

MAINE STATE LEGISLATURE

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SEVENTY-NINTH LEGISLATURE

HOUSE

NO. 243

House of Representatives, February 25, 1919.

Referred to Committee on Labor and Judiciary. Sent up for concurrence.

CLYDE R. CHAPMAN, Clerk.

Presented by Mr. Maher of Augusta.

STATE OF MAINE

IN THE YEAR OF OUR LORD ONE THOUSAND
NINE HUNDRED AND NINETEEN

AN ACT to Amend Chapter Fifty of the Revised Statutes and
Acts Amendatory Thereof.

Be it enacted by the People of the State of Maine, as follows:

Section 1. Subtitles (a) and (b) of subtitle nine of section one of chapter fifty of the revised statutes is hereby amended by striking out the word "fifty-two" in the eleventh and twenty-eighth line and inserting the word 'fifty' in place thereof, so that said subtitles as amended shall read as follows:

'IX. Average weekly wages, earnings or salary,' of an injured employee shall be computed as follows:

(a) If the injured employee has worked in the same em-

2 ployment in which he was working at the time of the acci-
3 dent, whether for the same employer or not, during, sub-
4 stantially the whole of the year immediately preceding
5 his injury, his 'average weekly wages' shall be three hun-
6 dred times the average daily wages, earnings or salary
7 which he has earned in such employment during the days
8 when so employed and working the number of hours con-
9 stituting a full working day in such employment, divided
10 by fifty. But where the employee is employed regularly
11 during the ordinary working hours concurrently by two
12 or more employers, for one of whom he works at one time
13 and for another he works at another time, his 'average
14 weekly wages' shall be computed as if the wages, earnings
15 or salary received by him from all such employers were
16 wages, earnings or salary earned in the employment of the
17 employer for whom he was working at the time of the
18 accident.

(b) If the injured employee has not so worked in such
2 employment during substantially the whole of such imme-
3 diately preceding year, his 'average weekly wages' shall be
4 three hundred times the average daily wages, earnings or
5 salary which an employee of the same class working sub-
6 stantially the whole of such immediately preceding year
7 in the same or a similar employment, in the same or a
8 neighboring place, has earned in such employment during
9 the days when so employed and working the number of

10 hours constituting a full working day in such employment,
11 divided by fifty.'

Sect. 2. Section four of chapter fifty is hereby amended
2 by striking out the words "or in the work of cutting, haul-
3 ing, rafting or driving logs" in the last line of said sec-
4 tion; so that said section as amended shall read:

'Sec. 4. LAW NOT APPLICABLE TO PERSONS EN-
2 GAGED IN DOMESTIC SERVICE, AGRICULTURE.
3 The provisions of this act shall not apply to actions to
4 recover damages for personal injuries or for death result-
5 ing from personal injuries sustained by employees engaged
6 in domestic service or agriculture.'

Sect. 3. Section nine of said chapter fifty shall be amend-
2 ed by the substitution of the words 'one week' for the
3 words "two weeks" wherever they occur in said section,
4 and by striking out the word "fifteenth" in the last line
5 thereof, so that said section as amended shall read:

'Sect. 9. EMPLOYEE SHALL BE INCAPACITATED
2 TWO WEEKS BEFORE COMPENSATION. No com-
3 pensation except as provided by section ten of this act
4 shall be paid under this act for any injury which does
5 not incapacitate the employee for a period of at least one
6 week from earning full wages, but if such incapacity ex-
7 tends beyond the period of one month compensation shall
8 begin on the day after the injury.'

Sect. 4. Section ten of chapter fifty shall be amended by
2 the substitution of the word 'fifty' for the word "thirty"

3 in the sixth line thereof, so that said section as amended
4 shall read as follows :

‘Sect. 10. EMPLOYER SHALL FURNISH MEDICAL
2 AID DURING FIRST TWO WEEKS. During the first
3 two weeks after the injury the employer shall furnish rea-
4 sonable medical and hospital services, and medicines when
5 they are needed, but the amount of the charge for such
6 services and medicines when they are needed, shall not
7 exceed the sum of fifty dollars, unless in the case of major
8 surgical operations being required, and the employer and
9 employee being unable to agree upon the same, the amount
10 to be allowed for such medical services or medicines shall
11 be fixed by the commission upon petition by either party
12 setting forth the facts.’

Sect. 5. Section twelve of chapter fifty shall be amended
2 by substituting the word ‘two-thirds’ for the word “one-
3 half” in the fifth line; by substituting the word ‘fifteen’
4 for the word “ten” in the sixth line, and by substituting
5 the word ‘five’ for the word “four” in the same line thereof,
6 so that said section shall read :

‘Sect. 12. EMPLOYER’S LIABILITY FOR DEATH.
2 If death results from the injury, the employer shall pay
3 the dependents of the employee wholly dependent upon his
4 earnings for support at the time of his injury a weekly
5 payment equal to two-thirds his average weekly wages,

6 earnings, or salary, but not more than fifteen dollars nor
7 less than five dollars a week, for a period of three hun-
8 dred weeks from the date of the injury ; provided, however,
9 that if the dependent of the employee to whom the com-
10 pensation shall be payable upon his death is the widow of
11 such employee, upon her death the compensation thereafter
12 payable under this act shall be paid to the child or children
13 of the deceased employee, including adopted and step-
14 children, under the age of eighteen years, or over said age
15 but physically or mentally incapacitated from earning, who
16 are dependent upon the widow at the time of her death.
17 In case there is more than one child thus dependent, the
18 compensation shall be divided equally among them. If
19 the employee leaves dependents only partly dependent upon
20 his earnings for support at the time of his injury, the em-
21 ployer shall pay such dependents for a period of three hun-
22 dred weeks from the date of the injury a weekly compensa-
23 tion equal to the same proportion of the weekly payments
24 herein provided for the benefit of persons wholly depend-
25 ent as the amount contributed annually by the employee
26 to such partial dependents bears to the annual earnings
27 of the deceased at the time of injury. When weekly pay-
28 ments have been made to an injured employee before his
29 death, the compensation to dependents shall begin from
30 the date of the last of such payments, but shall not con-
31 tinue more than three hundred weeks from the date of the
32 injury. Provided, however, that if the deceased leaves no

33 dependents at the time of the injury, the employer shall
34 not be liable to pay compensation under this act except as
35 specifically provided in the following section:

Sect. 6. Section fourteen of chapter fifty shall be amended
2 by the substitution of the word 'two-thirds' for the word
3 "one-half" in the fourth line of said section; the word
4 'fifteen' for the word "ten" in the sixth line; the word
5 'five' for the word "four" in the same line thereof and the
6 word 'four' for the word "three" in the ninth line, so that
7 said section as amended shall read as follows:

'Sect. 14. COMPENSATION FOR TOTAL DISABIL-
2 ITY; TOTAL DISABILITY, HOW DETERMINED.
3 While the incapacity for work resulting from the injury is
4 total, the employer shall pay the injured employee a week-
5 ly compensation equal to two-thirds his average weekly
6 wages, earnings or salary, but not more than fifteen dol-
7 lars nor less than five dollars a week; and in no case shall
8 the period covered by such compensation be greater than
9 five hundred weeks from the date of the injury, nor the
10 amount more than four thousand dollars. In the follow-
11 ing cases it shall, for the purposes of this act, be conclu-
12 sively presumed that the injury resulted in permanent total
13 disability, to wit: The total and irrevocable loss of sight
14 in both eyes, the loss of both feet at or above the ankle, the
15 loss of both hands at or above the wrist, the loss of one
16 hand and one foot, an injury to the spine resulting in per-
17 manent and complete paralysis of the legs or arms, and

18 an injury to the skull resulting in incurable imbecility or
19 insanity.'

Sect. 7. Section fifteen of chapter fifty shall be amended
2 by the substitution of the word 'two-thirds' for the word
3 "one-half" in the fourth line thereof, so that said section
4 as amended shall read:

'Sect. 15. COMPENSATION FOR PARTIAL DISABIL-
2 ITY. While the incapacity for work resulting from the
3 injury is partial, the employer shall pay the injured em-
4 ployee a weekly compensation equal to two-thirds the dif-
5 ference between his average weekly wages, earnings or
6 salary which he is able to earn thereafter, but not more
7 than ten dollars a week and in no case shall the period
8 covered by such compensation be greater than three hun-
9 dred weeks from the date of the injury.'

Sect. 8. Section sixteen of chapter fifty shall be amended
2 by substituting the word 'two-thirds' for the word "one-
3 half" wherever it appears in said section, so that said sec-
4 tion as amended shall read:

'Sect. 16. SCHEDULE OF ACCIDENTS, PROVIDED
2 FOR. In cases included in the following schedule the dis-
3 ability in each such case shall be deemed to be total for
4 the period specified and after such specified period, if there
5 be a partial incapacity for work resulting from the injury
6 specified, the employee shall receive compensation while
7 such partial incapacity continues under the provisions of
8 section fifteen, but in no case shall compensation continue

9 more than three hundred weeks after the injury. The
10 compensation to be paid for the injuries hereinafter speci-
11 fied shall be as follows, to wit:

For the loss of a thumb, two-thirds the average weekly
2 wages during fifty weeks.

For the loss of the first finger, commonly called the in-
2 dex finger, two-thirds the average weekly wages during
3 thirty weeks.

For the loss of the second finger, two-thirds the average
2 weekly wages during twenty-five weeks.

For the loss of the third finger, two-thirds the average
2 weekly wages during eighteen weeks.

For the loss of the fourth finger, commonly called the lit-
2 tle finger, two-thirds the average weekly wages during
3 fifteen weeks.

The loss of the first phalange of the thumb or of any
2 finger, shall be considered to be equal to the loss of one-
3 half of said thumb or finger, and the compensation shall
4 be two-thirds the amount above specified. The loss of
5 more than one phalange shall be considered as a loss of
6 the entire thumb or finger; provided, however, that in no
7 case shall the amount received for the loss of more than one
8 finger exceed the amount specified in this schedule for the
9 loss of a hand.

For the loss of the great toe, two-thirds the average week-
2 ly wages during twenty-five weeks.

For the loss of one of the toes other than the great toe,
2 two-thirds the average weekly wages during ten weeks.

The loss of the first phalange of any toe shall be considered
2 to be equal to the loss of one-half of said toe, and the com-
3 pensation shall be two-thirds of the amount above specified.

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

For the loss of a hand two-thirds the average weekly
2 wages during one hundred twenty-five weeks.

For the loss of an arm, or any part above the wrist, two-
2 thirds the average weekly wages during one hundred fifty
3 weeks.

For the loss of a leg, or any part above the ankle, two-
2 thirds the average weekly wages, during one hundred fifty
3 weeks.

For the loss of a foot, two-thirds the average weekly
2 wages for one hundred twenty-five weeks.

For the loss of an eye or the reduction of the sight of
2 an eye, with glasses, to one-tenth of the normal vision, two-
3 thirds the average weekly wages during one hundred weeks.

The amounts specified in this section are all subject to
2 the same limitations as to maximum and minimum amounts,
3 that is, of not more than fifteen and not less than five dol-
4 lars a week, as provided for total or partial disability.'

Sect. 9. Section twenty-nine is hereby amended by strik-
2 ing out the entire section and enacting the following:

'Sect. 29. The Industrial Accident Commission as here-
2 tofore established shall consist of five members. The in-
3 surance commissioner and the commissioner of labor and

4 industry shall be ex-officio members thereof. The Gov-
5 ernor shall appoint from time to time upon the expira-
6 tion of the terms of the several members for terms of
7 three years, three members of the commission; any vacancy
8 occurring in the commission shall be filled by appoint-
9 ment for the unexpired term when such vacancy occurs.
10 One of said commissioners appointed as aforesaid shall
11 be learned in the law and serve as chairman of said com-
12 mission. The commission shall be sworn and for inefficien-
13 cy, willful neglect of duty or for malfeasance in office,
14 may, after notice of hearing, be removed from office by
15 the Governor and Council. The commission shall have a
16 secretary appointed and removable by it. It shall be al-
17 lowed the sum of two thousand dollars, or so much thereof
18 as is necessary, for expert and clerical assistance and other
19 expenses in organizing a suitable system of administration.
20 The sum of seven thousand five hundred dollars shall be
21 annually appropriated for the payment of clerical and other
22 assistance, physicians' and witness fees, traveling and other
23 expenses.

The commission shall have a seal bearing the words "In-
2 dustrial Accident Commission of Maine." It shall have its
3 office and keep its records in the State House in Augusta,
4 but may hold sessions at any place within the state. The
5 commission shall have a general supervision over the ad-
6 ministration of this act and shall have the following pow-
7 ers:

1. To make rules and regulations not inconsistent with
2 this act or other laws of the state for the purpose of carry-
3 ing out the provisions hereof.

2. To issue subpoenas for witnesses and subpoenas duces
2 tecum to compel the production of books and papers relat-
3 ing to any questions in dispute before it.

3. The chairman of the commission at any hearing
2 before it under the provisions of this act, may issue sub-
3 poenas for witnesses and subpoena duces tecum to com-
4 pel the production of books and papers relating to any
5 matters in dispute before him. Witness fees in all pro-
6 ceedings under this act shall be the same as for witnesses
7 before the supreme judicial court.

4. To provide for the taking of depositions for the same
2 cause in the same manner now prescribed in action of law.

Sect. 10. Amend section thirty by changing the word
2 "commissioner" wherever the same occurs in said section
3 and substituting in place thereof the word "commission."
4 By striking out the word "he" in the sixth line of said sec-
5 tion and substituting the word 'it.' So that said section as
6 amended shall read as follows:

'Sect. 30. If the employer and the employee reach an
2 agreement in regard to compensation under this act a mem-
3 orandum of such agreement signed by the parties shall be
4 filed in the office of the commission. If the commission
5 finds that such agreement is in conformity with the pro-
6 visions of this act, it shall approve the same and the clerk

7 of the commission shall record it in a book kept for that
8 purpose. In case the commission shall find that any such
9 agreement is not in conformity with the provisions of this
10 act and shall refuse to approve the same, or if the em-
11 ployer and employee fail to reach an agreement in regard
12 to compensation under this act, either employer or em-
13 ployee, and when death has resulted from the injury and
14 the dependents of the deceased employee entitled to com-
15 pensation are, or the apportionment thereof among them
16 is, in dispute, any person in interest may file in the office
17 of the commission a petition setting forth the names and
18 residences of the parties, the facts relating to the employ-
19 ment at the time of the injury, the cause, extent and char-
20 acter of the injury and the knowledge of the employer or
21 notice of the occurrence of the injury and, if an agree-
22 ment had been reached between the parties which had
23 not been approved by the commission, the form of such
24 agreement and such other facts as may be necessary and
25 proper for the determination of the matter in dispute, and
26 shall state the matter in dispute and the claims of the pe-
27 titioner with reference thereto.

Sect. 11. Section thirty-four is amended by striking out
2 said section and enacting in its stead a new section, so that
3 the same shall read as follows:

‘Sect. 34. If from the petition and answer there appear
2 to be facts in dispute, the commission shall then hear such
3 witnesses as may be presented by each party, or by agree-

4 ment the claims of both parties as to the facts in dispute
5 may be presented by affidavits. From the evidence thus
6 furnished the chairman or either of the associate commis-
7 sioners shall, in a summary manner, decide the merits of
8 the controversy. The decision, together with a statement
9 of the facts submitted, the findings of fact and rulings of
10 law, and any other matters pertinent to the questions raised
11 at the hearing, shall be filed in the office of the commission,
12 and a copy thereof certified by the clerk of the commission
13 mailed forthwith to all parties interested. The decision
14 in the absence of fraud, upon all questions of fact shall be
15 final.

Any party in interest may present copies certified by the
2 clerk of said commission of any order or decision of the
3 commission or of its chairman, or of any memorandum of
4 agreements approved by the commission, together with all
5 papers in connection therewith, to the clerk of courts for
6 the county in which the injury occurred; whereupon any
7 justice of the supreme judicial court shall render a de-
8 cree in accordance therewith and notify all parties. Such
9 decree shall have the same effect and all proceedings in
10 relation thereto shall thereafter be the same as though
11 rendered in a suit in equity duly heard and determined by
12 said court, except there shall be no appeal therefrom upon
13 questions of fact found by said commission, or where the
14 decree is based upon a memorandum of agreement ap-
15 proved by the commission. Upon any appeal therefrom

16 the proceedings shall be the same as in appeals in equity
17 procedure and the law court may, after consideration, re-
18 verse or modify any decree made by a justice, based upon
19 an erroneous ruling or finding of law. There shall be no
20 appeal from a decree based upon any order or decision of
21 the commission, or upon any memorandum of agreement
22 approved by the commission, which has not been certified
23 and presented to the court within ten days after the notice
24 of the filing thereof by the commission. Upon the presen-
25 tation to it of a certified copy of any decision the com-
26 mission terminating, diminishing, increasing or modifying
27 any payments under the provisions of section thirty-six, or
28 under any decision of said chairman or any agreement ap-
29 proved by the commission the court shall revoke or modify
30 its decree, if any has been based thereon, to conform to
31 such decision.

Sect. 12. Section forty-nine is hereby added to read as
2 follows:

'Sect. 49. There is hereby created a fund to be known
2 as the Industrial Accident Fund, which shall be held by
3 the state treasurer and be by him deposited in such banks
4 or otherwise, as may be authorized by the laws of the
5 state. All moneys received by the commission shall be
6 paid over forthwith to the state treasurer and become a
7 part of the Industrial Accident Fund.

The state treasurer shall set apart the sum of twenty-five
2 thousand dollars, which shall become a part of the fund.
3 The sum so set apart shall be repaid to the state out of

4 the fund in five equal annual installments with interest at
5 three and one-half per cent. per annum, payable annually.

The state treasurer, with the approval of the Governor,
2 is authorized to invest such fund, or any part thereof, in
3 any securities which are a legal investment for savings
4 banks, under the laws of the state of Maine, and with such
5 approval may sell such securities and apply the proceeds
6 to meet current disbursements as provided hereby.

Payments from such fund shall be made as follows:

At each regular meeting of the Governor and Council the
2 commission shall present an estimate of the amount neces-
3 sary to pay compensation to become payable before the
4 regular meeting of the Governor and Council, to be held
5 in the next following month.

Whereupon the Governor and Council shall issue its war-
2 rant for such amount, payable to the Industrial Accident
3 Commission. Such estimates and warrants shall specify
4 separately the amounts to be paid from segregated and un-
5 segregated moneys.

The sums received upon such warrants shall be disbursed
2 by the commission to employees entitled thereto, under this
3 act and shall be accounted for on a monthly account current,
4 to be filed with the state auditor. Any unused balance
5 shall be covered into the state treasury whenever directed
6 by the Governor and shall become a part of the Industrial
7 Accident Fund.

The state treasurer shall set apart such part of the funds

2 as is necessary to be segregated under the provisions of
3 this act and shall keep a separate account of segregated
4 and unsegregated moneys, crediting each with its increment
5 and charging it with the disbursements made on account of
6 it.

Sect. 13. Section fifty is hereby added so as to read as follows:

'Sect. 50. Any employer desiring to become an assent-
2 ing employer as herein provided may file with the com-
3 mission his written assent as herein before provided in
4 such form as the commission approved. He shall pay to
5 the commission such premium as the commission deter-
6 mines, thus bringing said employed under the operation of
7 said industrial accident fund. The commission may re-
8 quire payment of further premium by any employer in
9 case of mistake or changed conditions, or in case it shall
10 be necessary for the purpose of meeting claims for com-
11 pensation according to the terms hereof. Any employer
12 who assents to this act and pays premiums to the Indus-
13 trial Accident Fund as provided by the first paragraph of
14 this section, shall be held to have promised to make such
15 further payment. In case the premium collected shall be
16 more than is necessary to satisfy claims for compensation
17 hereunder, the commission may in its discretion order a
18 rebate to employers who have paid such excessive pre-
19 miums. The additional premium to be paid by any em-
20 ployer, as provided in this paragraph, may be recovered by

21 the commission in an action of debt, in behalf of the state,
22 for the benefit of the Industrial Accident Fund.'

Sect. 14. Section fifty-one is hereby added to read as fol-
2 lows:

'Sect. 51. Ten percentum of the premiums collected from
2 employers insured in the fund shall be set aside by the
3 commission for the creation of a surplus until such sur-
4 plus shall amount to the sum of one hundred thousand dol-
5 lars, and thereafter five per centum of such premiums un-
6 til such time as in the judgment of the commission such
7 surplus shall be sufficiently large to cover the catastrophe
8 hazard. The commission shall also set up and maintain
9 reserves adequate to meet anticipated losses and carry all
10 claims and policies to maturity, which reserves shall be
11 computed in accordance with such rules as shall be approved
12 by the insurance commissioner.'

Sect. 15. Section fifty-two is hereby added to read as
2 follows:

'Sect. 52. **Employments coming under the provisions of**
2 this chapter shall be divided for the purposes of the State
3 fund into the groups. Separate accounts shall be kept of
4 the amounts collected and expended in respect to each such
5 group for convenience in determining equitable rates; but
6 for the purpose of paying compensation the State fund
7 shall be deemed one and indivisible. The commission shall
8 have power to rearrange any of the groups by withdrawing
9 any employment embraced in it and transferring it wholly

10 or in part to any other group, and from such employments
11 to set up new groups at its discretion. The commission
12 shall determine the hazards of the different classes compos-
13 ing each group and fix the rates of premium therefor based
14 upon the total pay roll and number of employees in each of
15 such classes of employment at the lowest possible rate con-
16 sistent with the maintenance of a solvent State insurance
17 fund and the creation of a reasonable surplus and reserve;
18 and for such purpose may adopt a system of schedule rat-
19 ing in such manner as to take account of the peculiar haz-
20 ard of each individual risk.'

Sect. 16. Section fifty-three is added to read as follows:

'Sect. 53. Except as otherwise provided in this chapter,
2 all premiums shall be paid by every employer into the State
3 insurance fund on or before September first, nineteen hun-
4 dred twenty, and semiannually thereafter, or at such other
5 time or times as may be prescribed by the commission.
6 The commission shall mail a receipt for the same to the
7 employer and place the same to the credit of the State in-
8 surance fund in the custody of the State treasurer.

Every employer who is insured in the State insurance
2 fund shall keep a true and accurate record of the number
3 of his employees and the wages paid by him, and shall
4 furnish to the commission upon demand a sworn state-
5 ment of the same. Such record shall be open to inspec-
6 tion at any time and as often as the commission shall re-

7 quire to verify the number of employees and the amount
8 of the pay roll.

An employer who shall willfully misrepresent the amount
2 of the pay roll upon which the premiums chargeable by
3 the State insurance fund is to be based shall be liable to
4 the State in ten times the amount of the difference between
5 the premiums paid and the amount the employer should
6 have paid had his pay roll been correctly computed; and
7 the liability to the State under this section shall be enforced
8 in a civil action in the name of the State insurance fund,
9 and any amount so collected shall become a part of such
10 fund.

Any person who willfully misrepresents any fact in order
2 to obtain insurance in the State insurance fund at less than
3 the proper rate for such insurance, or in order to obtain
4 payment out of such fund, shall be guilty of a misdemeanor.

The commission shall have the right to inspect the plants
2 and establishments of employers insured in the State in-
3 surance fund; and the inspectors designated by the com-
4 mission shall have free access to such premises during reg-
5 ular working hours.

Information acquired by the commission or its officers or
2 employees from employers or employees pursuant to this
3 chapter shall not be opened to public inspection, and any
4 officer or employee of the commission who, without author-
5 ity of the commission or pursuant to its rules or as other-

6 wise required by law, shall disclose the same shall be
7 guilty of a misdemeanor.

The commission shall make reports to the superintendent
2 of insurance concerning the State insurance fund at the
3 same times and in the same manner as is required from
4 mutual employers' liability and workmen's compensation
5 corporation by section one hundred and ninety-two of the
6 insurance law, and the superintendent of insurance may ex-
7 amine into the condition of such State insurance fund at
8 any time, either personally or by any duly authorized ex-
9 aminer appointed by him, for the purpose of determining
10 the condition of the investments and the adequacy of the
11 reserves of such fund.'

Sect. 17. Section fifty-four is hereby added to read as
2 follows:

'Sect. 54. The salary of the chairman of said commis-
2 sion shall be forty-five hundred dollars per annum, and of
3 the two associate members four thousand dollars per an-
4 num.'