

MAINE STATE LEGISLATURE

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EIGHTY-FOURTH LEGISLATURE

House Document

No. 529

H. P. 1470 House of Representatives, Feb. 28, 1929.

Referred to Committee on Judiciary and 1000 copies ordered printed. Sent up for concurrence.

CLYDE R. CHAPMAN, Clerk.

Presented by Mr. Bove of Naples.

STATE OF MAINE

IN THE YEAR OF OUR LORD ONE THOUSAND NINE
HUNDRED AND TWENTY-NINE

AN ACT Relating to Workmen's Compensation.

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

Section 1. Paragraph IV of section one of chapter two
2 hundred thirty-eight of the public laws of nineteen hundred
3 nineteen as amended is hereby further amended by striking
4 out all of said paragraph and inserting in place thereof the
5 following:

'IV. The word "Commissioner" or the word "Chairman"
2 hereafter indicates and shall mean the chief commissioner.
3 The word "Commission" shall mean the industrial accident
4 commission created by section twenty-nine hereof, or any
5 member thereof, sitting at hearings. The words "Associate

6 Legal Member” hereafter in this act, shall mean associate
7 commissioners.’

Sect. 2. Section twenty-nine of chapter two hundred thir-
2 ty-eight of the public laws of nineteen hundred nineteen is
3 hereby amended by striking out all of said section and
4 inserting in place thereof the following:

‘Sect. 29. The industrial accident commission of the state
2 of Maine shall consist of five members, one of whom shall
3 be designated the chief commissioner and two of them shall
4 be designated associate commissioners, all of whom shall be
5 men well learned in the law and members in good standing
6 at the bar of this state. The chief commissioner and said
7 associate commissioners shall be appointed by the governor,
8 by and with the consent of the council, the chief commis-
9 sioner for a term of five years and said associate commis-
10 sioners for a term of four years from the first appointment
11 under this act and when this amendment becomes effective;
12 the fourth shall be the commissioner of labor and industry,
13 ex-officio, and the fifth the insurance commissioner, ex-
14 officio. The chief commissioner and the two first men-
15 tioned associate commissioners shall hold office for the
16 respective term aforesaid unless removed as hereinafter
17 provided and until their successors are appointed and quali-
18 fied. They shall be sworn and for inefficiency, wilful neglect
19 of duty or for malfeasance in office may, after notice and
20 hearing, be removed by the governor and council. In case
21 of a vacancy occurring through death, resignation or re-

22 moval, the governor shall appoint a successor for the whole
23 term of five years, as aforesaid, subject to confirmation
24 by the council.

The chief commissioner shall receive a salary of four
2 thousand five hundred dollars per annum, and the associate
3 commissioners shall each receive a salary of four thousand
4 dollars per annum, all beginning when this act becomes
5 effective. The commissioner of labor and industry shall
6 receive a salary of one thousand dollars in addition to his
7 salary as commissioner of labor and industry, for his serv-
8 ices in attending to agreements as herein specified. The
9 insurance commissioner shall receive a salary of one thou-
10 sand dollars in addition to the salary he receives as insur-
11 ance commissioner, to compensate him for his services in
12 attending to compensation insurance and rates as herein
13 specified. The members of the commission shall also re-
14 ceive their actual, necessary cash expenses while away from
15 their office on official business of the commission.

The commission shall have a clerk appointed and removed
2 by it. The salary of the clerk of the commission shall be
3 fixed by the governor and council upon recommendation of
4 the commission.

The associate commissioner shall have the same authority,
2 powers and duties as the chief commissioner, but shall only
3 exercise said authority, powers and duties when requested
4 in writing so to do by the chief commissioner. In case the
5 office of chief commissioner becomes vacant through death,

6 resignation or removal, the ranking associate commissioner,
7 the one oldest in time in service as such associate commis-
8 sioner, shall act as chief commissioner until a successor to
9 the chief commissioner shall be appointed and qualified.
10 In case both associate commissioners are equal in point of
11 time of service in that capacity, the governor shall indicate
12 the one to act as chief commissioner pro tempore.

V. The sum of thirty-five thousand dollars (\$35,000.00)
2 shall be appropriated for the annual payment of the com-
3 missioners, clerk and other assistants, physicians, witness
4 fees, traveling and other expenses.

VI. The commission shall have a seal bearing the words
2 "Industrial Accident Commission of Maine." It shall have
3 its 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 general supervision over the adminis-
6 tration of this act and shall have powers:

1. To make rules and regulations not inconsistent with
2 the laws of the state for the purposes of carrying out the
3 provisions hereof.

2. The chief commissioner and associate commissioners
2 may call witnesses and issue subpoenas for witnesses and
3 issue subpoenas duces tecum to compel the production of
4 books, papers and photographs before it, and may do the
5 same at any hearing. Witness fees in all proceedings under
6 this act shall be the same as for witnesses before the su-
7 preme judicial court.

3. The chief commissioner or associate commissioners
2 may, when the interest of any of the parties or when the
3 administration of this act demands it, appoint a person in
4 that part of the state where an accident has occurred to
5 make a full investigation of the circumstances surrounding
6 the said accident and report the same without delay to the
7 office of said commission.

4. Depositions taken for the causes and in the manner
2 hereinafter mentioned, may be used in all hearings before
3 the industrial accident commission.

5. The chief commissioner or any associate commissioner
2 may issue commissions to take depositions, to any United
3 States consul, United States vice consul, any judge in any
4 court of record in the United States or any foreign country
5 or to any notary public or justice of the peace in the state
6 of Maine, for any of the following causes:

a. When deponent resides out of, or is absent from the
2 state.

b. When deponent is bound to sea or about to go out of
2 the state.

c. When deponent is so aged, infirm, or sick as to be
2 unable to attend at the place of hearing.

c-1. Such deposition shall be taken by written interroga-
2 tories to be filed with the chief commissioner, and the ad-
3 verse party shall have ten (10) days after notice of such
4 filing to him or his attorney, in which to file cross interroga-
5 tories thereto, and if cross interrogatories are not so filed

6 within ten (10) days after such notice, the right of such
7 cross examination shall be considered waived.

c-2. The deponent shall be duly sworn and after his
2 answers have been written out, the deposition shall be signed
3 and sworn to by the person authorized to take said deposi-
4 tion and shall be, by him, sealed up and sent to the chief
5 commissioner of the industrial accident commission at Au-
6 gusta.'

Sect. 3. Amend section thirty by adding after the word
2 "commissioner" in line seven, and line twenty-two, the
3 words 'of labor and industry,' so that said section as amend-
4 ed shall read as follows:

'Sect. 30. Memorandum of agreement as to compensa-
2 tion; proceedings upon failure to agree or when agreement
3 is not approved. If the employer and the employee reach
4 an agreement in regard to compensation under this act a
5 memorandum of such agreement signed by the parties shall
6 be filed in the office of the commission. If the commission
7 finds that such agreement is in conformity with the pro-
8 visions of this act, it shall approve the same. In case the
9 commission shall find that any such agreement is not in
10 conformity with the provisions of this act and shall refuse
11 to approve the same, or if the employer and employee fail
12 to reach an agreement in regard to compensation under this
13 act, either employer or employee, and when death has re-
14 sulted from the injury and the dependents of the deceased
15 employee entitled to compensation are, or the apportionment

16 thereof among them is, in dispute, any person in interest,
17 may file in the office of the commission a petition setting
18 forth the names and residences of the parties, the facts
19 relating to the employment at the time of the injury, the
20 case, extent and character of the injury and the knowledge
21 of the employer or notice of the occurrence of the injury,
22 and, if an agreement had been reached between the parties
23 which had not been approved by the commission, the form
24 of such agreement and such other facts as may be neces-
25 sary and proper for the determination of the matter in
26 dispute, and shall state the matter in dispute and the claims
27 of the petitioner with reference thereto.'

Sect. 4. Amend section thirty-four by adding after the
2 word "commissioner" in line five of paragraph two, line
3 seventeen of paragraph two, line twenty-four and line thir-
4 ty-three of said paragraph two, the words 'of labor and
5 industry,' and also amend section thirty-four by adding the
6 word 'only' after the word "commissioner" in line three,
7 and so that said section reads as follows:

'Sect. 34. Proceedings at hearing: decision; decree by
2 justice of supreme judicial court; appeal; modification of
3 decree. If from the petition and answer there appear to be
4 facts in dispute, the chairman or either associate legal mem-
5 ber of the commission shall then hear such witnesses as
6 may be presented, or by agreement the claims of both parties
7 as to the facts in dispute may be presented by affidavits.
8 From the evidence thus furnished the chairman or associate

9 legal member acting in the case shall, in a summary manner,
10 decide the merits of the controversy. His decision, findings
11 of fact and rulings of law, and any other matters pertinent
12 to the questions raised at the hearing, shall be filed in the
13 office of the commission, and a copy thereof certified by the
14 clerk of the commission mailed forthwith to all parties
15 interested. His decision in the absence of fraud, upon all
16 questions of fact, shall be final.

Any party in interest may present copies, certified by the
2 clerk of the commission of any order or decision of the
3 commission, or of its chairman or either associate legal
4 member, or of any memorandum of agreements approved
5 by the commission, together with all papers in connection
6 therewith, to the clerk of courts for the county in which
7 the injury occurred; whereupon any justice of the supreme
8 judicial court shall render a decree in accordance there-
9 with and notify all parties. Such decree shall have the
10 same effect and all proceedings in relation thereto shall
11 thereafter be the same as though rendered in a suit in equity
12 duly heard and determined by said court, except that there
13 shall be no appeal therefrom upon questions of fact found
14 by said commission, or its chairman or associate legal mem-
15 ber, acting in the case, or where the decree is based upon
16 a memorandum of agreement approved by the commission.
17 Upon any appeal therefrom the proceedings shall be the
18 same as in appeals in equity procedure and the law court
19 may, after consideration, reverse or modify any decree made

20 by a justice, based upon an erroneous ruling or finding of
21 law. There shall be no appeal from a decree based upon
22 any order or decision of the commission or of its chairman
23 or associate legal member, or upon any memorandum of
24 agreement approved by the commission, which has not been
25 certified and presented to the court within twenty days after
26 the notice of the filing thereof by the commission or its
27 chairman or associate legal member. Upon the presentation
28 to it of a certified copy of any decision of the chairman
29 or associate legal member terminating, diminishing, increas-
30 ing or modifying any payments under the provisions of
31 section thirty-six, or under any decision of said chairman
32 or associate legal member or any agreement approved by
33 the commission, the court shall revoke or modify its decree,
34 if any has been based thereon to conform to such decision.

Definition of the "Full Legal Board."

1. The full legal board shall consist of the chief commissioner and two associate commissioners.
2. Provision is hereby made so that a party wishing to take an exception to the decision of the chief commissioner or associate member, can take an appeal as to the questions of law, either before the full board, or to the supreme judicial court, with provision that if the appeal is taken and heard before the full board, such a decision shall be final, also on all the questions of law, and barred from taking any further appeal to the supreme judicial court.
3. The commission shall have a reporter, appointed and

2 removed by it. The salary of said reporter shall be fixed
3 by the governor and council, upon the recommendation of
4 the commission. The reporter should be available to take
5 the evidence at all hearings, whenever questions of fact
6 and questions of law are in dispute.

4. The act should provide for a reasonable attorney's fee,
2 payable to counsel for the employee, in the event that his
3 petition is sustained, to be charged against the defendant;
4 the chief commissioner, or the associate member who heard
5 the case shall pass upon the adequacy of the services ren-
6 dered and the reasonableness of the charges.

5. The act should provide that no person but a duly
2 authorized and licensed attorney-at-law should be allowed
3 to conduct hearings on either side during the course of dis-
4 puted facts or questions of law.'

Sect. 5. Amend section thirty-five by adding the words
2 'of labor and industry' after the word "commissioner" in
3 line three, so that the said section as amended may read
4 as follows:

'Sect. 35. Agreement or decision of chairman shall have
2 the same effect as judgment of court. Any agreement be-
3 tween employer and employee filed with the commission and
4 approved by the commission, or any decision of the chair-
5 man or associate legal member of said commission under
6 the provisions of section thirty-four, shall have the same
7 effect as the judgment of a court, and a copy thereof, certi-
8 fied to by the clerk of said commission and filed with the

9 clerk of the court of the county in which either the employer
10 or employee resides, or where the business of the employer
11 is located, shall be enforceable by the supreme judicial court
12 by any suitable process including execution against the
13 goods, chattels and real estate, and including proceedings
14 for contempt for wilful failure or neglect to obey the orders
15 or decrees of the court, or in any other manner that decrees
16 in equity may be enforced.'

Sect. 6. Amend section thirty-six by adding the words 'of
2 labor and industry' after the word "commissioner" in lines
3 three and twenty-five so that the said section, as amended,
4 shall read as follows:

'Sect. 36. Agreement, award, findings, or decrees may be
2 reviewed. At any time before the expiration of two years
3 from the date of the approval of an agreement by the com-
4 mission, or the entry of a decree fixing compensation, but
5 not afterwards, and before the expiration of the period for
6 which compensation has been fixed by such agreement or
7 decree may be from time to time reviewed by the chairman
8 or associate legal member upon the application of either
9 party, after due notice to the other party, upon the grounds
10 that the incapacity of the injured employee has subse-
11 quently ended, increased or diminished. Upon such review
12 the said chairman or associate legal member may increase,
13 diminish, or discontinue the compensation from the date
14 of the application for review, in accordance with the facts,
15 or make such other order as the justice of the case may

16 require, but shall order no change of the status existing
17 prior to the application for review. The finding of the said
18 chairman or associate legal member upon such review shall
19 be served on the parties and filed with the clerk of the
20 commission and may be certified to the court in like time
21 and manner and subject to like disposition as in the case
22 of original decrees; provided that an agreement for com-
23 pensation may be modified at any time by a subsequent
24 agreement between the parties approved by the commis-
25 sioner of labor and industry in the same manner as original
26 agreements in regard to compensation are required to be
27 approved by the provisions of section thirty of this act.'