpose of insuring against the compensation provided for in this Act, the expense of which is maintained by the employer. This Act shall not prevent the organization or maintaining under the insurance laws of this State of any voluntary mutual aid, benefit or relief association among employees for the payment of additional accident or sick benefits.

(b) No existing insurance, mutual aid, benefit or relief association or department shall, by reason of anything herein contained, be authorized to discontinue its operation without first discharging its obligations to any and all persons carrying insurance in the same or entitled to relief or benefits therein.

(c) Any contract, oral, written or implied, of employment providing for relief benefit, or insurance or any other device whereby the employee is required to pay any premium or premiums for insurance against the compensation provided for in this Act shall be null and void, and any employer withholding from the wages of any employee any amount for the purpose of paying any such premium shall be guilty of a misdemeanor and punishable by a fine of not less than ten dollars nor more than one thousand dollars, or imprisonment in the county jail for not more than six months, or both, in the discretion of the court.

SEC. 28. *Liability of insurer.*—In the event the employer does not pay the compensation for which he is liable, then an insurance company, association or insurer which may have insured such employer against such liability shall become primarily liable to pay to the employee, his personal representative or beneficiary the compensation required by the provisions of this Act to be paid by such employer. The insurance carrier may be made a party to the proceedings to which the employer is a party and an award may be entered jointly against the employer and the insurance carrier.

SEC. 29. *Disablement caused by third person.*—Where a disablement or death for which compensation is payable by the employer under this Act was not proximately caused by the negligence of the employer or his employees, and was caused under circumstances creating a legal liability for damages in some person other than the employer to pay damages, such other person having also elected to provide and pay compensation under this Act, the right of the employee

or personal representative to recover against such other person shall be transferred to his employer and such employer may bring legal proceedings against such other person to recover the damages sustained, in an amount not exceeding the aggregate amount of compensation payable under this Act, by reason of the disablement or death of such employee.

Where the disablement or death for which compensation is payable under this Act was not proximately caused by the negligence of the employer or his employees and was caused under circumstances creating a legal liability for damages on the part of some person other than the employer to pay damages, such other person not having elected to provide and pay compensation under this Act, then legal proceedings may be taken against such other person to recover damages notwithstanding such employer's payment of or liability to pay compensation under this Act. In such case, however, if the action against such other person is brought by the disabled employee or his personal representative and judgment is obtained and paid, or settlement is made with such other person, either with or without suit, then from the amount received by such employee or personal representative there shall be paid to the employer the amount of compensation paid or to be paid by him to such employee or personal representative.

If the disabled employee or his personal representative shall agree to receive compensation from the employer or accept from the employer any payment on account of such compensation, or to institute proceedings to recover the same, the said employer may have or claim a lien upon any award, judgment or fund out of which such employee might be compensated from such third party.

In such action brought by the employee or his personal representative, he shall forthwith notify his employer 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. The employer may, at any time thereafter join in said action upon his motion so that all orders of court after hearing and judgment shall be made for his protection. No release or settlement of claim for damages by reason of such disability or death, and no satisfaction of judgment in such proceedings, shall be valid without the written consent of both employer and employee or his personal representative, except in the case of the employers, such consent shall not be required where said employer has been fully indemnified or protected by court order.

In the event the said employee or his personal representative shall fail to institute a proceeding against such third person at any time prior to three months before said action would be barred at law said employer may in his own name, or in the name of the employee, or his personal representative, commence a proceeding against such other person for the recovery of damages on account of such disability or death to the employee, and out of any amount recovered the employer shall pay over to the injured employee or his personal representative all sums collected from such other person by judgment or otherwise in excess of the amount of such compensation paid or to be paid under this Act, and costs, attorney's fees and reasonable expenses as may be incurred by such employer in making such collection or in enforcing such liability.

**SEC. 30. Reports by employer to commission.**—It shall be the duty of every employer within the compensation provisions of this Act to send to the industrial commission in writing an immediate report of all occupational diseases arising out of and in the course of the employment and resulting in death; it shall also be the duty of every such employer to report between the 15th and the 25th of each month to the industrial commission all occupational diseases for which compensation has been paid under this Act, which entail a loss to the employee of more than one week's time, and in case the occupational disease results in permanent disability, a further report shall be made as soon as it is determined that such permanent disability has resulted or will result therefrom. All reports shall state the date of the disablement, the nature of the employer's business, the name, address, the age, sex, conjugal condition of the person, the specific occupation of the person, the nature and character of the occupational disease, the length of disability, and, in case of death, the length of disability before death, the wages of the employee, whether compensation has been paid, to the employee, or to his legal representatives or his heirs or next of kin, the amount of compensation paid, the amount paid for physicians', surgeons' and hospital bills, and by whom paid, and the amount paid for funeral or burial expenses, if known. The making of reports as provided herein shall relieve the employer from making such reports to any other officer of the State.

SEC. 31. *Employer required to post notices.*—Every employer operating under the compensation provisions of this Act shall, under the rules and regulations prescribed by the industrial commission, post printed notices in their respective places of employment in such number and at such places as may be determined by the commission, containing such information relative to this Act as in the judgment of the commission may be necessary to aid employees to safeguard their rights under this Act.

SEC. 32. *Violations.*—Any wilful neglect, refusal or failure to do the things required to be done by any section, clause, or provision of this Act, on the part of the persons herein required to do them, or any violation of any of the provisions or requirements hereof, or any attempt to obstruct or interfere with any court officer, or any other person charged with the duty of administering or enforcing the provisions of this Act, shall be deemed a misdemeanor, punishable by a fine of not less than \$10.00 nor more than \$500.00, at the discretion of the court.

SEC. 33. *Repeal of previous acts.*—“An Act to promote public health by protecting certain employees in this State from dangers of occupational diseases, and providing for the enforcement thereof,” approved May 26, 1911, as amended, and section 4 of “An Act in relation to employments creating poisonous fumes or dusts in harmful quantities, and to provide for the enforcement thereof,” approved June 29, 1915, are hereby repealed.

SEC. 34. *Effect of repeal.*—No repeal of any act or part thereof herein contained shall extinguish or in any way affect any right of action thereunder existing at the time this Act takes effect; and no employer shall be liable for compensation or damages under this Act in any case in which the disablement on which claim is predicated shall have occurred prior to the date this Act becomes effective; *Provided*, That nothing in this section shall affect any case in which exposure as defined in this Act shall have taken place after the effective date of this Act.

SEC. 35. *Effective date.*—This Act shall take effect on October 1, 1936.

## KENTUCKY

### CARROLL'S STATUTES, 1930

SECTION 4880 (as amended 1934, ch. 89). *Accidents; diseases.*— \* \* \* It shall affect the liability of the employers subject thereto to their employees for personal injuries sustained by the employee by accident arising out of and in the course of his employment, or for death resulting from such accidental injury: *Provided, however*, That personal injury by accident as herein defined shall not include diseases except where the disease is the natural and direct result of a traumatic injury by accident, nor shall they include the results of a preexisting disease but shall include injuries or death due to 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. \* \* \* and any employers and their employees engaged in the operation of glass manufacturing plants, quarries, sand mines or in the manufacture, treating, or handling of sand may, with respect to the disease of silicosis caused by the inhalation of silica dust, in like manner voluntarily subject themselves thereto as to such disease.

SEC. 4882 (as amended 1934, ch. 89). *Wilful misconduct of the employee.*— \* \* \* Notwithstanding anything hereinafter 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 wilful self-inflicted injury, wilful misconduct or intoxication of such employee. The words “wilful misconduct” as used in this section, when relating to the disease of silicosis caused by the inhalation of silica dust, shall include (1) failure or omission on the part of an employee to observe such rules and recommendations as may be adopted by the employer and approved by the workmen's compensation board and which rules and recommendations have been and are kept posted in a conspicuous place in and about the plant, (2) failure or omission on the part of an employee truthfully to state to the best of his knowledge in answer to inquiry made by the employer the place, duration, and nature of previous employment, (3) failure and omission on the part of an employee truthfully to furnish to the best of his knowledge in answer to an inquiry made by the employer full information about the previous status of his health, habits, and medical atten-

tion that he or his blood relatives may have heretofore received, and (4) failure or refusal to submit to medical examination to determine his physical condition with reference to the disease of silicosis whenever such examination is ordered by the board, or to evade or obstruct such examination.

## MASSACHUSETTS

### GENERAL LAWS, 1932

#### CHAPTER 152

SECTION 26. *Coverage.*—If an employee \* \* \* receives a personal injury arising out of and in the course of his employment \* \* \* he shall be paid compensation by the insurer, \* \* \*.

SEC. 9B (as added 1935, ch. 424). *Industrial disease referees.*—The board of registration in medicine shall, as soon as this section takes effect, prepare and transmit to the department a list of registered physicians. In the event of any employee, or in case of his death his legal representative or dependents, making a claim for compensation alleging that his injury is due to an industrial disease, the industrial accident board shall submit the claim to 3 physicians selected by it from said list, who shall be impartial. Such 3 physicians shall be known as industrial disease referees. They may make such examinations of the employee and cause to be made such inspections of the place or places of employment as they deem necessary, and shall report their diagnosis to the department. The insurer shall reimburse the department for the fees and other expenses of such referees, subject to the approval of the industrial accident board. The diagnosis shall be made by a majority vote of the referees, and shall be included in the decision of the single member and in the decision of the reviewing board, and such diagnosis shall be binding on the parties. The reviewing board, if a claim for review is filed, may refer the matter back to the industrial disease referees for further diagnosis. The board of registration in medicine from time to time may, and on request of the industrial accident board shall, revise the list of physicians from which industrial disease referees may be appointed, and shall notify the department in writing of such revision.

## MINNESOTA

### STATUTES, 1927

SECTION 4327. *Occupational diseases—How regarded—Compensation for—Definitions of.*—(1) The disablement of an employe 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 employe was last employed, and "disablement" means the act of becoming so disabled.

(2) If an employe is disabled or dies and 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 employe 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 employe 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 employe 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 employe, at the time of his employment, wilfully 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 employe 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 employe 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 employe in the employment to the nature of which the disease was due. Such apportionment shall be proportioned to the time such employe 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 employe 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 employe 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 last 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 employe 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 employe's rights unless the last employer is prejudiced thereby.

(8) If the employe, 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 purposes of this act only the diseases enumerated in column 1, following, shall be deemed to be occupational diseases:

| COLUMN 1                                 | COLUMN 2  |
|--|---|
| DESCRIPTION OF DISEASE                   | DESCRIPTION OF PROCESS  |
| 1. Anthrax.....                          | Handling of wool, hair, bristles, hides, or skins.  |
| 2. Lead poisoning or its sequelæ.....    | Any process involving the use of lead or its preparations or compounds.                   |
| 3. Mercury poisoning or its sequelæ...   | Any process involving the use of mercury or its preparations or compounds.                |
| 4. Phosphorous poisoning or its sequelæ. | Any process involving the use of phosphorous or its preparations or compounds.            |
| 5. Arsenic poisoning or its sequelæ....  | Any process involving the use of arsenic or its preparations or compounds.                |
| 6. Poisoning by wood alcohol.....        | Any process involving the use of wood alcohol or any preparation containing wood alcohol. |

| COLUMN 1  | COLUMN 2   |
|---|--|
| DESCRIPTION OF DISEASES   | DESCRIPTION OF PROCESS   |
| 7. Poisoning by nitro- and amido-derivatives of benzine (dinitrobenzol, anilin and others), or its sequelæ.   | Any process involving the use of a nitro- or amido-derivative of benzine or its preparations or compounds.                         |
| 8. Poisoning by carbon bisulphide or its sequelæ.   | Any process involving the use of carbon bisulphide or its preparations or compounds.   |
| 9. Poisoning by nitrous fumes or its sequelæ.   | Any process in which nitrous fumes are evolved.  |
| 10. Poisoning by nickel carbonyl or its sequelæ.  | 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.)   | Any process involving the use of any substance used as or in conjunction with a solvent for acetate of cellulose.                  |
| 12. Poisoning by gonioma kamassi (African boxwood) or its sequelæ.  | Any process in the manufacture of articles from gonioma kamassi (African boxwood).   |
| 13. Chrome ulceration or its sequelæ---   | 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. | Handling or use of tar, pitch, bitumen, mineral oil, or paraffin, or any compound, product, or residue of any of these substances. |
| 15. Glanders-----   | Care or handling of any equine animal, or the carcass of any such animal.  |
| 16. Compressed-air illness or its sequelæ.  | Any process carried on in compressed air.  |
| 17. Ankylostomiasis-----  | Mining.  |
| 18. Miners' nystagmus-----  | Mining.  |
| 19. Subcutaneous cellulitis of the hand (beat hand).  | Mining.  |
| 20. Subcutaneous cellulitis over the patella (miner's beat knee).   | Mining.  |
| 21. Acute bursitis over the elbow (miner's beat elbow).   | Mining.  |
| 22. Inflammation of the synovial lining of the wrist joint and tendon sheaths.  | Mining.  |
| 23. Cataract in glass workers-----  | Processes in the manufacture of glass involving exposure to the glare of 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.

### MISSOURI

#### REVISED STATUTES, 1929

**SECTION 3305** (as amended 1931, p. 382). *Definitions.*—\* \* \* The said terms ["injury" and "personal injuries"] shall in no case except as hereinafter provided be construed to include occupational disease in any form \* \* \*; *Provided*, That nothing in this chapter contained shall be construed to de-

prive employees of their rights under the laws of this State pertaining to occupational diseases, unless the employer shall file with the commission a written notice that he elects to bring himself with respect to occupational disease within the provisions of this act 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 section unless he shall have filed with the commission and his employer a written notice that he elects to reject this act. \* \* \*

## NEBRASKA

## COMPILED STATUTES, 1929

SECTION 48-152 (as amended 1935, ch. 57). *Definitions.*—\* \* \* (b) \* \* \* 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 except occupational diseases which arise out of and during the course of employment and are peculiar to the smelting or metal refining industries and which are contracted by workmen employed in said industries, and disability commencing during the period of employment or disability commencing within two years subsequent to the termination of said employment, and shall not be construed to include 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. \* \* \*

## NEW JERSEY

## CUMULATIVE SUPPLEMENT TO COMPILED STATUTES (1911-24)

SECTION \*\*236-26. *Compensation for death or injury.*—22 (a). 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.

SEC. \*\*236-28. *Amount of compensation.*—22 (c). The compensation payable for death or disability total in character and permanent in quality resulting from an occupational disease shall be the same in amount and duration and shall be payable in the same manner and to the same persons as would have been entitled thereto had the death or disability been caused by an accident arising out of and in the course of the employment.

(A) In determining the duration of temporary and/or permanent partial disability, and the duration of payment for the disability due to occupational diseases, the same rules and regulations as are now applicable to accident or injury occurring under section II of the act to which this act is an amendment or supplement shall apply.

SEC. \*\*236-29. *Employer shall have knowledge of contracted disease.*—22 (d). Unless the employer during the continuance of the employment shall have actual knowledge that the employee has contracted a compensable occupational disease, or unless the employee or some one on his behalf, or some of his dependents, or some one on their behalf, shall give the employer written notice or claim that the employee has contracted one of said compensable occupational diseases, which notice to be effective must be given within a period of 5 months after the date when said employee shall have ceased to be subject to exposure to such occupational disease, no compensation shall be payable on account of the death or disability by occupational disease of such employee.

SEC. \*\*236-30. *Barring claims.*—22 (e). All claims for compensation for compensable occupational disease shall be forever barred unless a petition is filed in duplicate with the secretary of the workmen's compensation bureau, at the State House in Trenton, within 1 year after date on which the employee ceased to be exposed in the course of employment with the employer to such occupational disease as hereinabove defined, or in case an agreement of compensation for compensable occupational disease has been made between such employer

and such claimant, then without [within] 1 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 1 year after the last payment of compensation.

SEC. \*\*236-31. *Provisions applicable to occupational disease.*—22 (f). All provisions of section II and section III applicable to claims for injury or death by accident shall apply to injury or death by compensable occupational disease, except to the extent that they are inconsistent with the provisions contained in paragraphs 22 (a) to 22 (f), both inclusive. The provisions in paragraphs 22 (a) to 22 (f), both inclusive, shall not apply to any claim for compensation for injury resulting from accident.

SUPPLEMENT (1925-30) TO COMPILED STATUTES

SEC. \* \* \* 236-27 (as amended 1931, ch. 33). *Definitions.*—22 (b). 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 5 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 poisoning.

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.

NEW YORK

CAHILL'S CONSOLIDATED LAWS, 1930

CHAPTER 66

SECTION 3. *Coverage.*—\* \* \*

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   |
|--|--|
| DESCRIPTION OF DISEASES                  | DESCRIPTION OF PROCESS   |
| 1. Anthrax.....                          | Handling of wool, hair, bristles, hides or skins.  |
| 2. Lead poisoning or its sequelæ.....    | Any process involving the use of or direct contact with lead or its preparations or compounds.           |
| 3. Zinc poisoning or its sequelæ.....    | Any process involving the use of or direct contact with zinc or its preparations or compounds or alloys. |
| 4. Mercury poisoning or its sequelæ....  | Any process involving the use of or direct contact with mercury or its preparations or compounds.        |
| 5. Phosphorus poisoning or its sequelæ.. | Any process involving the use of or direct contact with phosphorus or its preparations or compounds.     |
| 6. Arsenic poisoning or its sequelæ....  | Any process involving the use of or direct contact with arsenic or its preparations or compounds.        |

| COLUMN 1  | COLUMN 2   |
|---|--|
| DESCRIPTION OF DISEASES   | DESCRIPTION OF PROCESS   |
| 7. Poisoning by wood alcohol.....   | Any process involving the use of wood alcohol or any preparation containing wood alcohol.  |
| 8. Poisoning by benzol or nitro-,hydro-, hydroxy-, and amido- derivatives of benzene (dinitro-benzol, anilin, and others), or its sequelæ.  | Any process involving the use of or direct contact with benzol or nitro-, hydro-,hydroxy-, or amido-derivatives of benzene or its preparations or compounds. |
| 9. Poisoning by carbon bisulphide or its sequelæ, or any sulphide.  | Any process involving the use of or direct contact with carbon bisulphide or its preparations or compounds, or any sulphide.                                 |
| 10. Poisoning by nitrous fumes or its sequelæ.  | Any process in which nitrous fumes are evolved.  |
| 11. Poisoning by nickel carbonyl or its sequelæ.  | Any process in which nickel carbonyl is evolved.   |
| 12. Dope poisoning (poisoning by tetrachlor-methane or any substance used as or in conjunction with a solvent for acetate of cellulose or nitro cellulose), or its sequelæ.                                     | Any process involving the use of or direct contact with any substance used as or in conjunction with a solvent for acetate of cellulose or nitro cellulose.  |
| 13. Poisoning by formaldehyde and its preparations.   | Any process involving the use of or direct contact with formaldehyde and its preparations.   |
| 14. Chrome ulceration or its sequelæ or chrome poisoning.   | Any process involving the use of or direct contact with chromic acid or bichromate of ammonium, potassium, or sodium or their preparations.                  |
| 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. | Handling or use of tar, pitch, bitumen, mineral oil, or paraffin or any compound, product or residue of any of these substances.                             |
| 16. Glanders.....   | Care or handling of any equine animal or the carcass of any such animal.   |
| 17. Compressed air illness or its sequelæ.  | Any process carried on in compressed air.  |
| 18. Miners' diseases, including only cellulitis, bursitis, ankylostomiasis, tenosynovitis and nystagmus.  | Any process involving mining.  |
| 19. Cataract in glassworkers.....   | Processes in the manufacture of glass involving exposure to the glare of molten glass.   |
| 20. Radium poisoning or disability due to radio-active properties of substances or to Roentgen rays (X-rays).   | Any process involving the use of or direct contact with radium or radio-active substance or the use of or direct exposure to Roentgen rays (X-rays).         |
| 21. Methyl chloride poisoning.....  | Any process involving the use of or direct contact with methyl chloride or its preparations or compounds.  |
| 22. Carbon monoxide poisoning.....  | Any process involving direct exposure to carbon monoxide in buildings, sheds or enclosed places.   |
| 23. Poisoning by sulphuric, hydrochloric or hydro-fluoric acid.   | Any process involving the use of or direct contact with sulphuric, hydrochloric or hydrofluoric acids or their fumes.  |

COLUMN 1

COLUMN 2

DESCRIPTION OF DISEASES

DESCRIPTION OF PROCESS

- |  |   |
|--|---|
| 24. Respiratory, gastrointestinal or physiological nerve and eye disorders due to contact with petroleum products and their fumes. | Any process involving the use of or direct contact with petroleum or petroleum products and their fumes.  |
| 25. Disability arising from blisters or abrasions.   | Any process involving continuous friction, rubbing or vibration causing blisters or abrasions.  |
| 26. Disability arising from bursitis or synovitis.   | Any process involving continuous rubbing, pressure or vibration of the parts affected.  |
| 27. Dermatitis (venenata)-----   | Any process involving the use of or direct contact with acids, alkalies, acids or oil, or with brick, cement, lime, concrete, or mortar capable of causing dermatitis (venenata). (As amended 1934, ch. 743.) |
| 28. Any and all occupational diseases--  | Any and all employments enumerated in subdivision one of section three of this chapter. (Added by acts of 1935, ch. 254.)   |

Nothing in paragraph 28 of this subdivision shall be construed to apply to any case of occupational disease in which the last injurious exposure to the hazards of the disease occurred prior to September 1, 1935; nor to any disability or death due to any disease described in article 4a of this chapter. (Amended 1935, ch. 254; 1936, ch. 887.)

SEC. 38. *Disablement treated as accident.*—The disablement of an employee resulting from an occupational disease described in subdivision 2 of section 3 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 2 of section 3, 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 the full compensation proportionate to the reduction in his earning capacity.

SEC. 40 (as amended 1931, ch. 344). *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, or in a continuous employment similar to the one in which he was engaged at the time of his disablement, within the 12 months previous to the date of disablement, whether under one or more employers. The time limit for contraction of the disease prescribed by this section shall not bar compensation in the case of an employee who contracted the disease in the same employment with the same employer by whom he was employed at the time of his disablement and who had continued in the same employment with the same employer from the time of contracting the disease up to the time of his disablement thereby.

SEC. 41. *Examining physician.*—The industrial commissioner shall appoint one or more physicians whose duty it shall be to examine any claimant under this article and to make a 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. *False representation.*—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 to employers.*—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 12 months in the employment to the nature of which the disease was due and such notice and claim shall be deemed reasonable as against prior employers. The requirements as to notice as to occupational disease and death resulting therefrom shall be the same as required in section 18 of this chapter, except that the notice shall be given to the commissioner and the employer within 90 days after the disablement.

SEC. 46. *Furnishing of 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 workman's rights unless the last employer is prejudiced thereby.

SEC. 47. *Presumption as to disease.*—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. *Employee's rights, exclusiveness.*—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 4A

SEC. 65 (as added 1936, ch. 887). *Prevention of dust diseases.*—1. It is hereby declared to be the policy of the legislature of this State, in enacting this article, to prohibit through every lawful means available, any requirement as a prerequisite to employment which compels an applicant for employment in any occupation coming within the purview of this article to undergo a medical examination.

2. The industrial commissioner and the industrial board are hereby required to add to the industrial code, as provided in sections 28 and 29 of the labor law, effective rules and regulations governing the installation, maintenance and

effective operation in all industries and operations wherein silica dust or other harmful dust hazard is present, of approved devices designed to eliminate such harmful dusts and to promulgate such other regulations as will effectively control the incidence of silicosis and similar diseases.

SEC. 66 (as added 1936, ch. 887). *Compensation payable for disability or death.*—Compensation shall not be payable for partial disability due to silicosis or other dust disease. In the event of temporary or permanent total disability or death from silicosis or other dust disease, notwithstanding any other provision of this chapter, compensation shall be payable under this article to employees in the employments enumerated in section 3 of this chapter or to their dependents in the following manner and amounts: If disablement or death occur during the first calendar month in which this act becomes effective not exceeding the sum of \$500; if disablement or death occur during the second calendar month after which this act becomes effective not exceeding the sum of \$550; thereafter the total of compensation and benefits payable for disability and death shall increase at the rate of \$50 each calendar month. The aggregate amount payable shall be determined by the total amount payable in the month in which disablement or death occurs. In no event shall such compensation exceed an aggregate total of \$3,000. The requirement as to payments into the special funds provided for in subdivisions 8 and 9 of section 15 for each case of injury causing death in which there are no persons entitled to compensation shall not apply to any claim arising under this article.

Compensation payable hereunder shall be paid from the eighth day following total disablement at the rate of 66⅔ per centum of the average weekly wage to be computed under section 14 of this chapter; but in no case shall compensation exceed \$25 per week nor in the event of total disability be less than \$8 per week; provided, however, that in the event of death from such disease his dependents shall receive, in the manner provided by sections 16 and 17 of this chapter, any balance remaining between the amounts paid for disability and the total compensation payable under this article.

Notwithstanding the provisions of section 28 of this chapter, all claims for compensation resulting from inhalation of harmful dust, where the last exposure occurred between the effective date of this act and September 1, 1935, shall be barred unless filed within 180 days from the day on which this act takes effect.

SEC. 67 (as added 1936, ch. 887). *Liability of employer.*—An employer shall be liable for the payments prescribed by this article for silicosis or other dust disease when disability of an employee resulting in loss of earnings shall be due to an employment in a hazardous occupation in which he was employed, and such disability results within one year after the last injurious exposure in such employment; or, in case of death resulting from such exposure, if such death occurs within 5 years following continuous disability from such disease. The provisions of section 44 of this chapter shall not apply to claims arising under this article.

The employer in whose employment the employee was last injuriously exposed in a hazardous occupation and the insurance carrier, if any, which was on the risk at the time of the last injurious exposure in such employment, shall be liable for any payments required by this article; the notice of injury and claim shall be made to such employer.

SEC. 68 (as added 1936, ch. 887). *Medical treatment and care.*—Notwithstanding any other provisions of this chapter the medical treatment herein provided for shall be limited in the case of an employee disabled by an occupational disease due to or resulting from the inhalation of harmful dust to a period of 90 days from the date of such disablement, but the requirement for such medical treatment may be extended for an additional period not to exceed 90 days upon the order of the industrial board.

SEC. 69 (as added 1936, ch. 887). *Employees, when not entitled to compensation.*—If an employee, at the time of his employment, falsely represents in writing that he has not previously been disabled from the disease which is the cause of disability or death or has not received compensation or benefits under this article, no compensation shall be payable.

SEC. 70 (as added 1936, ch. 887). *Special medical examiners.*—The industrial commissioner shall divide the State into 5 districts and in each district may appoint 2 or more special medical examiners who shall be licensed physicians in good professional standing, each of whom shall have had, at the time of his appointment, and immediately prior thereto, at least 5 years of practice in the diagnosis, care and treatment of pulmonary diseases. Such examiners shall

be employed on a per diem basis as the exigencies of the work may require. Fees of examiners shall be fixed by the industrial commissioner within the limits of the appropriation therefor. Each position of special medical examiner provided herein shall be in the exempt class of civil service.

Whenever a claim is made under this article and an examination of the claimant by an impartial physician is desired by any party in interest, the industrial commissioner shall order such medical examiners to make the necessary medical and X-ray examination of the claimant in an effort to obtain the medical facts in an impartial manner.

For the purposes of adjudication under this chapter, the industrial board shall adopt rules of practice and procedure and shall prescribe methods and standards under which physical examinations, X-rays and other studies shall be conducted.

SEC. 71 (as added 1936, ch. 837). *Appointment of consultants.*—The industrial commissioner shall appoint as expert consultants on dust diseases 3 licensed physicians in good professional standing, each of whom shall have had, at the time of his appointment, and immediately prior thereto, at least 10 years of practice in the diagnosis, care and treatment of diseases of the pulmonary tract, along with the interpretation of X-ray films thereof. They shall be paid at a salary to be fixed by the industrial commissioner not to exceed \$7,500 per year. Each such position of consultant shall be in the exempt class of civil service.

The industrial commissioner or the industrial board shall on their own volition or on the application of either an employee, an employer, or an insurance carrier, direct such expert consultants to make examinations of claimants, to review the findings of special medical examiners, to read and review the files of compensation cases when necessary, and to inform the industrial commissioner and the industrial board of their opinion as to their findings in such cases.

SEC. 72 (as added 1936, ch. 837). *Alternative remedy.*—The liability of an employer prescribed by this article shall be exclusive and in place of any other liability whatsoever, at common law or otherwise, 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 any injury, disability, or death, caused by the inhalation of harmful dust, 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 or disease, 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 or disease; 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 or disease was caused by the negligence of a fellow servant or that the employee assumed the risk of his employment, nor that the injury or disease was due to the contributory negligence of the employee.

## NORTH CAROLINA

### MICHIE'S CODE, 1935

SECTION 8081 (1). *Occupational diseases compensable.*—Disablement or death of an employee resulting from an occupational disease described in section 8081 (2) shall be treated as the happening of an injury by accident within the meaning of the North Carolina Workmen's Compensation Act and the procedure and practice and compensation and other benefits provided by said Act shall apply in all such cases except as hereinafter otherwise provided. The word "accident," as used in the Workmen's Compensation Act, shall not be construed to mean a series of events in employment, of a similar or like nature, occurring regularly, continuously or at frequent intervals in the course of such employment, over extended periods of time, whether such events may or may not be attributable to fault of the employer, and disease attributable to such causes, shall be compensable only if culminating in an occupational disease mentioned in and compensable under this article. *Provided, however,* No compensation shall be payable for asbestosis and/or silicosis as hereinafter defined if the employee, at the time of entering into the employment of the employer by whom compensation would otherwise be payable, falsely represented himself in writing as not having previously been disabled or laid off because of asbestosis or silicosis.

SEC. 8081 (2). *Enumeration of diseases.*—The following diseases and conditions only shall be deemed to be occupational diseases within the meaning of this article:

1. Anthrax.
2. Arsenic poisoning.
3. Brass poisoning.
4. Zinc poisoning.
5. Manganese poisoning.
6. Lead poisoning. *Provided*, The employee shall have been exposed to the hazard of lead poisoning for at least thirty days in the preceding twelve months' period: *And provided further*, Only the employer in whose employment such employee was last injuriously exposed shall be liable.
7. Mercury poisoning.
8. Phosphorus poisoning.
9. Poisoning by carbon bisulphide, methanol, naphtha, or volatile halogenated hydrocarbons.
10. Chrome ulceration.
11. Compressed-air illness.
12. Poisoning by benzol, or by nitro and amido derivatives of benzol (dinitrol-benzol, anilin, and others).
13. Infection or inflammation of the skin or eyes or other external contact surfaces or oral or nasal cavities due to irritating oils, cutting compounds, chemical dust, liquids, fumes, gases or vapors.
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.
15. Radium poisoning or injury by X-rays.
16. Blisters due to use of tools or appliances in the employment.
17. Bursitis, of the knee or elbow, due to intermittent pressure in the employment.
18. Miner's nystagmus.
19. Bone felon due to constant or intermittent pressure in employment.
20. Synovitis, caused by trauma in employment.
21. Tenosynovitis, caused by trauma in employment.
22. Carbon monoxide poisoning.
23. Poisoning by sulphuric, hydrochloric or hydrofluoric acid.
24. Asbestosis.
25. Silicosis.

Occupational diseases caused by chemicals shall be deemed to be due to exposure of an employee to the chemicals herein mentioned only when as a part of the employment such employee is exposed to such chemicals in such form and quantity, and used with such frequency as to cause the occupational disease mentioned in connection with such chemicals.

SEC. 8081 (3). *Disablement defined.*—The term "disablement" as used in this article as applied to cases of asbestosis and silicosis means the event of becoming actually incapacitated, because of such occupational disease, from performing normal labor in the last occupation in which remuneratively employed; but in all other cases of occupational disease shall be equivalent to "disability" as defined in section 8081 (1), paragraph (1).

SEC. 8081 (4). *Disability defined.*—The term "disability" as used in this article means the state of being incapacitated as the term is used in defining "disablement" in section 8081 (3).

SEC. 8081 (5). *Limitations.*—The provisions of this article shall apply only to cases of occupational disease in which the last exposure in an occupation subject to the hazards of such disease occurred on or after the date on which this article shall have taken effect.

SEC. 8081 (6). *Persons liable.*—In any case where compensation is payable for an occupational disease, the employer in whose employment the employee was last injuriously exposed to the hazards of such disease, and the insurance carrier, if any, which was on the risk when the employee was so last exposed under such employer, shall be liable.

SEC. 8081 (7). *Restrictions.*—An employer shall not be liable for any compensation for asbestosis, silicosis or lead poisoning unless disablement or death results within three years after the last exposure to such disease, or, in

case of death, unless death follows continuous disability from such disease, commencing within the period of three years limited herein, and for which compensation has been paid or awarded or timely claim made as hereinafter provided and results within seven years after such last exposure. Claims for all other occupational diseases shall be barred unless claims shall be filed with the Industrial Commission within one year from the disablement or death caused by such occupational disease.

SEC. 8081 (8). *Treatment*.—In the event of disability from an occupational disease, the employer shall provide reasonable medical and/or other treatment for such time as in the judgment of the Industrial Commission will tend to lessen the period of disability or provide needed relief: *Provided, however*, Medical and/or other treatment for asbestosis and/or silicosis shall not exceed a period of three years nor cost in excess of \$334.00 in any one year: *And, provided further*, all such treatment shall be first authorized by the Industrial Commission after consulting with the Advisory Medical Committee.

SEC. 8081 (9). *Compulsory examination of employees*.—The compulsory examination of employees and prospective employees as herein provided applies only to persons engaged or about to engage in an occupation which has been found by the Industrial Commission to expose them to the hazards of asbestosis and/or silicosis. The Industrial Commission shall designate by order each industry found subject to any such hazard and shall notify the employers therein before such examinations are required. On and after the date on which this article becomes operative it shall be the duty of every employer, in the conduct of whose business his employees or any of them are subjected to the hazards of asbestosis and/or silicosis, to provide prior to employment necessary examinations of all new employees for the purpose of ascertaining if any of them are in any degree affected by asbestosis and/or silicosis or peculiarly susceptible thereto; and every such employer shall from time to time, as ordered by the Industrial Commission, provide similar examinations for all of his employees whose employment exposes them to the hazards of asbestosis and/or silicosis. At least one member of the Advisory Medical Committee or other physician designated by the Industrial Commission shall make such examinations or be present when any such examination is made. The refusal of an employee to submit to any such examination shall bar such employee from compensation or other benefits provided by this article in the event of disablement and/or death resulting from exposure to the hazards of asbestosis and/or silicosis subsequent to such refusal. It shall be the duty of the Industrial Commission to make and/or order inspections of employments and to keep a record of all employments subjecting employees to the hazards of asbestosis and/or silicosis, and to notify the employer in any case where such hazard shall have been found to exist. The unreasonable failure of an employer to provide for any examination or his unreasonable refusal to permit any inspection herein authorized shall constitute a misdemeanor and shall be punishable as such.

SEC. 8081 (10). *Compensation for employees temporarily removed from hazardous employment*.—Where an employee, though not actually disabled, is found by the Industrial Commission to be affected by asbestosis and/or silicosis, and it is also found by the Industrial Commission that such employee would be benefited by being taken out of his employment and that such disease with such employee has progressed to such a degree as to make it hazardous for him to continue in his employment and is in consequence removed therefrom by order of the Industrial Commission, he shall be paid compensation as for temporary total or partial disability, as the case may be, until he can obtain employment in some other occupation in which there are no hazards of such occupational disease: *Provided, however*, Compensation in no such case shall be paid for a longer period than twenty weeks to an employee without dependents, nor for a longer period than forty weeks to an employee with dependents, and in either case said period shall begin from the date of removal from the employment, unless actual disablement from such disease results later and within the time limited in section 8081 (7). When in any such case the forced change of occupation shall in the opinion of the Industrial Commission require that the employee be given special training in order to properly readjust himself there shall be paid for such training and incidental traveling and living expenses an additional sum which shall not exceed \$300.00 in the case of an employee without dependents, and which shall not exceed \$500.00 in the case of an employee with dependents, such payment to be made for the benefit of the employee to such person or persons as the Industrial Commission may direct: *Provided*,

*however*, No such payment shall be made unless the employee accepts the special training herein provided, nor shall payment be made for a longer period of time than the employee shall accept such special training. If an employee has been so compensated, and whether or not specially trained for another occupation, and he thereafter engages in any occupation which exposes him to hazards of silicosis and/or asbestosis without first having obtained the written approval of the Industrial Commission, neither he, his dependents, personal representative nor any other person shall be entitled to any compensation for disablement or death from silicosis and/or asbestosis: *Provided, however*, That an employee so affected, as an alternative to forced change of occupation, may, subject to the approval of the Industrial Commission, waive in writing his right to compensation for any aggravation of his condition that may result from his continuing in his hazardous occupation; but in the event of total disablement and/or death as a result of asbestosis and/or silicosis with which the employee was so affected compensation shall nevertheless be payable, but in no case, whether for disability or death or both, for a longer period than 100 weeks. Such written waiver must be filed with the Industrial Commission, and the Commissioner shall keep a record of each waiver, which record shall be open to the inspection of any interested person.

SEC. 8081 (11). *"Silicosis" and "asbestosis" defined.*—The word "silicosis" shall mean the characteristic fibrotic condition of the lungs caused by the inhalation of dust of silica or silicates. "Asbestosis" shall mean a characteristic fibrotic condition of the lungs caused by the inhalation of asbestos dust.

SEC. 8081 (12). *Period necessary for employee to be exposed.*—Compensation shall not be payable for disability or death due to silicosis and/or asbestosis unless the employee shall have been exposed to the inhalation of dust of silica or silicates or asbestos dust in employment for a period of not less than two years in this State, provided no part of such period of two years shall have been more than ten years prior to the last exposure.

SEC. 8081 (13). *Workmen's compensation to control as to payment of benefits.*—Except as herein otherwise provided, in case of disablement or death from silicosis and/or asbestosis, compensation shall be payable in accordance with the provisions of the North Carolina Workmen's Compensation Act.

SEC. 8081 (14). *Reduction of payments where tuberculosis develops.*—In case of disablement or death due primarily from silicosis and/or asbestosis and complicated with tuberculosis of the lungs compensation shall be payable as hereinbefore provided, except that the rate of payments may be reduced one-sixth.

SEC. 8081 (15). *Notice required.*—Unless written notice of the first distinct manifestation of an occupational disease shall be given to the employer in whose employment the employee was last injuriously exposed to the hazards of such disease or to the Industrial Commission within 30 days after such manifestation, and, in case of death, unless also written notice of such death shall be given by the beneficiary hereunder to the employer or the Industrial Commission within 90 days after occurrence, and unless claim for disability and/or death shall be made within 1 year after the disablement or death, respectively, all rights to compensation for disability or death from an occupational disease shall be forever barred: *Provided, however*, That notice and/or claim shall be deemed waived in case of disability or death where the employer or insurance carrier voluntarily makes compensation payments therefor, or, within the time above limited, has actual knowledge of the incurrence of the disease or of the death and its cause, or by his or its conduct misleads the injured employee or claimant reasonably to believe that notice and/or claim has or have been waived: *And provided further*, That where compensation payments have been made and discontinued, and further compensation is claimed, whether for disability or death from asbestosis, silicosis or lead poisoning, the claim for such further compensation shall be made within two years after the last payment, but in all other cases of occupational disease claim for further compensation shall be made within one year after the last payment.

SEC. 8081 (16). *Post-mortem examinations.*—Upon the filing of a claim for death from an occupational disease where in the opinion of the Industrial Commission a post-mortem examination is necessary to accurately ascertain the cause of death, such examination shall be ordered by the Industrial Commission. A full report of such examination shall be certified to the Industrial Commission. The surviving spouse or next kin and the employer or his insurance carrier, if their identity and whereabouts can be reasonably ascertained, shall be given reasonable notice of the time and place of such post-mortem

examination and, if present at such examination, shall be given an opportunity to witness the same. Any such person may be present at and witness such examination either in person or through a duly authorized representative. If such examination is not consented to by the surviving husband or wife or next of kin, all right to compensation shall cease.

SEC. 8081 (17). *Controverted medical questions.*—If on the hearing of a claim for compensation for asbestosis and/or silicosis, any controverted medical question or questions shall arise, the Industrial Commission shall reserve its decision and award until it shall have received a report from the Advisory Medical Committee; and the Industrial Commission may in its discretion refer to said Committee controverted medical questions arising out of other occupational disease claims.

SEC. 8081 (18). *Hearing before advisory medical committee.*—The Advisory Medical Committee, upon reference to it of a case of occupational disease, shall notify the employee, or, in case he is dead, his dependents or personal representative, and his employer to appear before the Advisory Medical Committee at a time and place stated in the notice. If the employee be living, he shall appear before the Advisory Medical Committee at the time and place specified then or thereafter and he shall submit to such examinations, including clinical and X-ray examinations, as the Advisory Medical Committee may require. The employee, or, if he be dead, the claimant and the employer shall be entitled to have present at all such examinations, a physician admitted to practice medicine in the State, who shall be given every reasonable facility for observing every such examination, whose services shall be paid for by the claimant or by the employer who engaged his services. If a physician admitted to practice medicine in the State shall certify that the employee is physically unable to appear at the time and place designated by the Advisory Medical Committee, such Committee may, upon the advice of the Industrial Commission, and on notice to the employer, change the place and/or time of the examination so as to reasonably facilitate the examination of the employee, and in any such case the employer shall furnish transportation and provide for other reasonably necessary expenses incidental to necessary travel. The claimant and the employer shall produce to the Advisory Medical Committee all reports of medical and X-ray examinations which may be in their respective possession or control showing the past or present condition of the employee to assist the Advisory Medical Committee in reaching its conclusions.

SEC. 8081 (19). *Report of committee to industrial commission.*—The Advisory Medical Committee shall, as soon as practicable after it has completed its consideration of a case, report to the Industrial Commission its opinion regarding all medical questions involved in the case. The Advisory Medical Committee shall include in its report a statement of what, if any, physician or physicians were present at the examination on behalf of the claimant or employer and what, if any, medical reports and X-rays were produced by or on behalf of the claimant or employer.

SEC. 8081 (20). *Filing report; right of hearing.*—The Advisory Medical Committee shall file its report in triplicate with the Industrial Commission, which shall send one copy thereof to the claimant and one copy to the employer by registered mail. Unless within thirty days from receipt of the copy of said report the claimant and/or employer shall request the Industrial Commission in writing to set the case for further hearing for the purpose of examining and/or cross-examining the members of the Advisory Medical Committee respecting the report of said Committee, said report shall become a part of the record of the case and shall be accepted by the Industrial Commission as expert medical testimony to be considered as such in connection with all the evidence in the case in arriving at its decision.

SEC. 8081 (21). *Appointment of advisory medical committee.*—There shall be an Advisory Medical Committee consisting of three members, who shall be licensed physicians in good professional standing and peculiarly qualified in the diagnosis and/or treatment of occupational diseases. They shall be appointed by the Industrial Commission with the approval of the Governor, and one of them shall be designated as chairman of the Committee by the Industrial Commission. The members of Committee shall be appointed to serve terms as follows: One for a term of two years, one for a term of four years, and one for a term of six years. Upon the expiration of each term as above mentioned the Industrial Commission shall appoint a successor for a term of six years; except that the terms of the members first appointed shall expire June 30, 1936. The function of the Committee shall be to conduct examinations and make reports

as required by sections 8081 (17)–8081 (20), and to assist in any post-mortem examinations provided for in section 8081 (16) when so directed by the Industrial Commission. Members of the Committee shall devote to the duties of the office so much of their time as may be required in the conducting of examinations with reasonable promptness, and they shall attend hearings as scheduled by the Industrial Commission when their attendance is desired for the purpose of examining and cross-examining them respecting any report or reports made by them.

The members of the Advisory Medical Committee shall be paid such salaries and/or fees and expenses, and in monthly installments or in such other manner as may be determined by the Governor and approved by the Advisory Budget Commission.

SEC. 8081 (22). *Expenses of examinations.*—The Industrial Commission shall establish a schedule of reasonable charges to defray expenses incurred in making examinations pursuant to sections 8081 (9) and 8081 (16), such charges to be collected in accordance with rules and regulations which shall be adopted by the Industrial Commission. Said charges shall be collected from employers who by order of the Industrial Commission are determined to be subject to the hazards of asbestosis and/or silicosis.

SEC. 8081 (23). *Expenses of hearings.*—In hearings arising out of claims for disability and/or death resulting from occupational diseases the Industrial Commission shall tax as a part of the costs in cases in which compensation is awarded a reasonable allowance for the services of members of the Advisory Medical Committee attending such hearings and reasonable allowances for the services of members of the Advisory Medical Committee for making investigations in connection with all claims for compensation on account of occupational diseases, including uncontested cases, as well as contested cases, and whether or not hearings shall have been conducted in connection therewith. All such charges, fees and allowances to be collected by the Industrial Commission shall be paid into the General Fund of the State Treasury to constitute a fund out of which to pay the expenses of the Advisory Medical Committee.

SEC. 8081 (24). *Assessment upon employers to pay expenses of committee.*—In the event the amount appropriated by the General Assembly and the charges, fees and allowances so assessed and collected and paid into the State Treasury shall not be sufficient to pay the full cost incurred by the Advisory Medical Committee in making examinations of employees, and conducting post-mortem examinations, and in making investigations of claims arising under this article, and in testifying before the Industrial Commission, the Industrial Commission shall assess against the employers found by the Industrial Commission to be subject to the hazards of asbestosis and/or silicosis an amount sufficient to pay such cost, said amount to be assessed against such employers pro rata on the basis of annual payroll. The Industrial Commission is authorized to assess and collect in advance in the beginning of any year from the employers subject to such hazard an amount estimated as necessary to pay such cost. Said amount when so assessed shall be paid by such employers within ten days after the notice of assessment, and when collected by the Industrial Commission shall be paid into the State Treasury as a part of the fund out of which to pay the expenses of the Advisory Medical Committee. In the event such amount so assessed shall be found to be in excess of the cost incurred by such Advisory Medical Committee in the performance of its duties under this article, such excess shall be credited against the estimate of the cost to be incurred by said Committee for the succeeding year. In case the amount so assessed shall be insufficient to pay such cost the Industrial Commission is authorized to make an additional assessment to be made at the end of the regular assessment period and to be collected from the employers subject to the hazards of asbestosis and/or silicosis.

SEC. 8081 (25). *Inspections.*—The Industrial Commission shall make inspections of employments for the purpose of ascertaining whether such employments, or any of them, are subject to the hazards of asbestosis and/or silicosis, and for the purpose of making studies and recommendations with a view to reducing and/or eliminating such hazards. The Industrial Commission, and/or any person selected by it, is authorized to enter upon the premises of employers where employments covered by this article are being carried on to make examinations and studies as aforesaid. Any employer, or any officer or agent of an employer, who unreasonably prevents or obstructs any such examinations or study shall be guilty of a misdemeanor.

## NORTH DAKOTA

## SUPPLEMENT (1925) TO COMPILED LAWS, 1913

SECTION 396a2. *Definitions.*—\* \* \* “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. \* \* \*

## OHIO

## PAGE’S GENERAL CODE, 1932

SECTION 1465-68a (as amended 1931, p. 26). *Occupational diseases.*—Every employee who is disabled because of the contraction of an occupational disease as herein defined, or the dependent 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 contraction of the disease the employee has been a resident of the State of Ohio, or for 90 days next preceding the contraction of the disease 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:

## SCHEDULE

| 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 amido-derivatives of benzol (di-nitro-benzol, anilin, and others). | Any industrial process involving the use of benzol or 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.                |
| 9. Poisoning by carbon bisulphide.....   | Any industrial process involving the use of carbon bisulphide or its preparations or compounds.                              |

## SCHEDULE

| DESCRIPTION OF DISEASE OR INJURY  | DESCRIPTION OF PROCESS   |
|---|--|
| 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.  |
| 16. Manganese dioxide poisoning.....  | Any process involving the grinding or milling of manganese dioxide or the escape of manganese dioxide dust.  |
| 17. Radium poisoning.....   | Any industrial process involving the use of radium and other radio active substances, in luminous paint.   |
| 18. Tenosynovitis and pre-patellar bursitis.  | Primary tenosynovitis characterized by a passive effusion or crepitus into the tendon sheath of the flexor or extensor muscles of the hand, due to frequently repetitive motions or vibration, or pre-patellar bursitis due to continued pressure. |
| 19. Chrome ulceration of the skin or nasal passages.  | Any industrial process involving the use of or direct contact with chromic acid or bichromates of ammonium, potassium, or sodium or their preparations.  |
| 20. Potassium cyanide poisoning.....  | Any industrial process involving the use of or direct contact with potassium cyanide.  |
| 21. Sulphur dioxide poisoning.....  | Any industrial process in which sulphur dioxide gas is evolved by the expansion of liquid sulphur dioxide.   |

SEC. 1465-68b. *Rights of employees.*—Every employee mentioned in the next preceding section and the dependent or dependents of such employee and the employer or employers of such employee shall be entitled to all the rights, benefits and immunities and shall be subject to all the liabilities, penalties and regulations provided for injured employees and their employers by sections 1465-44 to 1465-108, General Code, inclusive, save and except section 1465-90, General Code, which shall not apply to any case involving occupational disease, and also subject to such other modifications or exemptions hereinafter provided.

The industrial commission shall have all of the powers, authority and duties with respect to the collection, administration and disbursement of the State occupational disease fund as are provided for in sections 1465-44 to 1465-108, General Code, inclusive, providing for the collection, administration and disbursement of the State insurance fund for the compensation of injured employees.

SEC. 1465-68c. *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 wilfully 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.

PHILIPPINE ISLANDS

PUBLIC LAWS, VOLUME 23

ACT No. 3428, p. 415

SECTION 2. *Grounds for compensation.*—When any employee receives a personal injury from any accident due to and in the pursuance of the employment, or contracts any illness directly caused by such employment or the result of the nature of such employment, his employer shall pay compensation in the sums and to the persons hereinafter specified.

PUERTO RICO

ACTS OF 1935

No. 45

SECTION 3. *Rights of laborers.*—Every workman or employee who suffers an injury or an occupational disease under the conditions specified in this Act, and as established in section 2, shall be entitled to—

\* \* \* \* \*

*Table of occupational diseases and their causes.*—The diseases enumerated in the following table shall be considered as occupational diseases when contracted by workmen or employees in the course of the occupations therein enumerated, within the twelve months prior to the date of the disability caused by such disease due to the nature of any of the processes described in said table:

| NAME OF DISEASE  | DESCRIPTION OF PROCESS   |
|--|--|
| 1. Anthrax.....  | Handling of wool, hair, bristles, hides, or skins.   |
| 2. Glanders.....   | Care of equine animals suffering from glanders.  |
| 3. Lead poisoning.....   | Any industrial process involving the use of lead or of its preparations or compounds.  |
| 4. Mercury poisoning.....  | Any industrial process involving the use of mercury or of its preparations or components.  |
| 5. Phosphorus poisoning.....   | Any industrial process involving the use of phosphorus or of its preparations or compounds.  |
| 6. Arsenic poisoning.....  | Any industrial process involving the use of arsenic or of its preparations or compounds.   |
| 7. Poisoning by benzol or by niter or their derivatives of amide dinitrate, anilin and others. | Any industrial process involving the use of benzol, of niter, of amide and its derivatives of benzol or its preparations or compounds. |

| NAME OF DISEASE  | DESCRIPTION OF PROCESS  |
|--|---|
| 8. Poisoning by gasoline, naphtha, or other volatile petroleum product.  | Any industrial process involving the use of gasoline, benzine, naphtha, or other volatile petroleum product.  |
| 9. Poisoning by carbon bisulphide.   | Any industrial process involving the use of carbon bisulphide or of its preparations or compounds.  |
| 10. Poisoning by wood alcohol.   | Any industrial process involving the use of wood alcohol or of its preparations.  |
| 11. Infection or inflammation of the skin on contact with compound, irritating or lubricant oils, dust, liquids, smoke, gases or vapors. | Any industrial process involving the handling or use of compound, irritating, or lubricant oils or involving contact with dust, liquids, smoke, gases, or vapors. |
| 12. Ulceration of the skin or of the corneal surface of the eye, due to coal, pitch, tar, or their compounds.                            | Handling or industrial use of coal, pitch, tar, or their compounds.   |
| 13. Compressed-air poisoning.  | 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 industrial process involving the manufacture, founding, or refining of brass or the melting or smelting of zinc.  |

RHODE ISLAND

GENERAL LAWS, 1923

CHAPTER 92

ARTICLE VIII (as added, by ch. 2358, Acts of 1936). Occupational Diseases

SECTION 1. *Definitions.*—Whenever used in this article:

(a) The word "disability" means the state of being disabled from earning full wages at the work at which the employee was last employed;

(b) The word "disablement" means the event of becoming so disabled as defined in sub-paragraph (a);

(c) The term "occupational disease" means a disease which is due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation, process or employment.

SEC. 2. *Occupational diseases.*—The disablement of an employee resulting from an occupational disease or condition described in the following schedule shall be treated as the happening of a personal injury by 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:

1. Anthrax.
2. Arsenic poisoning or its sequelae.
3. Brass or zinc poisoning or its sequelae.
4. Lead poisoning or its sequelae.
5. Manganese poisoning.
6. Mercury poisoning or its sequelae.
7. Phosphorus poisoning or its sequelae.
8. Poisoning by wood alcohol.
9. Poisoning by carbon bisulphide, methanol, naphtha, or volatile halogenated hydrocarbons, or any sulphide, or its sequelae.
10. Poisoning by benzol, or nitro-, hydro-, hydroxy- and amido-derivatives of benzol (dinitro-benzol, anilin, and others), or its sequelae.
11. Poisoning by carbon monoxide.
12. Poisoning by nitrous fumes or its sequelae.

13. Poisoning by nickel carbonyl or its sequelae.
14. Dope poisoning (poisoning by tetrachlormethan or any substance used as or in conjunction with a solvent for acetate of cellulose or nitro cellulose or its sequelae).
15. Poisoning by formaldehyde and its preparations.
16. Chrome ulceration or its sequelae or chrome poisoning.
17. 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.
18. Glanders.
19. Compressed air illness or its sequelae.
20. Miners' disease, including only cellulitis, bursitis, ankylostomiasis, tenosynovitis and nystagmus.
21. Cataract in glassworkers.
22. Radium poisoning or disability due to radio-active properties of substances or to Roentgen rays (X-rays).
23. Methyl chloride poisoning.
24. Poisoning by sulphuric, hydro-chloric or hydro-fluoric acid.
25. Respiratory, gastrointestinal or physiological nerve and eye disorders due to contact with petroleum products and their fumes.
26. Disability arising from blisters or abrasions.
27. Hernia, clearly recent in origin and resulting from a strain, arising out of and in the course of employment and promptly reported to the employer.
28. Infection or inflammation of the skin or eyes or other external contact surfaces or oral or nasal cavities due to oils, cutting compounds, or lubricants, dust, liquids, fumes, gases or vapors.
29. Dermatitis (venenata).
30. Disability arising from bursitis or synovitis.
31. Disability arising from frost bite.

SEC. 3. *Benefits.*—If an employee is disabled or dies and his disability or death is caused by one of the diseases mentioned in the schedule contained in section two of this article and the disease is due to the nature of the employment in which such employee was engaged and was contracted therein, he or his dependents shall be entitled to compensation for his death or for his disablement, and he shall be entitled to be furnished with medical and hospital services, all as provided in article II of this chapter, except as hereinafter stated in this article: *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. 4. *Time limit.*—Neither the employee nor his dependents shall be entitled to compensation for disability or death resulting from such occupational disease, unless such occupational disease is due to the nature of his employment and was contracted therein, or in a continuous employment similar to the one in which he was engaged at the time of his disablement, within twenty-four months previous to the date of disablement, whether under one or more employers. The time limit for contraction of the occupational disease prescribed by this section shall not bar compensation in the case of an employee who contracted such occupational disease in the same employment with the same employer by whom he was employed at the time of his disablement and who had continued in the same employment with the same employer from the time of contracting such occupational disease up to the time of his disablement thereby.

SEC. 5. *Examination by physician.*—The director of labor shall appoint one or more physicians whose duty it shall be to examine any claimant under this article and to make a report in such form as the director may require.

SEC. 6. *Date of disablement.*—For the purposes of this article the date of disablement shall be such date as the director or the court may determine on the hearing on the claim.

SEC. 7. *False representations.*—No compensation shall be payable for an occupational disease if the employee, at the time of entering into the employment of the employer by whom the compensation would otherwise be payable, or there-

after, wilfully and falsely represents in writing that he has not previously suffered from the disease which is the cause of the disability or death. Where an occupational disease is aggravated by any other disease or infirmity, not itself compensable, or where disability or death from any other cause, not itself compensable, is aggravated, prolonged, accelerated, or in any wise contributed to by an occupational disease, the compensation payable shall be such proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death as such occupational disease, as a causative factor, bears to all the causes of such disability or death, such reduction in compensation, to be effected by reducing the number of weekly payments or the amounts of such payments, as under the circumstances of the particular case may be for the best interests of the claimant or claimants.

**SEC. 8. Apportionment of compensation.**—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 director of labor 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 director finds that any portion of such compensation is payable by an employer prior to the employer who is made liable for the total compensation as provided by this section, he 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. 9. 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 twenty-four months in the employment to the nature of which the disease was due and such notice and claim shall be deemed seasonable as against prior employers. The requirements as to notice as to occupational disease and death resulting therefrom and the requirements as to the bringing of proceedings for compensation for disability or death resulting from such occupational disease shall be the same as required in section seventeen of article II of this chapter, except that the notice shall be given to the employer within ninety days after the disablement.

**SEC. 10. Additional information furnished.**—The employee, or his dependents, if so requested, shall furnish the last employer or the director of labor with such information as to the names and addresses of all his other employers during the said twenty-four 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 eight of this article, unless it be established that the occupational 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 eight of this article, such last employer shall be liable only for such part of the total compensation as under the particular circumstances the director 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.

**SEC. 11. Rights under other provisions.**—Nothing in this article shall affect the rights of an employee, or his dependents, to recover compensation in respect to a disease to which this article does not apply, if the disease, apart from this article, is one for which compensation is payable under the other provisions of this chapter.

**SEC. 12. Exposure prior to September 15, 1936.**—This article shall not apply to cases of occupational disease in which the last injurious exposure to the hazards of such disease occurred prior to the fifteenth day of September, A. D. 1936.

## WEST VIRGINIA

CODE, 1931

## ARTICLE 6 (as added by acts of 1935, ch. 79)

**SECTION 1. Administration.**—The provisions of this article shall be administered by the state compensation commissioner, and the provisions of article one of this chapter are applicable hereto. All charges and expenses peculiar to the administration of this article shall in the proportionate amount be chargeable to and paid out of the workmen's compensation silicosis fund.

**SEC. 2. Classification of industries; election by employers.**—(a) In order that compensation for the disease of silicosis as herein defined might be paid to all persons employed within this state in interstate or intrastate work as defined by section ten, article two of this chapter, and in the service of those employers legally doing or authorized to do business in this state and who elect to qualify under and subject themselves to the provisions of this article, the commissioner shall make the necessary separate classifications of the various industries for those employers who so elect, and the commissioner shall make such classifications and fix the rate of premiums in the manner provided by section four of article two of this chapter. Those employers who do not elect to come within the provisions of this article shall not be subject to the provisions of article two of this chapter except as otherwise specifically provided in this article. The assessments and premiums paid by such employers so electing shall be kept by the commissioner in a separate fund to be known and designated as "workmen's compensation silicosis fund."

(b) For the purpose of creating the workmen's compensation silicosis fund, each employer electing to become subject thereto under the provisions of this article shall make his election and pay the premiums in the manner provided by section five of article two of this chapter.

(c) Every employer electing to come under the provisions of this article shall give the information, and make the necessary reports, to the commissioner as provided by sections two and three of article two of this chapter.

(d) Except as otherwise herein specifically provided, all the provisions of this chapter relating to premiums and assessments paid into, and disbursements for benefits, compensation, medical and hospital treatment, funeral expenses, and other charges from, the fund designated as "workmen's compensation fund," and the limitations of the amounts to be thereby expended, shall likewise apply to the fund designated as "workmen's compensation silicosis fund;" and the term "workmen's compensation fund" as used in this chapter whenever applicable, shall be construed to mean and include the term "workmen's compensation silicosis fund."

**SEC. 3. Notice by employers to employees; exemption from liability.**—Each employer electing to pay the premiums provided by this article into the workmen's compensation silicosis fund, or electing to make direct payments of compensation as provided by section nine of article two of this chapter, shall post, and keep posted, in conspicuous places about his place or places of business, typewritten or printed notices in the form prescribed by the commissioner, stating the fact that such employer has made such election, and the same when so posted shall constitute sufficient notice to all his employees, and to the parents of any minor employees, of the fact that the employer has made such election; and any employer who makes such election shall not thereafter be liable to respond in damages at common law or by statute for the disease or death of any employee because of silicosis during the period in which such employer shall not be in default in the payment of such premiums and shall have complied fully with all other provisions of this article.

**SEC. 4. Silicosis fund.**—(a) The commissioner shall establish a fund, to be known as "workmen's compensation silicosis fund," from the premiums and other funds paid thereto by employers who have elected to pay and have paid the premiums applicable to such employers under the provisions of this article relating to silicosis, for the benefit of employees of employers who have paid the premiums applicable to such employers, and have otherwise complied fully with the provisions of section five, article two of this chapter, and for the benefit of the dependents of such employees, and for the payment of the administration expenses of this article, and shall adopt rules and regulations in

respect to the collection, maintenance and disbursement of such funds not in conflict with the provisions of this chapter.

(b) Ten per cent of all that shall hereafter be paid into the workmen's compensation silicosis fund shall be set aside for the creation of a sufficient surplus fund, within the discretion of the commissioner, not exceeding one hundred thousand dollars, after which time the sum of five per cent of all the money paid into such fund shall be credited to such surplus fund until such time as in the judgment of the commissioner such surplus fund shall be sufficiently large to cover the catastrophe hazard and all losses not otherwise specifically provided for in this article.

(c) Employers electing as provided by this chapter to individually and directly compensate their employees having silicosis, or their dependents, shall do so in the manner prescribed by the compensation commissioner, and shall make all reports and execute all blanks, forms and papers as directed by said commissioner and as herein provided in this chapter.

(d) The custody, investment and disbursement of the workmen's compensation silicosis fund shall be in the manner and form prescribed by section two, article three, of this chapter, and any and all amendments thereto.

SEC. 5. *Disbursement of silicosis fund; definition of "silicosis."*—The commissioner shall disburse the workmen's compensation silicosis fund to the employees of such employers as are not delinquent in the payment of premiums for the last month in which said employees have been exposed to silicon dioxide dust in harmful quantities and who have otherwise complied fully with the provisions of this article, and which employees shall have contracted silicosis in this state in the course of and resulting from their employment, or to the dependents, if any, of such employees, in case death has ensued, according to the provisions hereinafter made.

Where an employee suffers from the disease of silicosis as hereinafter defined, or dies as the result of such disease, and the disease is due to the nature of an occupation or process in which he was employed at any time within one year previous to such disease, and claim therefor has been made within one year after the last exposure of said employee to silicon dioxide dust in harmful quantities, the employee, or in case of death his dependents, shall be entitled to compensation for silicosis as provided herein: *Provided, however,* That compensation shall not be payable for the disease of silicosis, or death resulting therefrom, unless the employee has been exposed to the inhalation of silicon dioxide dust in harmful quantities over a period of not less than two years in the same employment in this state.

For the purpose of this article, silicosis is defined as an insidious fibrotic disease of the lung or lungs due to the prolonged inhalation and accumulation sustained in the course of and resulting from his employment, of minute particles of dust containing silicon dioxide ( $\text{SiO}_2$ ) over such a period of time and in such amounts as result in the substitution of fibrous tissue for normal lung tissues; and the term "silicosis" as used herein shall also include silicosis accompanied by tuberculosis of the lungs evidenced by the presence of tubercle bacillus in the sputum.

SEC. 6. *Disbursement where contracted by wilful misconduct, rules and safety appliances; deliberate intention by employer; definitions.*—Notwithstanding anything hereinbefore or hereinafter contained, no employee or dependent of any employee shall be entitled to receive any sum from the workmen's compensation silicosis fund, or to direct compensation from any employer making the election and receiving the permission mentioned in section nine, article two of this chapter, or otherwise under the provisions of this chapter, on account of contracting the disease of silicosis caused by wilful misconduct, wilful self-exposure as defined herein, disobedience to such rules and regulations as may be adopted by the employer and approved by the commissioner, and which rules and regulations have been and are kept posted in conspicuous places in and about the premises, or the failure of such employee to use or make use of any protective or safety appliance or appliances prescribed by the commissioner and furnished by the employer for the use of or applicable to such employee; nor shall any employee or dependent thereof maintain any action for damages on account of disability arising from the disease of silicosis contracted through wilful self-exposure as defined herein. For the purposes of this article and to prevent employees from contracting silicosis, the commissioner may require all employers to adopt rules which have been approved by him for the protection and safety of his employees, and keep the same posted in conspicuous places in and about

the premises; and the commissioner shall require employers to install, use or adopt such protective or safety appliance or appliances as in the commissioner's opinion are necessary for the protection of the employees. If silicosis or death therefrom result to any employee from the deliberate intention of his employer to produce silicosis or death therefrom, the employee, the widow, widower, child or dependent of the employee, shall have the privilege to take under this article, and shall also have cause of action against the employer as if this chapter had not been enacted for any excess of damages over the amount received or receivable under this chapter. As used in this section, the term, "deliberate intention", shall mean conscious and wilful determination.

As used in this section, the term "willful self-exposure," causing the contraction of the disease of silicosis, shall include: (1) Failure or omission on the part of an employee to observe such rules and regulations as may be adopted by the employer and approved by the commissioner and which rules and regulations have been and are kept posted in a conspicuous place in and about the premises; (2) Failure or omission on the part of an employee truthfully to state to the best of his knowledge in answer to inquiry made by the employer the place, duration, and nature of previous employment; (3) Failure or omission on the part of an employee truthfully to answer to the best of his knowledge in answer to an inquiry made by the employer full information about the previous status of his health, habits, and medical attention that he or his blood relatives may have heretofore received.

**SEC. 7. Stages of silicosis; benefits and mode of payment.**—An employee shall, for the purposes hereof, be deemed to have silicosis: (1) in the first stage when it is found by the commissioner that the earliest detectable specific signs of silicosis are present, whether or not capacity for work is or has been impaired by such silicosis; (2) in the second stage when it is found by the commissioner that definite and specific physical signs of silicosis are present, and that capacity for work is or has been impaired by that disease; (3) in the third stage when it is found by the commissioner that the employee has silicosis accompanied by tuberculosis of the lungs evidenced by the presence of tubercle bacillus in the sputum.

Where compensation for silicosis is due an employee under the provisions hereof, such compensation shall be provided in the following schedule: (a) If the employee is suffering from silicosis in the first stage, the employee shall receive the sum of five hundred dollars as compensation in full for said disease that he has sustained as a result of and in the course of his employment, said sum to be payable as a lump sum or in periodic installments in the discretion of the commissioner, and shall be a final payment and operate as a full release by the employee for compensation and for any claim against the employer that the employee may thereafter have for silicosis, and irrespective of whether the employee thereafter continues in the same employment, he shall not have the right to receive any or further compensation or make any claim because of silicosis either to the compensation commissioner or against his employer, anything to the contrary in this chapter notwithstanding; (b) if the employee is suffering from silicosis in the second stage, the employee shall receive the sum of one thousand dollars as compensation in full for said disease that he has sustained as a result of and in the course of his employment, said sum to be payable as a lump sum or in periodic installments in the discretion of the commissioner, and shall be a final payment and operate as a full release by the employee for compensation and for any claim against the employer that the employee may thereafter have for silicosis, and irrespective of whether the employee thereafter continues in the same employment, he shall not have the right to receive any or further compensation or make any claim because of silicosis either to the commissioner or against his employer, anything to the contrary in this chapter notwithstanding; (c) if the employee is suffering from silicosis in the third stage, the compensation shall be paid therefor in the same manner and at the same rate as is provided for permanent disability under the provisions of subdivisions (c), (f) and (h) of section six, article four, of this chapter; (d) if the employee dies from silicosis within one year from the date of the last exposure of the employee to silicon dioxide dust in harmful quantities, the benefits shall be in the amounts and to the persons provided for in section one, article four of this chapter; as to such benefits sections eleven to fourteen, inclusive, of article four of this chapter shall apply.

**SEC. 8. Physical examination of claimant; expenses.**—The commissioner shall have power, after due notice to the employer, and whenever in his opinion it shall be necessary, to order a claimant to appear for examination before the medical board hereinafter provided. Claimant shall be entitled to reasonable

traveling and other expenses necessarily incurred by him in obeying such order, which shall be paid out of the workmen's compensation silicosis fund within the amount allowed for medical, surgical and hospital treatment.

SEC. 9. *Application for benefits; nonresident aliens.*—(a) To entitle any employee to compensation for silicosis under the provisions hereof, the application therefor must be made on a form or forms prescribed by the commissioner and filed in the office of the commissioner within one year from and after the date of the last injurious exposure to silicon dioxide dust, or in case of death, the application shall be filed as aforesaid by the dependent of such employee within one year from and after the date of the last injurious exposure to silicon dioxide dust.

(b) Nonresident aliens may be officially represented by the consular officers of the country of which such aliens may be citizens or subjects: *Provided*, That nothing herein contained shall be construed as giving such consular officer the right to make application for compensation in behalf of the nonresident aliens.

SEC. 10. *Notice to employer by employee or dependent.*—Unless the employer during the continuance of employment shall have actual knowledge that the employee has contracted silicosis, or unless the employee or some one on his behalf or his dependents shall give written notice of a claim that such employee has contracted silicosis, within a period of one year from the date when said employee shall have ceased to be a subject to injurious exposure to silicon dioxide dust in employment with said employer, no compensation shall be allowed and paid on account of death or disability of such employee by reason of silicosis.

SEC. 11. *Hearings; findings required of commissioner.*—On the hearing of a claim for compensation for silicosis, the commissioner shall hear, determine and file findings covering, but not limited thereto, the following nonmedical questions:

(a) Whether the employee was in fact, within one year prior to the filing of his claim, in the employ of the employer, and, if so, the duration of such employment and whether or not such employment was subject to the provisions hereof;

(b) The occupation or occupations, process or processes in which the employee was engaged during such employment, and the approximate periods of work in each such occupation or process;

(c) The employments, previous and subsequent to the employment out of which the claim arose, the duration thereof, and the exposure therein to the hazard of silicon dioxide dust;

(d) Whether such employee contracted said disease through wilful self-exposure;

(e) The average weekly wages of the employee at the time of his last injurious exposure to silicon dioxide dust in the employment of the employer;

(f) The date of the last injurious exposure to silicon dioxide dust in the employment with the employer, and if the employee is no longer in the service of the employer, the date upon which said employee ceased so to work; and, if the employee has died, the date and place of such death and the place of interment of the body.

SEC. 12. *Silicosis medical board; qualifications, etc.*—There shall be a medical board, known as the "silicosis medical board," which shall consist of three licensed physicians, who shall be appointed by the commissioner. No person shall be appointed as a member of said board, or as a consultant thereto, who has not by special study or experience, or both, acquired special knowledge of pulmonary diseases. All members of the silicosis medical board shall be physicians of good professional standing, admitted to practice medicine and surgery in this state, and two of said physicians shall be roentgenologists. One of the board shall be designated annually as chairman by the commissioner. The term of office of each member of such board shall be six years, except that the terms of the members first appointed shall be two, four and six years, respectively. The function of such board shall be to determine all medical questions to cases of compensation for silicosis under the direction and supervision of the commissioner. The commissioner, from time to time, shall fix the per diem salary, computed on the basis of actual time devoted to the discharge of their duties, to be paid each member of such board, and they shall also be entitled to reasonable and necessary traveling and other expenses incurred while actually engaged in the performance of their duties.

SEC. 13. *Silicosis medical board; procedure; autopsy.*—The silicosis medical board upon reference to it by the commissioner of a case of silicosis, shall notify the employee, or in case he is dead the claimant, and the employer, to

appear before such board at a time and place stated in the notice. If the employee be living, he shall appear before the board at the time and place specified and submit to such examinations, including clinical and X-ray examinations, as the board may require. If a physician licensed to practice medicine in the state shall make affidavit that the employee is physically unable to appear at the time and place designated by the board, such board shall, on notice to the proper parties, change the place and time of examination to such other place and time as may reasonably facilitate the hearing or examination of the employee. The employee or in case he is dead the claimant, and the employer shall also produce as evidence to the board all reports of medical and X-ray examinations which may be in their respective possession or control, showing the past or present condition of the employee. If the employee be dead, the notice of the board shall further require that the claimant produce necessary consents and permits so that an autopsy may be performed, if the board shall so direct. When in the opinion of the board an autopsy is deemed necessary to accurately and scientifically ascertain and determine the cause of death, such autopsy examination shall be ordered by the board, which shall designate a duly licensed physician, a pathologist, or such other specialists as may be deemed necessary by the board, to make such examination and tests to determine the cause of death and certify his or their written findings, in triplicate, with said board, and which findings shall be public records. In the event that a claimant for compensation for such death refuses to consent and permit such autopsy to be made, all rights for compensation shall thereupon be forfeited.

The employee, or if he be dead, the claimant, and the employer, shall be entitled to be present at all examinations conducted by the board, and to be represented by attorneys and physicians.

SEC. 14. *Silicosis medical board; reports, findings, etc.*—The silicosis medical board, as soon as practicable, after it has completed its investigation, shall make its written report, in triplicate, to the commissioner of its findings and conclusions on every medical question in controversy, and the commissioner shall send one copy thereof to the employee or claimant and one copy to the employer, and the said board shall also return to and file with the commissioner all the evidence, as well as all statements under oath, if any, of the persons who appeared before it on behalf of the employee or claimant, or employer, and also all medical reports and X-ray examinations produced by or on behalf of the employee or claimant, or employer.

The findings and conclusions of the said board shall set forth, among other things, the following:

(a) Whether or not the claimant or the deceased employee has contracted silicosis, and, if so, the stage thereof;

(b) If the claimant or the deceased employee has contracted such disease, whether or not the exposure in the employment, with said employer, was sufficient to have caused silicosis or to have injuriously aggravated an existing silicosis;

(c) What, if any, physician appeared before the board on behalf of the claimant, and what, if any, X-rays were produced by or on behalf of the claimant, and what, if any, physician appeared before the board on behalf of the employer, and what, if any, X-rays were produced by or on behalf of the employer.

If either party object to the whole or any part of such findings and conclusions of the board, he shall file with the commissioner, within ten days of the mailing of said copy to him unless for good cause shown the commissioner extends said time, his objections, in writing, thereto, specifying the particular statements of the board's findings and conclusions to which he objects. After the time has expired for the filing of objections to the findings and conclusions of the board, the commissioner shall proceed to act as provided in this chapter. If after the time has expired for the filing of objections to the findings and conclusions of the board no objections have been filed, the report of a majority of the board of its findings and conclusions on any medical question shall be taken to be plenary and conclusive evidence of the findings and conclusions therein stated. If objection has been filed to the findings and conclusions of the board, notice thereof shall be given to the board, and the members thereof joining in such findings and conclusions shall appear at the time fixed by the commissioner for the hearing to submit to examination and cross-examination in respect to such findings and conclusions. At such hearing evidence to controvert the findings and conclusions of the board shall be limited to examina-

tion and cross-examination of the members of the board appearing and in addition thereto only the testimony of such physician or physicians as may have appeared before the board on behalf of the claimant or the employer, or each, and participated in all of the examinations conducted by such board: *Provided*, That if such physician shall have died or is physically unable to attend, after appearing before said board, the party whom he represented may select any other duly licensed physician of West Virginia and may introduce his testimony in addition to that of the one who has so died or is so physically unable to attend.

SEC. 15. *Protection against exposure prior to effective date of statute.*—The provisions hereof shall not apply to cases of silicosis in which the last injurious exposure to silicon dioxide dust in harmful quantities occurred before the provisions hereof shall have taken effect: *Provided*, That any employer hereunder may elect to provide and pay compensation hereunder for silicosis in which the last injurious exposure to the hazards of such disease occurred before the provisions hereof shall have taken effect by filing notice of such election with the commissioner and posting copies of said notice in conspicuous places on his premises, and every employee who is employed at the time of posting such notice shall be deemed to have accepted all the provisions hereof and shall be bound thereby unless within thirty days after the filing and posting of such notice such employee shall file a notice to the contrary with the commissioner, whose duty it shall be to immediately notify the employer: *Provided, further*, That any employer and any former employee thereof prior to the date the provisions hereof take effect, when such former employee claims to have contracted silicosis, may by an agreement in writing elect to accept the provisions hereof, whereupon such former employee shall file his application with the commissioner, and the commissioner is hereby authorized to act in such cases, in which event all charges for administration and other expenses shall be charged to the particular employer, and if the commissioner finds that compensation should be paid, he shall determine the total amount and all administration charges thereof and assess same against the particular employer, who shall at once make payment of the full amount thereof into the workmen's compensation silicosis fund, and such amount so awarded shall be disbursed by the commissioner as in any other case arising under the provisions hereof.

SEC. 16. *Mode of paying benefits; exemption from legal process.*—Compensation shall be paid only to or for the use of such employees, or their dependents, as herein provided, and shall be exempt from all claims of creditors and from any attachment, execution or assignment. Payments shall be made in such periodical installments as may seem best to the commissioner in each case.

SEC. 17. *Seeking compensation wrongfully; penalty.*—Any person who shall knowingly and with fraudulent intent secure or attempt to secure larger compensation, or compensation for a longer term than he is entitled to, from the workmen's compensation silicosis fund, or knowingly and with like intent secure or attempt to secure compensation from such fund when he is not entitled thereto, or shall knowingly and with like intent aid or abet anyone in the commission of the offenses herein set forth, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding five hundred dollars or imprisoned not exceeding twelve months, or both, in the discretion of the court, and if the person so convicted is receiving compensation from such fund, he shall from and after such conviction cease to receive such compensation.

SEC. 18. *Finality of rulings; review; conflicting acts repealed; provisions of act separable.*—The provisions of section one, article five of this chapter, providing for the finality of the commissioner's rulings and the review by the supreme court of appeals, are applicable to the provisions of this article.

All acts and parts of acts in conflict with this act, or any part thereof, are hereby repealed. The various provisions of this act shall be construed as separable and several, and should any of the provisions, sentences, clauses or parts thereof be construed or held unconstitutional, or for any other reason invalid, the remaining provisions of this act shall not be thereby affected.

## WISCONSIN

### STATUTES, 1935

#### SECTION 102.01. *Definitions.*—\* \* \*

(2) \* \* \* "injury" is mental or physical harm to an employee caused by accident or disease; \* \* \*

SEC. 102.03. *Conditions of liability.*—\* \* \*

(3) In the case of disease intermittent periods of temporary disability shall create separate claims, and permanent partial disability shall create a claim separate from a claim for any subsequent disability which latter disability is the result of an intervening cause.

SEC. 102.18. *Findings and award.*—\* \* \*

(5) If it shall appear to the commission on due hearing that a mistake has been made in an award of compensation for an injury when in fact the employe was suffering from an occupational disease, the commission may within 3 years, set aside such award, and make a new award under this section.

SEC. 102.565. *Nondisabling silicosis.*—(1) When the conditions of liability as provided in this chapter exist, except as provided in this section, and an employee is discharged from employment because he has a nondisabling silicosis under circumstances such as to occasion wage loss, the commission may allow such sum for compensation on account thereof, as it may deem just, not exceeding 70 percent of his average annual earnings as defined in section 102.11.

(2) Payment of a benefit under this section to an employee shall estop such employee from any further recovery under this section.

UNITED STATES EMPLOYEES' COMPENSATION ACT

UNITED STATES CODE, 1934

TITLE 5

SECTION 790. *Definitions.*—\* \* \* The term "injury" includes, in addition to injury by accident, any disease proximately caused by the employment.\* \* \*

UNITED STATES LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT

UNITED STATES CODE, 1934

TITLE 33

SECTION 902. *Definitions.*—When used in this act \* \* \* (2) The term "injury" means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury, and includes an injury caused by the willful act of a third person directed against an employee because of his employment.

## Appendix

### Occupational-Disease Legislation Enacted in 1937

During the year 1937 a number of States enacted new occupational-disease legislation, while a few States passed amendatory laws. The States of Delaware, Michigan, Pennsylvania, and Washington have enacted new laws granting compensation for specified diseases, and Indiana enacted a detailed act similar to that of Illinois. Nebraska and Ohio enlarged the scope of their laws, the former State making compensable occupational diseases contracted in the battery manufacturing industry, while the latter State added silicosis to the list of diseases compensable under the workmen's compensation law. The State insurance fund of Oklahoma was empowered to insure persons, etc., against loss by reason of "occupational disease suffered by employees, for which the insured may be liable or have assumed liability."

In the States adopting the schedule plan of compensating for occupational diseases in 1937, Delaware included 12 specified diseases, Michigan 31, Pennsylvania 15, and Washington 21. In addition to the amendatory laws of Ohio and Wisconsin covering silicosis, this disease was included in the Michigan and Pennsylvania acts. The Michigan legislature also added the disease of pneumoconiosis caused by quarrying, cutting, crushing, grinding, or polishing metal. The new Pennsylvania act, in addition to the coverage of silicosis, includes asbestosis received in any occupation involving a direct contact with, the handling of, or exposure to asbestos dust, and establishes a special fund to partially handle, over a 10-year period, the problem of liability for the compensating of employees suffering from silicosis or asbestosis. In order to receive compensation for these diseases it must be shown that the disabled employee was employed in a silica or asbestos dust industry within the State for an aggregate period of 2 years during the 8 years next preceding the date of disability. The act requires also that disability as a result of any of the enumerated diseases must occur within 2 years after the last exposure to such disease, and in cases resulting in death, within 5 years following the disability from such disease. Other States have also established limitations before compensation is payable. In Delaware the disability must have commenced within 5 months after the exposure, and in Indiana 1 year. In silica and asbestos dust cases, the Indiana law provides that disablement must occur within 3 years after the last day of the last exposure to the hazards of such diseases.

The Michigan law specifically provides that compensation shall not be payable for partial disability due to silicosis or other dust diseases. However, in cases of temporary or total disability caused by silicosis, the act provides a payment of \$500 if the disablement occurred during the first month after the effective date of the act, \$550 during the second month, and an increase of \$50 for each subsequent month,

limited to \$3,000. The disease must have been contracted in a continuous employment similar to the one the employee was engaged in at the time of the disability, and within 12 months "previous to the date of disablement whether under one or more employers."

The Ohio amendatory act requires that the employee must have been subjected to silica dust exposure at least 5 years preceding the disablement.

As regards the diseases of silicosis and asbestosis, the new law in Washington is broader and covers any industry "where intense dust prevails."

Hereafter, by the provisions of chapter 271, the State of New York will include funeral expenses as a part of the compensation payable in cases where death results from silicosis or other dust diseases.

The legislature in Ohio has made a requirement that hereafter applications for compensation for occupational diseases must be made within 6 months after death.

By a mandate of the Wisconsin legislature (ch. 180), the industrial commission may now allow a maximum compensation of \$3,500 in silicosis cases, instead of 70 percent of the average annual earnings as heretofore.

By an act of the 1937 legislature, Illinois has assured the payment of compensation in occupational-disease cases by compelling the insurance of the risk.

In addition to the occupational-disease legislation enacted in 1937, the States of Arkansas, Idaho, Maine, Massachusetts, Michigan, Montana, New Hampshire, and Oregon considered the subject in one form or another. The Michigan legislature passed a law (Act No. 210) requiring that physicians and hospitals must report all occupational diseases to the State department of health. The legislatures of the seven other States ordered the appointment of commissions to study the subject, and in most cases to report their findings to the next session of the legislatures with drafts of appropriate legislation. The Arkansas State board of health was delegated as the agency to conduct the survey in that State; in Idaho, the department of public welfare; and in Massachusetts such agency is to be the department of labor and industries in conjunction with the public health department, while the States of Maine, Montana, New Hampshire, and Oregon have appointed special commissions with a personnel ranging from 3 to 9, composed of representatives of employers and employees, medical specialists, and officials of labor and health departments.

Including the new laws passed in 1937, there are now 27 jurisdictions compensating for occupational diseases:

|                      |                    |                  |
|----------------------|--------------------|------------------|
| California           | Minnesota          | Puerto Rico      |
| Connecticut          | Missouri           | Rhode Island     |
| District of Columbia | Nebraska           | Washington       |
| Delaware             | New Jersey         | West Virginia    |
| Hawaii               | New York           | Wisconsin        |
| Illinois             | North Carolina     | United States—   |
| Indiana              | North Dakota       | Civil employees  |
| Kentucky             | Ohio               | Longshoremen and |
| Massachusetts        | Pennsylvania       | harbor workers   |
| Michigan             | Philippine Islands |                  |

The text of the new laws and the amendments to existing laws, passed in 1937, are presented as follows:

## DELAWARE

REVISED CODE, 1935

**SECTION 6114** (as amended 1937, ch. 241). *Terms construed.*—The term “injury” and “personal injury” as used in this chapter shall be construed to mean violence to the physical structure of the body, such disease or infection as naturally results directly therefrom when reasonably treated and compensable occupational diseases, as are hereinafter defined, arising out of and in the course of the employment. When death is mentioned as a cause for compensation under this chapter, it shall mean death resulting from such violence, its resultant effect when reasonably treated as aforesaid and occurring within two hundred and eighty-five weeks after the accident, and compensable occupational diseases, as are hereinafter defined, arising out of and in the course of the employment. When applicable in this chapter to compensable occupational diseases the following words and phrases shall be construed to have the following meanings:

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  | Wood alcohol poisoning          |
| Lead poisoning   | Chrome poisoning                |
| Mercury poisoning  | Caisson disease                 |
| Arsenic poisoning  | Mesothorium or radium poisoning |
| Phosphorus poisoning                                     | Carbon disulphide               |
| Benzene, and its homologues, and all derivatives thereof | Hydrogen sulphide               |

Willful self-exposure to occupational disease shall include (1) failure or omission to observe such rules and regulations as may be promulgated 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.

The compensation payable for death or disability total in character and permanent in quality resulting from an occupational disease shall be the same in amount and duration and shall be payable in the same manner and to the same persons as would have been entitled thereto had the death or disability been caused by an accident arising out of and in the course of the employment.

In determining the duration of temporary total and/or temporary partial and/or permanent partial disability, and the duration of such payments for the disabilities due to occupational diseases, the same rules and regulations as are now applicable to accident or injury occurring under the act to which this act is an amendment or supplement, shall apply.

Unless the employer during the continuance of the employment shall have actual knowledge that the employee has contracted a compensable occupational disease, or unless the employee or some one in his behalf, or some of his dependents, or some one on their behalf, shall give the employer written notice or claim that the employee has contracted one of said compensable occupational diseases, which notice to be effective must be given within a period of five months after the date when said employee shall have ceased to be subject to exposure to such occupational disease, no compensation shall be payable on account of the death or disability by occupational disease of such employee.

All claims for compensation for compensable occupational disease shall be forever barred unless a petition is filed in duplicate with the secretary of the Industrial Accident Board, within one year after date on which the employee ceased to be exposed in the course of employment with the employer to such occupational disease as hereinabove defined, or in case an agreement of compensation for compensable occupational disease 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.

Whenever it shall appear that any disability from which any employee is suffering following the contraction of a compensable occupational disease, is due in part to such occupational disease and in part to a pre-existing disease or infirmity, the Industrial Accident Board shall determine the proportion of such disability which is reasonably attributable to the said occupational disease and the proportion thereof which is reasonably attributable to the pre-existing disease or infirmity, and such employee shall be entitled to compensation for that proportion of his disability which is reasonably attributable solely to the said occupational disease, and shall not be entitled to compensation for that proportion of his disability which is reasonably attributable to the pre-existing disease or infirmity.

SEC. 2. That chapter 175 of the Revised Code of Delaware, 1935, be and the same is hereby, further amended by striking out and repealing paragraph (c) of 6115, section 45 of said chapter.

## ILLINOIS

### ACTS OF 1937

(Page 563)

S. B. No. 482

[This act amends section 6 of act of 1936 (H. B. No. 10, third special session),<sup>1</sup> so as to read as follows:]

SECTION 6. *Definition of occupational disease.*—In this act the term "occupational disease" means a disease arising out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where the said diseases follow as an incident of an occupational disease as defined in this section.

A disease shall be deemed to arise out of the employment only if there is apparent to the rational mind upon consideration of all the circumstances, a direct causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment and which can be fairly traced to the employment as the proximate cause, and which does not come from a hazard to which workmen would have been equally exposed outside of the employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. The disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.

## INDIANA

### ACTS OF 1937

#### CHAPTER 69

SECTION 1. *Title.*—Be it enacted by the general assembly of the State of Indiana, that this act shall be known and may be cited as "The Indiana Workmen's Occupational Diseases Act."

SEC. 2. *Liability of employer.*—There shall be no liability of any employer for compensation or damages for or on account of any injury to health, disease, or death therefrom, other than for the compensation herein provided, or for damages as provided in section 3 of this act. The provisions of this act shall not affect any right to compensation under "The Indiana Workmen's Compensation Act of 1929," and amendments thereto.

SEC. 3. *Rights of employees; limitation of actions.*—(a) Where an employee in this State dies or sustains injury to health, by reason of a disease contracted or sustained in the course of the employment, and proximately caused by the negligence of the employer, unless such employer shall have elected to provide

<sup>1</sup> See p. 9, *infra*.

and pay compensation as provided in section 4 of this act, a right of action shall accrue to the employee whose health has been so injured for any damages sustained thereby; and in case of death, a right of action shall accrue to the widow of such deceased person, his lineal heirs or adopted children, or to any person or persons who were, before such loss of life, dependent for support upon such deceased person, for a like recovery of damages for the injury sustained by reason of such death, in an amount not to exceed the sum of ten thousand dollars. Any violation by any employer of any law of this State, intended for the protection of the health of employees, shall be and constitute negligence of the employer within the meaning of this section. Every such action for damages for injury to the health shall be commenced within two years after the last day of the last exposure to the hazards of the disease and every such action for damages in case of death shall be commenced within one year after the death of such employee and within three years after the last day of the last exposure to the hazards of the disease. In any action to recover damages under the provisions of this section, unless the employee shall have rejected the compensation provisions of this act, it shall not be a defense that the employee, either expressly or impliedly, assumed the risk of the employment, or that the contraction or sustaining of the disease or death was caused in whole or in part by the negligence of a fellow servant or fellow servants, or that the contraction or sustaining of the disease or death resulting was caused in whole or in part by the contributory negligence of the employee, where such contributory negligence was not wilful.

(b) Every employee who elects not to operate under the compensation provisions of this act shall, in any action to recover damages for injury to health or death therefrom brought against an employer who has elected to provide and pay compensation under the provisions of this act, proceed as provided in subsection (a) of this section; provided, however, that the employer may avail himself of the defenses of contributory negligence, negligence of a fellow servant and assumption of risk.

**SEC. 4. Election by employer.**—(a) Any employer in this State may elect to provide and pay compensation according to the provisions of this act, for disability or death resulting from occupational diseases, and such election, when effective, shall apply to all cases in which the last day of the last exposure, as defined in this act, to the hazards of the occupational disease claimed upon shall have occurred on or after the effective date of such election, and shall relieve such employer of all liability under section 3 of this act, and all other liability with respect to injury to health or death therefrom by reason of any disease contracted or sustained in the course of the employment.

(b) Election by any employer, pursuant to the provisions of subsection (a) of this section, shall be made by filing notice in writing of such election with the industrial board. Such employer shall either furnish to his employees personally or post in a conspicuous place in the place of employment, a copy of such notice of his election.

(c) Every employer who shall have elected, pursuant to the provisions of subsections (a) and (b) of this section, to provide and pay compensation shall, from and after the effective date of such election, be, remain, and operate under all of the provisions of this act, except section 3 hereof, with respect to all his employees, except those who shall have rejected, in due time, as provided in subsection (d) of this section. On October 1, 1937, and on each October first for four years thereafter, any employer who shall have elected pursuant to the provisions of subsections (a) and (b) of this section to provide and pay compensation under the provisions of this act, may elect not to provide and pay compensation under the provisions of this act by filing notice in writing of such election not to provide and pay compensation under the provisions of this act with the industrial board, at least sixty days prior to the October first upon which such election is to be effective, and by either giving to his employees, personally, or posting in a conspicuous place in the place of employment, a copy of such notice of such election not to provide and pay compensation at least sixty days prior to such October first; and such election not to provide and pay compensation shall apply to all cases in which the last day of the last exposure, as defined in this act, to the hazards of the disease claimed upon shall have occurred on or after the October first on which such election shall have become effective. Any employer having elected, pursuant to the provisions of this subsection, not to provide and pay compensation, may, at any time thereafter, again elect, pursuant to the provisions of subsections (a) and (b) of this section to provide and pay compensation, but having thus

elected for the second time to provide and pay compensation, such employer shall, from and after the effective date of such last election, be, remain, and operate under all of the provisions of this act, except section 3 hereof, with respect to all employees, except those who have rejected in due time, as provided in subsection (3) [d] of this section, and such employer may not again withdraw.

(d) If any employer elects, pursuant to the provisions of subsections (a) and (b) of this section, then every employee of such employer, who may be employed at the time of such election by such employer, shall be deemed to have accepted all of the compensation provisions of this act and shall be bound thereby unless, within thirty days after such election, he shall file a notice in writing to the contrary with the industrial board, whose duty it shall be immediately to notify the employer, and until such notice is given to the employer, the measure of liability of such employer shall be determined according to the compensation provisions of this act; and every employee of such employer, hired after such employer's election, as a part of his contract of hiring, shall be deemed to have accepted all of the compensation provisions of this act, and shall have no right of rejection.

(e) The compensation herein provided for shall be the full, complete, and only measure of the liability of the employer bound by election under the provisions of this act and such employer's liability for compensation and medical benefits under the provisions of this act shall be exclusive and in place of any and all other civil liability whatsoever, at common law or otherwise, to any employee or his legal representative on account of damage, disability or death caused or contributed to by any disease contracted or sustained in the course of the employment.

SEC. 5. *Definitions.*—As used in this act:

(a) "Employer" shall include the State and any political division, any municipal corporation within the State, any individual, firm, association, or corporation or the receiver or trustee of the same, or the legal representatives of a deceased person, using the services of another for pay. If the employer is insured it shall include his insurer so far as applicable.

(b) The term "employee," as used in this act, shall be construed to include every person, including a minor, in the service of another, under any contract of hire or apprenticeship, written or implied, except one whose employment is both casual and not in the usual course of the trade, business, occupation, or profession of the employer. Except as herein otherwise 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 suffered disablement shall, when the employee is dead, also include his legal representative, dependents, and other persons to whom compensation may be payable. Except as hereinafter otherwise provided, if the employee be a minor who, at the time of the last exposure, 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 disability or death of such minor, and the employer shall be wholly liable for the other one-half of such compensation or benefits. If such employee be a minor who is not less than sixteen years and not more than eighteen years of age, and who at the time of the last exposure is employed, suffered, or permitted to work at any occupation which is not prohibited by law, the provisions 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 disease shall exclude all rights and remedies of such minor, his parents, his personal representatives, dependents, or next of kin at common law, statutory or otherwise, on account of any disease.

(c) This act shall not apply to casual laborers as defined in subsection (b) of this section, nor to farm or agricultural employees, nor to domestic servants, nor to railroad employees engaged in train service as engineers, firemen, conductors, brakemen, flagmen, baggagemen, or foremen in charge of yard engines and helpers assigned thereto, nor to their employers with respect to such employees; neither shall this act apply to employees or their employers with respect to employments in which the laws of the United States provide for compensation or liability for injury to the health, disability, or death by reason of diseases suffered by such employees.

(d) The term "disablement" means the event of becoming disabled from earning full wages at the work in which the employee was engaged when last exposed to the hazards of the occupational disease by the employer from whom he claims compensation, or equal wages in other suitable employment and "disability" means the state of being so incapacitated.

(e) No compensation shall be payable for or on account of any occupational disease unless disablement, as herein defined, occurs within one year after the last day of the last exposure to the hazards of the disease, except in cases of occupational diseases caused by the inhalation of silica dust or asbestos dust and, in such cases, within 3 years after the last day of the last exposure to the hazards of such disease.

(f) No compensation shall be payable for or on account of death resulting from any occupational disease unless death occurs within 1 year after the date of disablement: *Provided*, That this paragraph shall not be a bar to compensation for death (a) where death occurs during the pendency of a claim filed by an employee within 1 year after the date of disablement and which claim has not resulted in a decision or has resulted in a decision which is in process of review or appeal, or (b) where, by agreement filed or decision rendered, a compensable period of disability has been fixed and death occurs within 1 year after the end of such fixed period, but in no event later than 300 weeks after the date of disablement.

SEC. 6. *Definition of occupational disease.*—(a) As used in this act, the term "occupational disease" means a disease arising out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where such diseases follow as an incident of an occupational disease as defined in this section.

(b) A disease shall be deemed to arise out of the employment, only if there is apparent to the rational mind, upon consideration of all of the circumstances, a direct causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment and which can be fairly traced to the employment as the proximate cause, and which does not come from a hazard to which workmen would have been equally exposed outside of the employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. The disease need not have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.

SEC. 7. *Compensation payable in case of death.*—(a) For death resulting from an occupational disease, there shall be paid weekly compensation equal to fifty-five percent of the deceased's average weekly wages for a period of three hundred weeks, less the number of weeks, if any, which shall have been paid to the deceased on account of the occupational disease during his lifetime. Such compensation for death shall be paid in equal shares to all dependents of the employee wholly dependent upon him for support at the time of his disablement. If the employee leaves dependents only partially dependent upon his earnings for support at the time of his disablement, the weekly compensation to those so dependent shall be in the same proportion to the weekly compensation of 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 disablement.

(b) The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employee:

(1) A wife upon a husband with whom she is living at the time of his disablement, or upon whom the laws of the State impose the obligation of her support at such time.

(2) 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 disablement.

(3) A child under the age of eighteen years upon the parent with whom he or she is living at the time of the disablement of such parent.

(4) A child under the age of eighteen years upon the parent with whom he or she may not be living at the time of the disablement of such parent, but upon whom, at such time, the laws of the State impose the obligation to support such child.

(5) A child over the age of eighteen years who is either physically or mentally incapacitated from earning his or her own support, upon a parent with

whom he or she is living at the time of the disablement 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 disablement and questions of partial dependency shall be determined in like manner as of the date of the disablement. If there is more than one person wholly dependent, the death benefit shall be divided equally among them; and persons partially dependent 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 the partial dependents according to the relative extent of the dependency.

The dependency of a widow, widower, or child, shall terminate with his or her marriage subsequent to the death of the employee.

The dependency of a child, except a child physically or mentally incapacitated from earning, shall terminate with the attainment of eighteen years of age.

(c) In all cases of the death of an employee from an occupational disease arising out of and in the course of his employment under such circumstances that the employee would have been entitled to compensation if the death had not resulted, the employer shall pay the burial expenses of such employee, not exceeding one hundred dollars.

SEC. 8. *Compensation payable in case of disability.*—(a) No compensation shall be allowed on account of disablements from occupational disease resulting in only temporary total disability to work or temporary partial disability to work for the first seven calendar days of disability resulting from such occupational disease except the medical benefits provided for in section 9, but if disability extends beyond that period, compensation shall commence with the beginning of the eighth day of such disability.

(b) For disablements from occupational disease resulting in temporary total disability for any work there shall be paid to the disabled employee during such temporary total disability, but not including the first seven calendar days thereof, a weekly compensation equal to fifty-five percent of his average weekly wages for a period not to exceed five hundred weeks.

(c) For disablements from occupational disease resulting in temporary partial disability for work, compensation shall be paid to the disabled employee during such disability, but not including the first seven calendar days, a weekly compensation equal to fifty-five percent of the difference between his average weekly wages and the weekly wages at which he is actually employed after the disablement, for a period not to exceed three hundred weeks. In case the partial disability [begins] after the period of temporary total disability, the latter period shall be included as a part of the maximum period allowed for partial disability.

(d) For disabilities from occupational disease in the following schedule, the employee shall receive in lieu of all other compensation, on account of such disabilities, a weekly compensation of fifty-five percent of his average weekly wages for the periods stated for such disabilities, respectively, to wit:

(1) Amputations: For the loss by separation, of the thumb, sixty weeks; of the index finger, forty weeks; of the second finger, thirty-five weeks; of the third or ring finger, thirty weeks; of the fourth or little finger, twenty weeks; of the hand by separation below the elbow, two hundred weeks; of the arm above the elbow joint, two hundred and fifty weeks; of the big toe, sixty weeks; of the second toe, thirty weeks; of the third toe, twenty weeks; of the fourth toe, fifteen weeks; of the fifth or little toe, ten weeks; of the foot below the knee joint, one hundred and fifty weeks; and of the leg above the knee joint, two hundred weeks. The loss of more than one phalange of a thumb or toe shall be considered as the loss of the entire thumb or toe. The loss of more than two phalanges of a finger shall be considered as the loss of the entire finger. 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. The loss of not more than two phalanges of a finger shall be considered as the loss of one-half the finger and compensation shall be paid for one-half of the period for the loss of the entire finger.

(2) **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.

(3) **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.

(4) For disablements from occupational disease resulting in total permanent disability, five hundred weeks.

(5) For the loss of both hands, or both feet or the sight of both eyes, or any two of such losses resulting from the same disablement by occupational disease, five hundred weeks.

(6) For the permanent loss of the sight of an eye or its reduction to one-tenth of normal vision with glasses, one hundred and fifty weeks, and for any other permanent reduction of the sight of an eye, compensation shall be paid for a period proportionate to the degree of such permanent reduction.

(7) For the permanent and complete loss of hearing, two hundred weeks.

(8) In all other cases of permanent partial impairment, compensation proportionate to the degree of such permanent partial impairment, in the discretion of the industrial board, not exceeding five hundred weeks.

(9) 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 two hundred weeks, except that no compensation shall be payable under this paragraph where compensation shall be payable under paragraphs (1) to (8), inclusive, of subsection (d) of this section. Where compensation for temporary total disability has been paid, this amount of compensation shall be deducted from any compensation due for permanent disfigurement.

(e) If any employee, only partially disabled, 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.

(f) If an employee has sustained a permanent impairment or disability in another employment than that in which he suffered a subsequent disability from occupational disease, such as herein specified, he shall be entitled to compensation for the subsequent disability in the same amount as if the previous impairment or disability had not occurred.

(g) If an employee suffers a disablement from occupational disease for which compensation is payable while he is still receiving or entitled to compensation for a previous injury by accident or disability by occupational disease in the same employment, he shall not at the same time be entitled to compensation for both, unless it be for a permanent injury, such as specified in paragraphs (1), (2), (3), (6), or (7) of subsection (d) of this section; but he shall be entitled to compensation for that disability and from the time of that disability which will cover the longest period and the largest amount payable under this act.

(h) If an employee receives a permanent disability from occupational disease such as specified in paragraphs (1), (2), (3), (6), or (7) of subsection (d) of this section, after having sustained another such permanent disability in the same employment he shall be entitled to compensation for both such disabilities, but the total compensation shall be paid by extending the period and not by increasing the amount of weekly compensation.

When such previous and subsequent permanent disabilities result in total permanent disability, compensation shall be payable for permanent total disability, but payments made for the previous disability shall be deducted from the total payment of compensation due.

(i) When an employee has been awarded or is entitled to an award of compensation for a definite period under this act for disability from occupational disease, and dies from any other cause than such occupational disease, payment of the unpaid balance of such compensation, not exceeding three hundred weeks, shall be made to his dependents as defined in section 7 hereof.

(j) Any payment made by the employer to the 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, but such deduction shall be made from the distal end of the period during which compensation must be paid, except in cases of temporary disability.

(k) 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.

(l) When the aggregate payments of compensation awarded by agreement or upon hearing to an employee or dependent under eighteen years of age, do not exceed one hundred dollars, the payment thereof may be made directly to such employee or dependent, except when the industrial board shall order otherwise.

Whenever the aggregate payments of compensation, due to any person under eighteen years of age, exceed one hundred dollars, the payment thereof shall be made to a trustee, appointed by the circuit or superior court, or to a duly qualified guardian, or, upon the order of the industrial board, to a parent or to such minor person. The payment of compensation due to any person eighteen years of age or over may be made directly to such person.

(m) If an 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.

(n) All compensation payments named and provided for in this section shall mean and be defined to be for only such occupational diseases and disabilities therefrom 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 employee himself.

SEC. 9. *Medical and hospital services.*—(a) During the first thirty days after a disablement, the employer shall furnish, or cause to be furnished, free of charge to the disabled employee, an attending physician, for the treatment of his occupational disease, 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 occupational disease, the employer may continue to furnish such physician, services, and supplies. If, by reason of the nature of the occupational disease, or the process of recovery, treatment is necessary for a longer period than thirty days, the industrial board may require the employer to furnish such treatment for an additional period, not exceeding thirty days. The refusal of the employee to accept such services and supplies, when so provided by the employer, shall bar the employee from all compensation during the period of 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, a physician other than that provided by the employer treats the injured employee within the first thirty days, or necessary and proper surgical, hospital, or nurse's services and supplies are procured within such period, the reasonable cost of such service and supplies shall, subject to the approval of the industrial board, be paid by the employer.

(b) The pecuniary liability of the employer for medical, surgical, hospital, and nurse service herein required shall be limited to such charges as prevail in the same community for similar service to injured persons of like standard of living when such service is paid for by the injured person.

SEC. 10. *Lump sum payments.*—(a) Any employer or employee or beneficiary who shall desire to have such compensation, or any unpaid part thereof, paid in a lump sum, may petition the industrial board, asking that such compensation be so paid, and if, upon proper notice to the interested parties, and a proper showing made before the industrial board, or any member thereof, it appears to the best interest of the parties that such compensation be so paid, the industrial board may order the commutation of the compensation to an equivalent lump sum, which commutation shall be an amount which will equal the total sum of the probable future payments capitalized at their present value upon the basis of interest calculated at three per centum per annum with annual rests. In cases indicating complete disability, no petition for a commutation to a lump-sum basis shall be entertained by the industrial board until after the expiration of six months from the date of the disablement.

(b) Whenever the industrial board deems it expedient, any lump-sum under this section shall be paid by the employer to some suitable person or corporation appointed by the circuit or superior court, as trustee, to administer the same for the benefit of the person entitled thereto, in the manner authorized by the court appointing such trustee. The receipt of such trustee for the amount so paid shall discharge the employer or anyone else who is liable therefor.

**SEC. 11. Basis of computation.**—(a) In computing compensation under this act, the average weekly wages of an employee shall be considered not to be more than thirty dollars nor less than sixteen dollars. The weekly compensation payable shall in no case exceed the average weekly wages of the employee at the time of the last exposure to the hazards of the occupation [occupational] disease in the employ of the employer from whom compensation is claimed. The maximum compensation which shall be paid for occupational disease and the results thereof, under any provision of this act or under any combination of its provisions shall not exceed five thousand dollars in any case.

(b) "Average weekly wages" shall mean the earnings of the injured employee in the employment in which he was working at the time of the last exposure during the period of fifty-two weeks immediately preceding the last day of the last exposure divided by fifty-two; but if the employee lost seven or more calendar days during such period, although not in the same week, then the earnings for the remainder of such fifty-two weeks shall be divided by the number of weeks and parts thereof remaining after the time so lost has been deducted. Where the employment prior to the last day of the last exposure extended over a period of less than fifty-two weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed, provided results just and fair to both parties will thereby be obtained. Where, by reason of the shortness of the time during which the employee has been in the employment of his employer or 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 fifty-two weeks previous to the last day of the last exposure, 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 that same class of employment in the same district.

Wherever allowances of any character made to an employee in lieu of wages are a specified part of the wage contract, they shall be deemed a part of his earnings.

**SEC. 12. Autopsies authorized.**—(a) Any dependent, the employer, or the industrial board, shall have the right in any case of death to require an autopsy at the expense of the party requiring the same. The board shall order such autopsy, and shall designate a competent pathologist to perform the same, and shall give the parties in interest such reasonable notice of the time and place thereof as will afford a reasonable opportunity to witness such autopsy in person or by a representative. It shall be the duty of such pathologist to perform such autopsy as, in his best judgment, is required to ascertain the cause of death. Such pathologist shall make a complete written report of all his findings to the industrial board, including laboratory results described as such, if any. The report of the pathologist shall contain his findings on such post-mortem examination and the report shall not contain any conclusion of the pathologist based upon the findings so reported. The report shall be placed on file with the industrial board, and shall be a public record. The report, or a certified copy thereof, may be introduced by either party on any hearing as evidence of the findings therein stated, but shall not be conclusive evidence of such findings, and either party may rebut any part thereof.

(b) No autopsy shall be held in any case, by any person, without notice first being given to the parties in interest, if they reside in this State or their whereabouts can reasonably be ascertained, of the time and place thereof, and reasonable time and opportunity given such parties in interest to have a representative or representatives present to witness the same. If such notice is not given, all evidence obtained by such autopsy shall be suppressed on motion duly made to the industrial board.

**SEC. 13. Medical examinations.**—After disablement and during the period of resulting disability or impairment, the employee, if so requested by his employer, or ordered by the industrial board, shall submit himself to examination, at reasonable times and places, by a duly qualified physician or surgeon designated and paid by the employer or the industrial board. The employee shall have the right to have present at any such examination any duly qualified physician or surgeon provided and paid by him. No fact communicated to, or otherwise learned by any physician or surgeon who may have attended or examined the employee, or who may have been present at any examination, shall be privileged in the hearings provided for in this act. If the employee refuses to submit

himself to or in any way obstructs such examination, his right to compensation and his right to take or prosecute any proceeding under this act shall be suspended until such refusal or obstruction ceases, and no compensation shall at any time be payable for the period of suspension unless in the opinion of the industrial board the circumstances justify the refusal or obstruction.

SEC. 14. *Compensation; when denied.*—(a) No compensation shall be payable under the provisions of this act for any condition of physical or mental ill-being, disability, disablement, or death for which compensation is recoverable on account of accidental injury under "The Indiana Workmen's Compensation Act of 1929" and amendments thereto.

(b) No compensation shall be allowed for any disease or death intentionally self-inflicted by the employee, or due to his intoxication, his commission of a felony or misdemeanor, his wilful failure or refusal to use a safety appliance, his wilful failure or refusal to obey a reasonable written or printed rule of the employer which has been posted in a conspicuous position in the place of work, or his wilful failure or refusal to perform any statutory duty. The burden of proof shall be on the defendant.

SEC. 15. *Industrial board; travel expenses and offices.*—(a) The members of the board and its assistants shall be entitled to receive from the State their actual and necessary expenses while traveling on the business of the board, but such expenses shall be sworn to by the person who incurred the same, and shall be approved by the chairman of the board before payment is made.

All expenses of the board in connection with this act shall be audited and paid out of the State treasury in the manner prescribed for similar expenses in other departments or branches of the State service.

(b) The board shall be provided with adequate offices in the capitol or some other suitable building in the city of Indianapolis in which the records shall be kept and its official business be transacted during regular business hours; it shall also be provided with necessary office furniture, stationery, and other supplies.

The board, or any member thereof, may hold sessions at any place within the State as may be deemed necessary.

SEC. 16. *Same; jurisdiction and duties.*—The industrial board shall have jurisdiction over the operation and administration of the compensation provisions of this act, and the board shall perform all of the duties imposed upon it by the provisions of this act, and such further duties as may hereafter be imposed by law and the rules of the industrial board not inconsistent therewith.

SEC. 17. *Same; rules, procedure, witnesses, and fees.*—(a) The board may make rules, not inconsistent with this act, for carrying out the provisions hereof. Processes and procedure under this act shall be as summary and simple as reasonably may be. The board, or any member thereof, shall have the power, for the purpose of this act, to subpoena witnesses, administer or cause to have administered oaths, and to examine or cause to have examined such parts of the books and records of the parties to a proceeding as relate to questions in dispute.

The county sheriff shall serve all subpoenas of the board, and shall receive the same fees as now provided by law for like service in civil actions; each witness who appears in obedience to such subpoena of the board shall receive for attendance the fees and mileage for witnesses in civil cases in the courts.

The circuit or superior court shall, on application of the board, or any member thereof, enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers, and records.

(b) The fees of attorneys and physicians and charges of nurses and hospitals for services under this act shall be subject to the approval of the industrial board. When any claimant for compensation is represented by an attorney in the prosecution of his claim, the industrial board shall fix and state in the award, if compensation be awarded, the amount of the claimant's attorney's fees. The fee so fixed shall be binding upon both the claimant and his attorney, and the employer shall pay to the attorney, out of the award, the fee so fixed, and the receipt of the attorney therefor shall fully acquit the employer for an equal portion of the award. The industrial board may withhold the approval of the fees of the attending physician in any case until he shall file a report with the industrial board on the form prescribed by such board.

SEC. 18. *Same; blank forms and literature.*—The board shall prepare and cause to be printed, and upon request furnish free of charge to any employer or employee, such blank forms and literature as it shall deem requisite to facilitate or promote the efficient administration of this act. The reports of occupational diseases and reports of attending physicians shall be the private records of the

board, which shall be open to the inspection of the employer, the employee, and their legal representatives, but not to the public unless, in the opinion of the board, the public interest shall so require.

SEC. 19. *Same; settlement of disputes.*—All disputes arising under this act, except section 3 hereof, if not settled by the agreement of the parties interested therein, with the approval of the board, shall be determined by the board.

SEC. 20. *Disputes; hearings; awards.*—(a) If the employer and the employee or his dependents disagree in regard to the compensation payable under this act, or, if they have reached such an agreement, which has been signed by them, filed with and approved by the industrial board, and afterward disagree as to the continuance of payments under such agreement, or as to the period for which payments shall be made, or as to the amount to be paid, because of a change in conditions since the making of such agreement, either party [may] then make an application, to the industrial board, for the determination of the matters in dispute. When compensation which is payable in accordance with an award or by agreement approved by the industrial board is ordered paid in a lump sum by the board, no review shall be had as in this paragraph mentioned.

(b) The application making claim for compensation filed with the industrial board shall state:

(1) The approximate date of the last day of the last exposure and the approximate date of the disablement.

(2) The general nature and character of the illness or disease claimed.

(3) The name and address of the employer by whom employed on the last day of the last exposure, and if employed by any other employer after such last exposure and before disablement the name and address of such other employer or employers.

(4) In case of death, the date and place of death.

(5) Amendments to applications making claim for compensation which relate to the same disablement or disablement resulting in death originally claimed upon may be allowed by the industrial board in its discretion, and, in the exercise of such discretion, it may, in proper cases, order a trial de novo; such amendment shall relate back to the date of the filing of the original application so amended.

(c) Upon the filing of such application, the board shall set the date of hearing, which shall be as early as practicable and shall notify the parties, in the manner prescribed by the board, of the time and place of hearing. The hearing of all claims for compensation, on account of occupational disease, shall be held in the county in which the last exposure occurred, except when the parties consent to a hearing elsewhere.

(d) The board by any or all of its members shall hear the parties at issue, their representatives and witnesses, and shall determine the dispute in a summary manner. The award shall be filed with the record of proceedings, and a copy thereof shall immediately be sent by registered mail to each of the parties in dispute.

(e) If an application for review is made to the board within seven days after receiving a copy of an award, made by less than all the members, the full board, if the first hearing was not held before the full board, shall review the evidence, or, if deemed advisable, hear the parties at issue, their representatives and witnesses as soon as practicable, and shall make an award and file the same with the finding of the facts on which it is based and send a copy thereof to each of the parties in dispute, in like manner as specified in the last foregoing section.

(f) An award of the board, by less than all of the members as provided in this section, if not reviewed, as provided in this section, shall be final and conclusive.

An award by the full board shall be conclusive and binding unless either party to the dispute, within thirty days after receiving a copy of such award, appeals to the appellate court under the same terms and conditions as govern appeals in ordinary civil actions, and the appellate court shall have jurisdiction to review all questions of law and of fact.

The board of its own motion, may certify questions of law to the appellate court for its decision and determination.

An assignment of errors that the award of the full board is contrary to law shall be sufficient to present both the sufficiency of the facts found to sustain the award and the sufficiency of the evidence to sustain the finding of facts.

All such appeals and certified questions of law shall be submitted upon the date filed in the appellate court, shall be advanced upon the docket of the court, and shall be determined at the earliest practicable date, without any extensions of time for filing briefs.

An award of the full board affirmed on appeal, by the employer, shall be increased thereby five percent, and by order of the court may be increased ten percent.

(g) Any party in interest may file in the circuit or superior court of the county in which the occupational disease or disability occurred, a certified copy of the memorandum of agreement, approved by the board, or of an order or decision of the board, or of an award of the full board unappealed from, or of an award of the full board affirmed upon an appeal, whereupon the court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though such judgment has been rendered in a suit duly heard and determined by the court.

Any such judgment of such circuit or superior court, unappealed from or affirmed on appeal or modified in obedience to the mandate of the appellate court, shall be modified to conform to any decision of the industrial board, ending, diminishing, or increasing any weekly payment under the provisions of subsection (i) of this section, upon the presentation to it of a certified copy of such decision.

(h) In all proceedings before the industrial board, or in a court under the compensation provisions of this act, the costs shall be awarded and taxed as provided by law in ordinary civil actions in the circuit court.

(i) The power and jurisdiction of the industrial board over each case shall be continuing and, from time to time, it may, upon its own motion, or upon the application of either party, on account of a change in conditions, make such modification or change in the award, ending, lessening, continuing, or extending the payments previously awarded, either by agreement or upon hearing, as it may deem just, subject to the maximum and minimum provided for in this act. When compensation which is payable in accordance with an award or settlement contract approved by the industrial commission, is ordered paid in a lump sum by the commission, no review shall be had as in this paragraph mentioned.

Upon making any such change, the board shall immediately send to each of the parties a copy of the modified award. No such modification shall affect the previous award as to any money paid thereunder.

The board shall not make any such modification upon its own motion, nor shall any application therefor be filed by either party after the expiration of one year from the termination of the compensation period fixed in the original award, made either by agreement or upon hearing. The board may, at any time, correct any clerical error or mistake of fact in any finding or award.

(j) The board or any member thereof may, upon the application of either party, or upon its own motion, appoint a disinterested and duly qualified physician or surgeon to make any necessary medical examination of the employee and to testify in respect thereto. Such physician or surgeon shall be allowed traveling expenses and a reasonable fee, to be fixed by the board, not exceeding ten dollars for each examination and report, but the board may allow additional reasonable amounts in extraordinary cases.

The fees and expenses of such physician or surgeon shall be paid by the State only on special order of the board or a member thereof.

(k) The board or any member thereof may, upon the application of either party or upon its own motion, appoint a disinterested and duly qualified industrial hygienist, industrial engineer, industrial physician, or chemist, to make any necessary investigation of the occupation in which the employee alleges that he was last exposed to the hazards of the occupational disease claimed upon, and testify with respect to the occupational disease health hazards found by such person or persons to exist in such occupation. Such person or persons shall be allowed traveling expenses and a reasonable fee, to be fixed by the board, not exceeding ten dollars for each investigation and report, but the board may allow additional reasonable amounts in extraordinary cases. The fees and expenses of such person or persons shall be paid by the State, only on special order of the board or a member thereof.

(l) Whenever any claimant misconceives his remedy and files an application for adjustment of a claim under "The Indiana Workmen's Compensation Act of 1929" and amendments thereto, and it is subsequently discovered, at any time

before the final disposition of such cause, that the claim for injury or death which was the basis for such application should properly have been made under the provisions of this act, then the application so filed under "The Indiana Workmen's Compensation Act of 1929" and amendments thereto, may be amended in form or substance or both to assert a claim for such disability or death under the provisions of this act, and it shall be deemed to have been so filed as amended on the date of the original filing thereof, and such compensation may be awarded as is warranted by the whole evidence pursuant to the provisions of this act. When such amendment is submitted, further or additional evidence may be heard by the industrial board when deemed necessary. Nothing in this section contained shall be construed to be or permit a waiver of any of the provisions of this act with reference to notice or time for filing a claim but notice or filing of a claim, if given or done, shall be deemed to be a notice or filing of a claim under the provisions of this act, if given or done within the time required herein.

SEC. 21. *Report of board.*—The board shall make to the Governor, annually, on or before the first day of September, a report of its work during the preceding fiscal year, in such form as it may determine, with the approval of the Governor. In order to prevent the accumulation of unnecessary and useless files of papers, the board, in its discretion, may destroy all papers which have been on file for more than two years, when there is no claim for compensation pending, or, when compensation has been awarded either by agreement or upon hearing, and more than one year has elapsed since the termination of the compensation period as fixed by such board, but notices of election or rejection shall not be destroyed.

SEC. 22. *Awards; priority; assignment.*—(a) 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.

(b) No claims for compensation under this act shall be assignable and all compensation and claims therefor shall be exempt from all claims of creditors.

SEC. 23. *Agreements to be filed.*—If after seven days from the date of disablement or any time, in case of death, the employer and the employee or his dependents reach an agreement in regard to compensation under this act, a memorandum of the agreement in the form prescribed by the industrial board shall be filed with the board; otherwise such agreement shall be voidable by the employee, or his dependent. If approved by the board, thereupon the memorandum shall for all purposes be enforceable by the court decree as hereinafter specified. Such agreement shall be approved by the board only when the terms conform to the provisions of this act.

SEC. 24. *Waiver.*—No employee, personal representative, or beneficiary shall have power to waive any of the provisions of this act in regard to the amount of compensation which may be payable to such employee, personal representative, or beneficiary hereunder except after approval by the industrial board; but any employee who, prior to the taking effect of this act, has contracted silicosis or asbestosis but is not disabled therefrom, may, within sixty days after the taking effect of this act, file with the industrial board a request for permission to waive full compensation on account of disability or death resulting from silicosis or asbestosis, or any direct result thereof, supported by medical evidence satisfactory to the industrial board, that he has actually contracted silicosis or asbestosis but is not disabled therefrom, and if the industrial board shall approve such waiver, the compensation payable for such resulting disability or death of such employee, after further exposure in the employment of any employer who has elected pursuant to the provisions of subsection [subsections] (a) and (b) of section 4 of this act, shall be fifty per centum of the compensation which but for such waiver would have been payable by any such employer.

SEC. 25. *Notice.*—(a) No proceedings for compensation under this act shall be maintained unless notice has been given to the employer of disablement arising from an occupational disease as soon as practicable after the date of disablement. No defect or inaccuracy of such notices shall be a bar to compensation unless the employer proves that he is unduly prejudiced in such proceedings by such defect or inaccuracy.

(b) That notice provided for in the preceding subsection shall state the name and address of the employee, the nature and cause of the occupational disease and disablement or death therefrom, and shall be signed by the disabled employee, or by some one in his behalf, or by one or more of the dependents, in

case of death, or by some person in their behalf. Such notice may be served personally upon the employer, or upon any foreman, superintendent, or manager of the employer to whose orders the disabled or deceased employee was required to conform or upon any agent of the employer upon whom a summons in a civil action may be served under the laws of the State, or may be sent to the employer by registered letter, addressed to his last-known residence or place of business.

(c) No proceedings by an employee for compensation under this act shall be maintained unless claim for compensation shall be filed by the employee with the industrial board within one year after the date of the disablement.

No proceedings by dependents of a deceased employee for compensation for death under this act shall be maintained unless claim for compensation shall be filed by the dependents with the industrial board within one year after the date of death.

(d) No limitation of time provided in this act shall run against any person who is mentally incompetent or a minor dependent, so long as he has no guardian or trustee.

SEC. 26. *Exposure presumed.*—(a) An employee shall be conclusively deemed to have been exposed to the hazards of an occupational disease when for any length of time, however short, he is employed in an occupation or process in which the hazard of the disease exists. The employer liable for the compensation provided for in this act shall be the employer in whose employment the employee was last exposed to the hazards of the occupational disease claimed upon regardless of the length of time of such last exposure, provided, that in cases of silicosis or asbestosis, the only employer liable shall be the last employer in whose employment the employee was last exposed during a period of sixty days or more after the effective date of this act, to the hazard of such occupational disease, and, in such cases, an exposure during a period of less than sixty days, after the effective date of this act, shall not be deemed a last exposure. The insurance carrier liable shall be the carrier whose policy was in effect covering the employer liable on the last day of the exposure rendering such employer liable, in accordance with the provisions of this act.

(b) Whenever any employee for whose disability or death compensation is payable under this act shall, at the time of the last exposure, be exposed in the joint service of two or more employers subject to the compensation provisions of this act, such employers shall contribute to the payment of such compensation in proportion to their wage liability to such employees. Nothing in this section shall prevent any reasonable arrangements between such employers for a different distribution as between themselves of the ultimate burden of compensation.

SEC. 27. *Duties of electing employer.*—(a) Every employer who, by election, is bound by the compensation provisions of this act, except the State, counties, townships, cities, towns, school cities, school towns, school townships, other municipal corporations, State institutions, State boards, and State commissions, 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.

(b) Every employer who, by election, is bound by the compensation provisions of this act, except those exempted therefrom by paragraph (a) hereof, shall either insure and keep insured his liability hereunder in some corporation, association, or organization authorized to transact the business of workmen's compensation insurance in this State, or shall furnish to the industrial board satisfactory proof of his financial ability to pay direct the compensation in the amount and manner and when due as provided for in this act. In the latter case the board may, in its discretion, require the deposit of an acceptable security, indemnity, or bond to secure the payment of compensation liabilities as they are incurred.

(c) Every employer who, by election, is bound by the compensation provisions of this act, except those exempted therefrom by paragraph (a) hereof, shall, within ten days after his election takes effect, file with the industrial board in the form prescribed by it, and thereafter within ten days, after the termination of his insurance by expiration or cancellation, evidence of his compliance with the insurance provisions of subsection (b) hereof, and all other provisions relating to the insurance under this act. This requirement shall not apply to employers who have not elected to operate under the compensation provisions of this act or who have procured from the industrial board

certificates of their financial ability to pay compensation directly without insurance.

If such employer refuses or neglects to comply with these provisions, he shall be punished by a fine of ten cents for each employee at the time of such refusal or neglect, but not less than ten dollars nor more than fifty dollars for each day of such refusal or neglect and until the same ceases, and he shall be liable during continuance of such refusal or neglect to an employee either for compensation under this act or at law in the same manner as provided for in section 3 of this act.

(d) Whenever an employer has complied with the provisions of paragraph (b) hereof relating to self-insurance, the industrial board shall issue to such employer a certificate which shall remain in force for a period fixed by the board, but the board may, upon at least thirty days' notice, and a hearing to the employer, revoke the certificate, upon satisfactory evidence for such revocation having been presented. At any time after such revocation the board may grant a new certificate to the employer upon his petition, and satisfactory proof of his financial ability.

(e) Subject to the approval of the industrial board, any employer may enter into or continue any agreement with his employees to provide a system of compensation, benefit, or insurance in lieu of the compensation and insurance provided by this act. No such substitute system shall be approved unless it confers benefits upon employees and their dependents at least equivalent to the benefits provided by this act, nor if it requires contributions from the employees unless it confers benefits in addition to those provided under this act at least commensurate with such contributions.

Such substitute system may be terminated by the industrial board on reasonable notice and hearing to the interested parties, if it shall appear that the same is not fairly administered or if its operation shall disclose latent defects threatening its solvency, or if for any substantial reason it fails to accomplish the purpose of this act; and in such case the board shall determine upon the proper distribution of all remaining assets, if any, subject to the right of any party in interest to take an appeal to the appellate court.

(f) No insurer shall enter into or issue any policy of insurance under this act until its policy form shall have been submitted to and approved by the industrial board. The industrial board shall not approve the policy form of any insurance company until such company shall file with it the certificate of the commissioner of insurance showing that such company is authorized to transact the business of workmen's compensation insurance in the state. The filing of a policy form by any insurance company or reciprocal insurance association with the industrial board for approval shall constitute on the part of such company or association a conclusive and unqualified acceptance of each and all of the compensation provisions of this act, and an agreement by it to be bound thereby.

All policies of insurance companies and of reciprocal insurance associations, insuring the payment of compensation under this act, shall be conclusively presumed to cover all the employees and the entire compensation liability of the insured under this act in all cases in which the last day of the exposure rendering the employer liable is within the effective period of such policy.

Any provision in any such policy attempting to limit or modify the liability of the company or association insuring the same shall be wholly void.

Every policy of any such company or association must contain the following provisions:

(1) The insurer hereby assumes in full all the obligations to pay physician's fees, nurse's charges, hospital services, hospital supplies, burial expenses, compensation or death benefit imposed upon or accepted by the insured under the provisions of "The Indiana Workmen's Occupational Disease Act."

(2) That this policy is made subject to the provisions of "The Indiana Workmen's Occupational Disease Act," and the provisions of such act relative to the liability of the insured to pay physician's fees, nurse's charges, hospital services, hospital supplies, burial expenses, compensation or death benefits to and for such employees, the acceptance of such liability by the insured, the adjustment, trial, and adjudication of claims for such physician's fees, nurse's charges, hospital services, hospital supplies, burial expenses, compensation or death benefits and the liability of the insurer to pay the same are and shall be a part of this policy contract as fully and completely as if written herein.

(3) That, as between this insurer and the employee, notice to or knowledge of the occurrence of the disablement on the part of the insured (the employer)

shall be notice or knowledge thereof, as the case may be, on the part of the insurer; that the jurisdiction of the insured (the employer) for the purpose of "The Indiana Workmen's Occupational Disease Act," shall be the jurisdiction of this insurer, and this insurer shall in all things be bound by and shall be subject to the awards, judgments, and decrees rendered against the insured (the employer) under that act.

(4) That this insurer will promptly pay to the person entitled to the same, all benefits conferred by "The Indiana Workmen's Occupational Disease Act," including physician's fees, nurse's charges, hospital services, hospital supplies, burial expenses, and all installments of compensation or death benefits that may be awarded or agreed upon under that act; that the obligation of this insurer shall not be affected by any default of the insured (the employer) after disablement or by any default in giving of any notice required by this policy, or otherwise; that this policy is and shall be construed to be a direct promise by this insurer to the person entitled to physician's fees, nurse's charges, fees for hospital services, charges for hospital supplies, charges for burial, compensation, or death benefits, and shall be enforceable in the name of such person.

(5) That any termination of this policy either by cancellation or expiration shall not be effective as to employees of the insured covered hereby until thirty days after written notice of such termination has been received by the industrial board of Indiana at its office in Indianapolis, Ind.

That all claims for compensation, nurse's charges, hospital services, hospital supplies, physician's fees, or burial expenses may be made directly against either the employer or the insurer or both, and the award of the industrial board may be made against either the employer or the insured or both.

That if any insurer shall fail or refuse to pay any final award or judgment (except during the pendency of an appeal) rendered against it, or its insured, or if it shall fail or refuse to comply with any provision of this act, the industrial board shall revoke the approval of its policy form, and shall not accept any further proofs of insurance from it until it shall have paid such award or judgment or complied with the violated provision of this act, and shall have resubmitted its policy form and received the approval thereof by the industrial board.

(g) No policy of insurance in effect at the time of the taking effect of this act, covering the liability of an employer for workmen's compensation, shall be construed to cover the liability of such employer under the provisions of this act for any occupational disease unless such liability is expressly accepted by the insurance carrier issuing such policy and is endorsed therein; the insurance or security in force to cover compensation liability under the provisions of this act, shall be separate and distinct from the insurance or security under the "Indiana Workmen's Compensation Act of 1929" and amendments thereto, and any insurance contract covering liability under either act need not cover any liability under the other.

(h) For the purpose of complying with the provisions of paragraph (b) hereof, groups of employers are hereby authorized to form mutual insurance associations or reciprocal or interinsurance exchanges subject to such reasonable conditions and restrictions as may be fixed by the industrial board. Membership in such mutual insurance associations or reciprocal or interinsurance exchanges so approved, together with evidence of the payment of premiums due, shall be evidence of compliance with paragraph (b) hereof. Mutual insurance associations and reciprocal or interinsurance exchanges heretofore formed and operating at the time of the passage of this act may continue to operate subject to the provisions of this act.

(i) The State, any political division thereof, any municipal corporation, any corporation, partnership, or person bound by election under the compensation provisions of this act, contracting for the performance of any work in which the hazard of an occupational disease exists by a contractor subject to the compensation provisions of this act without exacting from such contractor a certificate from the industrial board showing that such contractor has complied with paragraphs (a), (b), and (c) of this section, 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 occupational disease arising out of and in the course of the performance of the work covered by such contract.

Any such principal contractor, intermediate contractor, or subcontractor, who shall sublet any contract for the performance of any such work, to a

subcontractor subject to the compensation provisions hereof, without requiring from such subcontractor a certificate from the industrial board showing that such subcontractor has complied with paragraphs (a), (b), and (c) of this section, 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 expense on account of the injury or death of any employee of such subcontractor due to occupational disease 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 the board, in its award, shall fix the order in which such parties shall be exhausted, beginning with the immediate employer.

**SEC. 28. Contracts for relief 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 provided in this act.

**SEC. 29. Disablement caused by third person.**—Whenever disability 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 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 the employer for compensation and against such other person to recover damages 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 disabled 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 employee or his dependents.

**SEC. 30. Reports by employer to commission.**—(a) Every employer operating under the compensation provisions of this act shall keep a record of all disablements by occupational disease, fatal or otherwise, received by his employees in the course of their employment. Within one week after the occurrence and knowledge thereof, as provided in section 25, of disablement to an employee causing his death or his absence from work for more than one day a report thereof shall be made in writing and mailed to the industrial board on blanks to be procured from the board for the purpose.

Such report shall contain the name, nature, and location of the business of the employer, the name, age, sex, wages, occupation of the employee, the approximate dates between which exposure occurred, the nature and cause of the occupational disease, and such other information as may be required by the board.

Any employer who refuses or neglects to make the report required by this or the next following section shall be liable for a penalty of not more than twenty-five dollars for each refusal or neglect, to be recoverable in any court of competent jurisdiction in a suit by the board.

(b) Every employer paying compensation directly without insurance and every insurance carrier paying compensation in behalf of an employer shall, within ten days from the termination of the compensation period fixed in any award against him or its insured, for disability or death, either by the approval of an agreement or upon hearing, and within ten days from the full redemption of any such award by the cash payment thereof in a lump sum, as in this act provided, shall make such report or reports as the industrial board may require.

**SEC. 31. Repeal.**—All laws and parts of laws in conflict herewith are hereby repealed.

**SEC. 32. Saving clause.**—No repeal of any act or part thereof herein contained shall extinguish or in any way affect any right of action thereunder, existing at the time this act takes effect; and no employer shall be liable for compensation or damages under the provisions of this act in any case in which the disablement on which claim is predicated shall have occurred prior to the date this act becomes effective; but nothing contained in this section shall affect any

case in which exposure as defined in this act shall have taken place after the effective date of this act.

## MICHIGAN

## ACTS OF 1937

## ACT No. 61

[This act amends the workmen's compensation act (Compiled Laws, 1929, secs. 8407-8485) by adding part VII as given below.]

## PART VII

SECTION 1. *Definition.*—Whenever used in this act:

(a) The word “disability” means the state of being disabled from earning full wages at the work at which the employee was last employed;

(b) The word “disablement” means the event of becoming so disabled as defined in subparagraph (a);

(c) The term “occupational disease” means a disease which is due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation, process, or employment.

SEC. 2. *Occupational diseases.*—The disablement of an employee resulting from an occupational disease or condition described in the following schedule shall be treated as the happening of a personal injury by accident within the meaning of this act and the procedure and practice provided in this act shall apply to all proceedings under this part, except where specifically otherwise provided herein:

| DISABILITIES ARISING FROM—  | CAUSED BY—  |
|---|---|
| 1. Anthrax-----   | Handling of wool, hair, bristles, hides or skins.   |
| 2. Lead poisoning or its sequelae----   | Any process involving the use of or direct contact with lead or its preparations or compounds.  |
| 3. Zinc poisoning or its sequelae----   | Any process involving the use of or direct contact with zinc or its preparations or compounds or alloys.  |
| 4. Mercury poisoning or its sequelae--  | Any process involving the use of or direct contact with mercury or its preparations or compounds.   |
| 5. Phosphorus poisoning or its sequelae.  | Any process involving the use of or direct contact with phosphorus or its preparations or compounds.  |
| 6. Arsenic poisoning or its sequelae--  | Any process involving the use of or direct contact with arsenic or its preparations or compounds.   |
| 7. Poisoning by wood alcohol-----   | Any process involving the use of wood alcohol or any preparation containing wood alcohol.   |
| 8. Poisoning by benzol or nitro-, hydro-, hydroxy-, and amido-derivatives of benzene (dinitrobenzol, anilin, and others), or its sequelae.                                  | Any process involving the use of or direct contact with benzol or nitro-, hydro-, hydroxy-, or amido-derivatives of benzene or its preparations or compounds. |
| 9. Poisoning by carbon bisulphide or its sequelae, or any sulphide.   | Any process involving the use of or direct contact with carbon bisulphide or its preparations or compounds, or any sulphide.                                  |
| 10. Poisoning by nitrous fumes or its sequelae.   | Any process in which nitrous fumes are evolved.   |
| 11. Poisoning by nickel carbonyl or its sequelae.   | Any process in which nickel carbonyl is evolved.  |
| 12. Dope poisoning (poisoning by tetrachlormethane or any substance used as or in conjunction with a solvent for acetate of cellulose or nitro cellulose), or its sequelae. | Any process involving the use of or direct contact with any substance used as or in conjunction with a solvent for acetate of cellulose or nitro cellulose.   |

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| 13. Poisoning by formaldehyde and its preparations.  | Any process involving the use of or direct contact with formaldehyde and its preparations.   |
| 14. Chrome ulceration or its sequelae or chrome poisoning.   | Any process involving the use of or direct contact with chromic acid or bichromate of ammonium, potassium, or sodium or their preparations.                                      |
| 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. | Handling or use of tar, pitch, bitumen, mineral oil, or paraffin or any compound, product, or residue of any of these substances.  |
| 16. Glanders-----  | Care or handling of any equine animal or the carcass of any such animal.   |
| 17. Compressed air illness or its sequelae.  | Any process carried on in compressed air.  |
| 18. Miners' diseases, including only cellulitis, bursitis, ankylostomiasis, tenosynovitis and nystagmus.   | Any process involving mining.  |
| 19. Cataract in glassworkers-----  | Processes in the manufacture of glass involving exposure to the glare of molten glass.   |
| 20. Radium poisoning or disability due to radio-active properties of substances or to Roentgen rays (X-rays).  | Any process involving the use of or direct contact with radium or radioactive substance or the use of or direct exposure to Roentgen rays (X-rays).                              |
| 21. Methyl chloride poisoning-----   | Any process involving the use of or direct contact with methyl chloride or its preparations or compounds.  |
| 22. Carbon monoxide poisoning-----   | Any process involving direct exposure to carbon monoxide in buildings, sheds, or enclosed places.  |
| 23. Poisoning by sulphuric, hydrochloric, or hydrofluoric acid.  | Any process involving the use of or direct contact with sulphuric, hydrochloric, or hydrofluoric acids or their fumes.   |
| 24. Respiratory, gastrointestinal, or physiological nerve and eye disorders due to contact with petroleum products and their fumes.  | Any process involving the use of or direct contact with petroleum or petroleum products and their fumes.   |
| 25. Disability arising from blisters or abrasions.   | Any process involving continuous friction, rubbing, or vibration causing blisters or abrasions.  |
| 26. Disability arising from bursitis or synovitis.   | Any process involving continuous rubbing, pressure, or vibrations of the parts affected.   |
| 27. Dermatitis (venenata)-----   | Any process involving the use of or direct contact with acids, alkalis, acids or oil, or with brick, cement, lime, concrete, or mortar capable of causing dermatitis (venenata). |
| 28. Hernia -----   | Clearly recent in origin and resulting from a strain, arising out of and in the course of employment and promptly reported to the employer.                                      |
| 29. Stoneworker's or grinder's phthisis.   | Quarrying, cutting, crushing, grinding, or polishing of stone, or grinding or polishing of metal.  |
| 30. Silicosis -----  | Mining.  |
| 31. Pneumoconiosis -----   | Quarrying, cutting, crushing, grinding, or polishing of metal.   |

SEC. 3. *Benefits*.—If an employee is disabled or dies and his disability or death is caused by one of the diseases mentioned in the schedule contained in section

2 of this part and the disease is due to the nature of the employment in which such employee was engaged and was contracted therein, he or his dependents shall be entitled to compensation for his death or for his disablement, and he shall be entitled to be furnished with medical and hospital services, all as provided in part II of this act, except as hereinafter stated in this part: *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. 4. *Compensation for total disability.*—Compensation shall not be payable for partial disability due to silicosis or other dust disease. In the event of temporary or permanent total disability or death from silicosis or other dust disease, notwithstanding any other provisions of this act, compensation shall be payable under this part to employees in the employments enumerated in section 2 of this part, or to their dependents in the following manner and amounts: If disablement or death occurs during the first calendar month in which this act becomes effective not exceeding the sum of five hundred dollars; if disablement or death occurs during the second calendar month after which this act becomes effective not exceeding the sum of five hundred and fifty dollars; thereafter the total compensation and benefits payable for disability and death shall increase at the rate of fifty dollars each calendar month. The aggregate amount payable shall be determined by the total amount payable in the month in which disablement or death occurs. In no event shall such compensation exceed an aggregate total of three thousand dollars.

SEC. 5. *Right to compensation.*—Neither the employee nor his dependents shall be entitled to compensation for disability or death resulting from such occupational disease, unless such occupational disease is due to the nature of his employment and was contracted therein, or in a continuous employment similar to the one in which he was engaged at the time of his disablement, within twelve months previous to the date of disablement, whether under one or more employers. The time limit for contraction of the occupational disease prescribed by this section shall not bar compensation in the case of an employee who contracted such occupational disease in the same employment with the same employer by whom he was employed at the time of his disablement and who had continued in the same employment with the same employer from the time of contracting such occupational disease up to the time of his disablement thereby.

SEC. 6. *Medical examination.*—In case the employee is alleged to be suffering from an occupational disease and there shall be a dispute with respect thereto, the said board, or any member thereof, shall appoint a commission of three qualified impartial physicians to examine the injured employee and to report. The report, when signed by at least two of the members of said commission, shall be final and conclusive as to the condition of said employee with respect to the alleged disease or diseases. Members of the commission shall receive such compensation for their services as shall be fixed by the board, to be paid from the appropriation to the department of labor and industry.

SEC. 7. *Date of disablement.*—For the purposes of this part the date of disablement shall be such date as the board may determine on the hearing of the claim.

SEC. 8. *False representations.*—No compensation shall be payable for an occupational disease if the employee, at the time of entering into the employment of the employer by whom the compensation would otherwise be payable, or thereafter, wilfully and falsely represents in writing that he has not previously suffered from the disease which is the cause of the disability or death. Where an occupational disease is aggravated by any other disease or infirmity, not itself compensable, or where disability or death from any other cause, not itself compensable, is aggravated, prolonged, accelerated, or in any wise contributed to by an occupational disease, the compensation payable shall be such proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death as such occupational disease, as a causative factor, bearing to all the causes of such disability or death, such reduction in compensation to be effected by reducing the number of weekly payments or the amounts of such payments, as under the circumstances of the particular case may be for the best interests of the claimant or claimants.

SEC. 9. *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 said 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 finds that any portion of such compensation is payable by an employer prior to the employer who is made liable for 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. 10. Notice to employer.**—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 twenty-four months in the employment to the nature of which the disease was due and such notice and claim shall be deemed seasonable as against prior employers. The requirements as to notice as to occupational disease and death resulting therefrom and the requirements as to the bringing of proceedings for compensation for disability or death resulting from such occupational disease shall be the same as required in section fifteen of part two of this act, except that the notice shall be given to the employer within one hundred twenty days after the disablement.

**SEC. 11. Information to be furnished.**—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 twenty-four 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 10 of this part, unless it be established that the occupational 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 10 of this part, such last employer shall be liable only for such part of the total compensation as under the particular circumstances the director may deem just; but a false statement in the information furnished as aforesaid shall not impair the employee's right unless the last employer is prejudiced thereby.

**SEC. 12. Exclusiveness of employees' rights.**—Nothing in this act shall affect the rights of an employee, or his dependents, to recover compensation in respect to a disease to which this act does not apply, if the disease, apart from this act, is one for which compensation is payable under the other provisions of this act.

**SEC. 13. Limitations.**—This act shall not apply to cases of occupational disease in which the last injurious exposure to the hazards of such disease occurred prior to the effective date of this act.

This act shall not apply to any employer or employee in agricultural industry or in the nursery or orchard business, or to any labor incidental to farming, including repairs on buildings and other property in connection therewith.

## NEBRASKA

### COMPILED STATUTES, 1929

**SECTION 48-152** (as amended 1935, ch. 57; 1937, ch. 107). *Definitions.*—\* \* \* (b) \* \* \* 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, except occupational diseases which arise out of and during the course of employment and are peculiar to the smelting, metal refining, or battery manufacturing industries, and which are contracted by workmen employed in said industries, and disability commencing during the period of employment, or disability commencing within two years subsequent to the termination of said employment, and occupational diseases contracted in these industries shall be included in said terms. Said terms shall not be construed to

include 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. \* \* \*

## OHIO

## ACTS OF 1937

## H. B. No. 71

[This act re-enacts section 1465-68a of Page's General Code, 1932,<sup>1</sup> as amended 1931, page 26 and adds paragraph 22, as given below:]

22. *Silicosis*.—(Silicosis shall mean a disease of the lungs caused by breathing silica dust (silicon dioxide) producing fibrous nodules, distributed through the lungs and demonstrated by X-ray examination or by autopsy.)

Nothing in this act shall entitle an employee or his dependents to compensation, medical treatment, or payment of funeral expenses for disability or death from silicosis, unless the employee has been subject to injurious exposure to silica dust (silicon dioxide) in his employment in Ohio preceding his disablement, for periods amounting in all to at least five years, some portion of which shall have been after the effective date of this act.

Compensation, medical, hospital, and nursing expenses on account of silicosis shall be payable only in the event of temporary total disability, permanent total disability, or death, and only in the event of such disability or death resulting within one year after the last injurious exposure: *Provided*, That in the event of death following continuous total disability commencing within two years after the last injurious exposure, the requirement of death within two years after the last injurious exposure shall not apply.

In the event that an employee has been subject to injurious exposure to silica dust (silicon dioxide) in his employment in Ohio for periods amounting in all to at least five years after the effective date of this act, such compensation shall be paid in accordance with the provision of sections 1465-79, 1465-81, and 1465-82 of the General Code; but in the event that such exposure after the effective date of this act shall have amounted to less than five years, then the maximum aggregate amount payable for disability, death, or disability and death shall not exceed the sum of five hundred dollars plus fifty dollars for each calendar month which may elapse after the effective date of this act and before the month in which disability shall begin but shall not exceed, in any event, the sum of three thousand dollars.

Claims for compensation on account of silicosis shall be forever barred unless application shall have been made to the industrial commission within one year after total disability began or within six months after death.

Nothing in this act shall entitle an employee or his dependents to compensation, medical, hospital, and nursing expenses or payment of funeral expenses for disability or death due to silicosis in the event of the failure or omission on the part of the employee truthfully to state, when seeking employment, the place, duration, and nature of previous employment in answer to an inquiry made by the employer.

The industrial commission shall appoint three referees to be known as "silicosis referees" who shall be licensed physicians in good professional standing who have by special duty, or experience, or both, acquired special knowledge of pulmonary diseases and at least one of said physicians shall be a roentgenologist. Before awarding compensation for disability or death due to silicosis, the industrial commission shall refer the claim to the silicosis referees for examination and recommendation with regard to the diagnosis, the extent of disability, and other medical questions connected with the claim. An employee shall submit to such examinations, including clinical and X-ray examinations, as the commission may require. The commission may designate a duly licensed physician, a pathologist, or such other specialist as may be deemed necessary, to make an autopsy examination and tests to determine the cause of death and certify written findings to the silicosis referees. In the event that an employee refuses to submit to examinations, including clinical and X-ray examinations, after notice from the commission, or in the event that a claimant for compensation for death due to silicosis fails to produce

<sup>1</sup> This section supersedes the Nebraska provision on p. 34, *infra*.

<sup>2</sup> See p. 46, *infra*.

necessary consents and permits, after notice from the commission, so that such autopsy examination and tests may be performed, then all rights for compensation shall thereupon be forfeited. The reasonable compensation of said silicosis referees and of such specialists and the expenses of examinations and tests shall be paid, if the claim is allowed, as part of the expenses of the claim, and otherwise from the surplus fund.

## PENNSYLVANIA

### ACTS OF 1937

#### ACT No. 552

**SECTION 1. Title of act.**—This act shall be known and be cited as the "Occupational Disease Compensation Act."

**SEC. 2. Definitions.**—The term "occupational disease" as used in this act shall mean and include the following diseases:

(a) Poisoning by lead, mercury, arsenic, or manganese, their preparations or compounds in any occupation involving direct contact with, handling thereof, or exposure thereto.

(b) Poisoning by phosphorus, its preparations or compounds, in any occupation involving direct contact with, handling thereof, or exposure thereto.

(c) Poisoning by methanol carbon bisulphide, hydro-carbon distillates (naphthas and others) or halogenated hydro-carbons, or any preparations containing these chemicals or any of them, in any occupation involving direct contact with, handling thereof, or exposure thereto.

(d) Poisoning by benzol or by nitro, amido, or amino-derivatives of benzol (dinitro-benzol anilin and others) or their preparations or compounds in any occupation involving direct contact with, handling thereof, or exposure thereto.

(e) Caisson disease (compressed air illness) resulting from engaging in any occupation carried on in compressed air.

(f) Radium poisoning or disability due to radioactive properties of substances or to Roentgen-ray (X-rays) in any occupation involving direct contact with, handling thereof, or exposure thereto.

(g) Poisoning by or ulceration from chromic acid or bichromate of ammonium, potassium, or sodium or their preparations in any occupation involving direct contact with, handling thereof, or exposure thereto.

(h) Epitheliomatous cancer or ulceration due to tar, pitch, bitumen, mineral oil, or paraffin, or any compound product, or residue of any of those substances, in any occupation involving direct contact with, handling thereof, or exposure thereto.

(i) Infection or inflammation of the skin or other contact surfaces due to oils, cutting compounds, lubricants, dust, liquids, fumes, gases, or vapors in any occupation involving direct contact with, handling thereof, or exposure thereto.

(j) Anthrax occurring in any occupation involving the handling of, or exposure to wool, hair, bristles, hides or skins or bodies of animals either alive or dead.

(k) Silicosis or anthraco-silicosis in any occupation involving direct contact with, handling of or exposure to dust of silicon dioxide (SiO<sub>2</sub>).

(l) Asbestosis in any occupation involving direct contact with, handling of, or exposure to the dust of asbestos.

**SEC. 3. Construction of act.**—The several provisions of the Workmen's Compensation Act to which this act is a supplement shall be applicable to this act insofar as they are consistent with terms hereof. In applying the Workmen's Compensation Act to this act the Workmen's Compensation Act shall be construed as including in addition to "injury" and "personal injury" by accident "occupational disease" and the resultant effects thereof including death. The word "disabled" as herein used means disabled from earning full wages in the employment in which the employee was employed.

"Disability" as used herein means the state of being so disabled. The date when the disability occurs from occupational disease shall be deemed to be the date of injury or accident.

**SEC. 4. Workmen's Compensation Act to apply.**—When an employer and employee shall be subject to the provisions of article three of the Workmen's Compensation Act as therein provided compensation for occupational disease shall be paid in all cases by the employer according to the schedule provided in

such act subject however to the special terms and conditions relative thereto as set forth in this act.

**SEC. 5. Compensation for silicosis, etc.**—Compensation for silicosis or anthraco-silicosis, or silicosis, anthraco-silicosis complicated by infection, and asbestosis, shall be paid only when it is shown that the employee has had an aggregate employment of at least two years in the Commonwealth of Pennsylvania during a period of eight years next preceding the date of disability in an occupation having a silica or asbestos hazard.

(b) Compensation shall not be payable for partial disability due to silicosis, anthraco-silicosis, or asbestosis. Compensation shall be payable as otherwise provided in this act for total disability or death caused primarily (as definitely distinguished from a contributory or accelerating cause) by silicosis, anthraco-silicosis, or asbestosis, or by silicosis, anthraco-silicosis, or asbestosis, when accompanied by active pulmonary tuberculosis or streptococcic infection of the lung. The total liability of the employer unto the employee or his dependents under this section shall not exceed the sum of thirty-six hundred dollars (\$3,600).

**SEC. 6 (a). Disability due to employment.**—If it shall be shown that the employee at or immediately before the date of disability was employed in any process or employment set forth in section 2 it shall be presumed that the occupational disease is due to the nature of that employment. This presumption, however, shall not be conclusive.

(b) An employer shall be liable for the payments prescribed by this act for the occupational diseases described in section 2 hereof when disability of an employee resulting in loss of earnings shall be due to an employment in a hazardous occupation in which he was employed and such disability results within two years after the last exposure in such employment or in case of death resulting from such exposure if such death occurs within five years following disability from such disease.

**SEC. 7 (a). Compensation for disability or death.**—In the case of such occupational diseases as the Workmen's Compensation Board shall determine develops to the point of disablement only after an exposure of five or more years the compensation for disability or death due to such diseases shall for a period of ten years immediately succeeding the effective date of this act be payable jointly by the Commonwealth and the employer as follows: If disability occurs or if no compensable period of disability occurs if death occurs during the first year in which this act becomes effective the employer shall be liable for and pay one-tenth of the compensation for such disability or death and the remainder of such compensation shall be paid by the Commonwealth out of moneys to the credit of the Second Injury Reserve Account in the State Workmen's Insurance Fund. Thereafter for each successive year of such ten-year period in which disability occurs or if no compensable period of disability occurs if death occurs the employer shall be liable for and shall pay one-tenth more of such compensation and the remainder of such compensation shall be paid by the Commonwealth out of moneys to the credit of the Second Injury Reserve Account in the State Workmen's Insurance Fund. After the expiration of such ten-year period the employer shall pay the compensation for disability or death occurring thereafter in full.

(b) The sum of one hundred thousand dollars (\$100,000.00) is hereby appropriated out of the general fund to the State Workmen's Insurance Board for payment into the State workmen's insurance fund to the credit of the second injury reserve account and is hereby appropriated for the carrying out of the purposes of paragraph (a) of this section. The aforesaid sum of one hundred thousand dollars (\$100,000.00) shall, as soon as practical, be repaid into the general fund of the State treasury out of moneys to the credit of the second injury reserve account in the State workmen's insurance fund and such moneys are hereby appropriated to the State Workmen's Insurance Board for this purpose.

**SEC. 8. Defenses abrogated.**—In any action brought after the effective date of this act in any court by an employe against his employer who has elected not to be bound by the provisions of article III of the Workmen's Compensation Act and such action is based upon a claim by the employee for damages for personal injury resulting from an occupational disease, proof on the part of the employe that he had been subjected to a physical examination by such employer and that he had been discharged by such employer within one year after such examination or proof of discharge by such employer, and the further fact that the employe was unable to secure other employment within six months of the

date of such discharge by reason of the presence of an occupational disease in any stage, shall be prima facie evidence of negligence on the part of such employer. In any such action it shall not be a defense on the part of any employer—

(a) That the injury was caused in whole or in part by the negligence of a fellow employe; or

(b) That the employe had assumed the risk of the employment; or

(c) That the injury was caused in any degree by the negligence of such employe; or

(d) That the employe was exposed to the hazard of such disease in any other employment more than two years prior to the date of such action.

The statute of limitations in any such action for personal injury resulting from an occupational disease shall commence to run from the date of the last exposure to the hazards of such disease in the employment of the defendant.

**SEC. 9. Liability of employer and insurance carrier.**—The employer in whose employment the employe was last exposed in a hazardous occupation and the insurance carrier, if any, who was on the risk at the time of the last exposure in such employment, shall be liable for any payments required by this act. The notice of injury and claim shall be made to such employer.

**SEC. 10. Medical advisory board.**—In all cases involving claims for silicosis, anthraco-silicosis, except in those cases wherein there are no controverted medical issues between the parties, the Workmen's Compensation Board or referee shall appoint a Medical Advisory Board composed of one or more duly qualified impartial physicians or surgeons or experts in accordance with section 420 of the Workmen's Compensation Act to be selected from a panel to be submitted by the Secretary of the department of labor and industry, which panel shall be made up of names selected from lists submitted by the deans of all legally recognized medical schools in the Commonwealth of Pennsylvania. The Workmen's Compensation Board or referee shall order the claimant to subject himself to such clinical pathological and Roentgen examinations as, in the opinion of the Medical Advisory Board, may be necessary to determine whether or not the claimant has contracted or is suffering from the disease for which claim has been filed. After examination the Medical Advisory Board shall file with the Workmen's Compensation Board or referee its written report setting forth its opinion with respect to the following medical questions:

(a) Whether or not the claimant has contracted or is suffering from silicosis or anthraco-silicosis, and in death cases whether or not death was caused by either of them.

(b) If the claimant has contracted or is suffering from silicosis or anthraco-silicosis, its opinion as to the extent of injury suffered by the claimant.

The Workmen's Compensation Board or referee shall mail a copy of such report and findings to the claimant and to the employer or his, their, or its insurers within twenty (20) days from the date of the filing thereof.

The Workmen's Compensation Board or referee shall order an autopsy to be made upon the decedent for the purpose of examination and tests to determine the cause of death in the following cases:

(1) When the Workmen's Compensation Board or referee upon the advice of the Medical Advisory Board deems such an autopsy to be necessary to determine the cause of death.

(2) Upon application of the employer when the Medical Advisory Board recommends an autopsy to determine the cause of death.

The findings resulting from such examinations and tests shall be filed with the State department of health and certified copies thereof shall be filed with the Workmen's Compensation Board or referee and shall become public records in the case.

The reports and findings of the physicians, surgeons, or experts so appointed by the Workmen's Compensation Board or referee shall be considered by the Workmen's Compensation Board or referee as evidence of findings therein contained, and shall be considered together with any other medical evidence offered on behalf of the claimant or employer. At the time of any hearing of said cause the physicians, surgeons, or experts so appointed by the Workmen's Compensation Board or referee shall appear and be subject to examination and cross-examination by the parties to said cause if written request therefor shall be filed by either of said parties with the referee or board within ten (10) days after written notice of the filing of said report, and findings shall be mailed to the respective parties in interest.

All the proceedings for compensation shall be suspended upon the refusal of a claimant or claimants to submit to such clinical, pathological and Roentgen examinations as may be ordered by the Workmen's Compensation Board or referee. In death cases, in the event that a claimant or claimants shall refuse to permit an autopsy to be made upon the body of the decedent for a period of six months after death when ordered by the Workmen's Compensation Board or referee, then, and in that event, no compensation shall be payable and claim therefor shall be disallowed by the Workmen's Compensation Board or referee.

SEC. 11. *Inspection of premises.*—The Workmen's Compensation Board or any workmen's compensation referee shall have power to issue an order authorizing the entry of any physician, surgeon, or expert upon the premises of the defendant employer in order to ascertain the facts in any case arising under this act.

SEC. 12. *Provisions severable.*—It is hereby determined to be the legislative intent that if this act cannot take effect in its entirety because of the decision of any court holding unconstitutional any part hereof the remaining provisions shall be given full force and effect as if the part held unconstitutional had not been included herein.

SEC. 13. *Effective date.*—This act shall become effective on the first day of January one thousand nine hundred thirty-eight.

## WASHINGTON

### ACTS OF 1937

#### CHAPTER 212

[The act amends section 7679, Remington's Revised Statutes, 1931, by adding section 7679-1, which reads as follows:]

SECTION 7679-1. *Occupational diseases.*—Compensation shall be payable for disabilities sustained or death incurred by an employee resulting from the following occupational diseases:

- (1) Anthrax. Handling of wool, hair, bristles, hides or skins;
- (2) Lead poisoning or its sequelae. Any process involving the use of or direct contact with lead or its preparations or compounds;
- (3) Zinc poisoning or its sequelae. Any process involving the use of or direct contact with zinc or its preparations or compounds or alloys;
- (4) Mercury poisoning or its sequelae. Any process involving the use of or direct contact with mercury or its preparations or compounds;
- (5) Phosphorous poisoning or its sequelae. Any process involving the use of or direct contact with phosphorous or its preparations or compounds;
- (6) Arsenic poisoning or its sequelae. Any process involving the use of or direct contact with arsenic or its preparations or compounds;
- (7) Poisoning by benzol or nitro-, hydro-, hydroxy-, and amido-derivatives of benzene (dinitro-benzol, anilin, and others), or its sequelae. Any process involving the use of or direct contact with benzol or nitro-, hydro-, hydroxy-, or amido-derivatives of benzene or its preparations or compounds;
- (8) Poisoning by carbon bisulphide or its sequelae, or any sulphide. Any process involving the use of or direct contact with carbon bisulphide or its preparations or compounds, or of any sulphide or sulphite;
- (9) Poisoning by tetrachlor-methane or any substance used as or in conjunction with a solvent for acetate of cellulose or nitro cellulose, or its sequelae. Any process involving the use of or direct contact with any substance used as or in conjunction with a solvent for acetate or cellulose or nitro cellulose;
- (10) Chronic ulceration or its sequelae or chrome poisoning. Any process involving the use of or direct contact with chromic acid or by [1]chromate of ammonium, potassium or sodium, or their preparations;
- (11) 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. Handling or use of tar, pitch, bitumen, mineral oil, or paraffin or any compound, product or residue of any of these substances;
- (12) Compressed air illness or its sequelae. Any process carried on in compressed air;
- (13) Miner's diseases, including cellulitis, bursitis, ankylostomiasis, tenosynovitis, and nystagmus;

(14) Cataract in glassworkers. Processes in the manufacture of glass involving exposure to the glare of molten glass;

(15) Methyl chloride poisoning. Any process involving the use of or direct contact with methyl chloride or its preparations or compounds;

(16) Carbon monoxide poisoning. Any process involving direct exposure to carbon monoxide in buildings, sheds, or enclosed places;

(17) Poisoning by sulphuric, hydrochloric, or hydrofluoric acid. Any process involving the use of or direct contact with sulphuric, hydrochloric, or hydrofluoric acids or their fumes;

(18) Disability arising from blisters or abrasions. Any process involving continuous friction, rubbing, or vibration causing blisters or abrasions;

(19) Disability arising from bursitis or synovitis. Any process involving continuous rubbing, pressure, or vibration of the parts affected;

(20) Dermatitis (venenata). Any process involving the use of or direct contact with acids, alkalis, acids or oils, or with brick, cement, lime, concrete, or mortar capable of causing dermatitis (venenata);

(21) And any persons employed in any industry where intense dust prevails. Nothing in this section shall be construed to apply to any case of occupational disease in which the last injurious exposure to the hazards of the disease occurred prior to January first, nineteen hundred thirty-seven, nor to any case in which such occupational disease was incurred in the pursuit of a prior employment to which a character of occupational disease is incident different from those incident to the employment followed at the time the disability occurred: *And provided further*, That the employment of any person claiming [compensation] hereunder shall have been wholly within the State of Washington during the three (3) years next immediately preceding the injury for which compensation is claimed, and during a substantial period of such employment subjected to conditions peculiarly conducive to such disease: *Provided, however*, That the increased cost in carrying out the provisions of this act shall be borne equally by employer and employee.

## WISCONSIN

### ACTS OF 1937

#### CHAPTER 180

[This act amends section 102.565,<sup>4</sup> Wisconsin statutes 1935, so as to read as follows:]

SECTION 102.565. *Nondisabling silicosis*.—(1) When an employe working subject to this chapter is, because he has a nondisabling silicosis, discharged from employment in which he is engaged, or after an examination of an employe as provided in subsection (2) and a finding by the commission that it is inadvisable for the employe to continue in his employment, such employe terminates his employment, and suffers wage loss by reason of such discharge or such termination of employment, the commission may allow such compensation on account thereof as it may deem just, not exceeding thirty-five hundred dollars. In case of such discharge prior to a finding by the industrial commission that it is inadvisable for him to continue in such employment, the liability of the employer who shall so discharge his employe shall be primary, and the liability of the insurance carrier shall be secondary under the same procedure and to the same effect as provided by section 102.62.

(2) Upon application of any employer or employe the commission may direct any employe of such employer or such employe who, in the course of his employment, has been exposed to the inhalation of silica, to submit to examination by a physician or physicians to be appointed by the industrial commission to determine whether such employe has silicosis, and the degree thereof. The cost of such medical examination shall be borne by the person making application. The results of such examination shall be submitted by the physician to the industrial commission, which shall submit copies of such reports to the employer and employe, who shall have opportunity to rebut the same, provided request therefor is made to the commission within ten days from the mailing of such report to the parties. The commission shall make

<sup>4</sup> See p. 58 *infra*.

its findings as to whether or not it is inadvisable for the employe to continue in his employment.

(3) If an employe 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 compensation under this section shall be barred.

(4) No payment shall be made to an employe under this section unless he shall have worked for the employer from whom he claims compensation in work exposing him to inhalation of silica for a total period of at least ninety days.

(5) If after his discharge by an employer or after termination of his employment, the employe becomes disabled, not because of additional exposure, but due to exposure in such employer's service, any amount which shall have been paid under this section shall be credited against compensation found to be payable by such employer for disability caused by silicosis, but shall not operate to reduce the number of weeks provided under the law for disability.

(6) Payment of a benefit under this section to an employe shall estop such employe from any further recovery whatsoever from any employer under this section.

