

MAINE STATE LEGISLATURE

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REVISED STATUTES
OF THE
STATE OF MAINE
1954

1957 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 1

Place in Pocket of Corresponding
Volume of Main Set

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1957

part which he has reason to believe is made or offered for sale in violation of the provisions of sections 155 to 162, inclusive, or the rules and regulations of the department; and any places where any articles covered by said sections are made, remade or offered for sale, or where sterilization or disinfecting is performed under the provisions of said sections, shall be subject to inspection by the department through its officers or agents. (1947, c. 330. 1953, cc. 35, 333. 1955, c. 151, § 3.)

Effect of amendment.—The 1955 amendment inserted the provision empowering the department to inspect the manufacture, sale or delivery of articles, etc., and

to open and examine the contents thereof. It also inserted the words "in whole or in part which he has reason to believe is" near the middle of the section.

Appeals.

Sec. 164. Appeals.—Any order by a board created and established under this chapter, or any rule, regulation, determination or declaration formulated by such board or by the commissioner, shall be subject to review by a justice of the superior court, in term time or vacation, by an appeal taken within 30 days after the effective date of such rule, regulation, determination or declaration to the superior court, held in or for the county in which the operation is located, at the instance of any party in interest and aggrieved by said rule, regulation, determination or declaration. Such appeal shall be prosecuted by petition. Upon the filing thereof the court in term time or a justice thereof in vacation shall order notice thereof. Upon the evidence and after hearing, which shall be held not less than 7 days after notice thereof, the court or a justice thereof may modify, affirm or reverse the rule, regulation, determination or declaration in whole or in part in accordance with law and the weight of the evidence. The court or a justice thereof shall, upon hearing, determine whether the filing of the appeal shall operate as a stay of any rule, regulation, determination or declaration pending the final determination of the appeal, and may impose such terms and conditions as may be deemed proper. (1957, c. 28.)

Chapter 31.

Industrial Accidents.

The Workmen's Compensation Act.

Sec. 2. Definitions.

II. Employee. "Employee" shall include officials of the state, counties, cities, towns which have accepted the provisions of this act, water districts and all other quasi-municipal corporations of a similar character and every person in the service of another under any contract of hire, express or implied, oral or written, except: (1955, c. 282.)

Effect of amendment.—The 1955 amendment inserted in the introductory paragraph of subsection II the words "officials of the state, counties, cities, towns which have accepted the provisions of this act.

water districts and all other quasi-municipal corporations of a similar character and." As the rest of the section was not changed only the introductory paragraph of subsection II is set out.

Sec. 3. Employers lose common law defenses.

A non-assenting employer has no duty to anticipate an employee's negligence. *Lyle v. Bangor & Aroostook R. R. Co.*, 150 Me. 327, 110 A. (2d) 584.

Employee cannot recover where his negligence is sole proximate cause of injury.—

Even though the defense that the employee was negligent is not available to a non-assenting employer under the Workmen's Compensation Act, where the employee's negligence is not only contributory but is the sole proximate cause of in-

jury such negligence is conclusive. *Lyle v. Bangor & Aroostook R. R. Co.*, 150 Me. 327, 110 A. (2d) 584. **Applied in** *LeClair v. Wallingford*, 152 Me. 342, 129 A. (2d) 631.

Sec. 4. Section 3 not applicable to certain actions; 5 or less employees; farming; domestic service.—The provisions of section 3 shall not apply to employers who employ 5 or less workmen or operatives regularly in the same business. Said provisions shall not apply to actions to recover damages for the injuries aforesaid, or for death resulting from such injuries, sustained by employees engaged in domestic service or in agriculture. (R. S. c. 26, § 4. 1957, c. 343.)

Effect of amendment.—The 1957 amendment deleted former provisions of this section relating to logging operations.

But employer not compelled to accept act as to logging and driving.

In accord with original. See *LeClair v. Wallingford*, 152 Me. 342, 129 A. (2d) 631.

Any employee engaged in the operation of cutting, hauling, rafting or driving logs, including work incidental thereto, may at the option of his employer be subject to the provisions of the act. Such employee, as a matter of right, does not come within the provisions of the act. *LeClair v. Wallingford*, 152 Me. 342, 129 A. (2d) 631.

And he may assent to sawmill operation without assenting to logging.

In accord with original. See *LeClair v.*

Wallingford, 152 Me. 342, 129 A. (2d) 631.

Burden is upon employer to exclude such operation in his assent.—The statute puts a burden upon the employer by providing that if the hauling of logs is incidental to his sawmill business he must exclude such operation in his assent, otherwise it will be presumed to be covered by his assent. *LeClair v. Wallingford*, 152 Me. 342, 129 A. (2d) 631.

Logging excluded from employer's assent.—Where employee at the time of sustaining injury was engaged in the hauling of logs, which operation was excluded from the employer's assent, the case was not within the jurisdiction of the industrial accident commission. *LeClair v. Wallingford*, 152 Me. 342, 129 A. (2d) 631.

Sec. 6. Insurance; self-insurers; benefit system; notices.

Applied, as to subsection I, in *LeClair v. Wallingford*, 152 Me. 342, 129 A. (2d) 631.

Sec. 8. Employee under act, injured by accident, entitled to compensation.

III. ARISING OUT OF AND IN THE COURSE OF THE EMPLOYMENT.

A. In General.

In order for the accident to arise out of the employment, etc.

In accord with 1st paragraph in original. See *Bouchard v. Sargent, Inc.*, 152 Me. 207, 127 A. (2d) 260.

To rise out of the employment an injury must, etc.

In accord with 1st paragraph in original. See *Bouchard v. Sargent, Inc.*, 152 Me. 207, 127 A. (2d) 260.

Nor does injury resulting from horseplay.

Where the accident arises out of an independent frolic or a bit of horseplay entered into by the employee and unrelated to his work, it has been held not to be compensable. *Bouchard v. Sargent,*

Inc., 152 Me. 207, 127 A. (2d) 260.

That some types of horseplay will occur under some conditions of employment must perhaps be considered inevitable. However, where one deliberately and substantially steps outside of his employment to engage in a personal prank or frolic of his own, he has for the moment abandoned his work and the resulting accident cannot be said to arise out of or in the course of his employment. *Bouchard v. Sargent, Inc.*, 152 Me. 207, 127 A. (2d) 260.

Unless such horseplay should have been foreseen by employer.

In accord with original. See *Bouchard v. Sargent, Inc.*, 152 Me. 207, 127 A. (2d) 260.

Attempting to swim stream instead of using boat.—Where employee returning

to work after lunch drowned while attempting to swim stream instead of using boat provided by employer for crossing stream, the fatal accident did not arise out of and in the course of employment and was not compensable. *Bouchard v. Sargent, Inc.*, 152 Me. 207, 127 A. (2d) 260.

IV. EVIDENCE AND BURDEN OF PROOF.

Circumstantial evidence held sufficient to show injury by accident arising out and in the course of employment resulted in employee's death. *Prescott v. Old Town Furniture Co.*, 151 Me. 11, 116 A. (2d) 413.

Sec. 11. Compensation for total incapacity.—While the incapacity for work resulting from the injury is total, the employer shall pay the injured employee a weekly compensation equal to $\frac{2}{3}$ his average weekly wages, earnings or salary, but not more than \$35 nor less than \$15 a week; and in no case shall the period covered by such compensation be greater than 500 weeks from the date of the accident, nor the amount more than \$14,000. In the following cases it shall, for the purposes of this act, be conclusively presumed that the injury resulted in permanent total incapacity: the total and irrevocable loss of sight in both eyes, the loss of both hands at or above the wrist, the loss of both feet at or above the ankle, the loss of 1 hand and 1 foot, an injury to the spine resulting in permanent and complete paralysis of the arms or legs and an injury to the skull resulting in incurable imbecility or insanity. (R. S. c. 26, § 11. 1949, c. 380, § 2. 1953, c. 357, § 1. 1955, c. 387, § 1. 1957, c. 404, § 1.)

Effect of amendments. — The 1955 amendment, effective November 30, 1955, changed the first sentence by substituting "\$30" for "\$27" in line four, and by inserting "\$12,000" in place of "\$10,500" at the

end of the sentence.

The 1957 amendment, effective November 30, 1957, substituted "\$35" for "\$30" and "\$14,000" for "\$12,000" in the first sentence.

Sec. 12. Compensation for partial incapacity.—While the incapacity for work resulting from the injury is partial, the employer shall pay the injured employee a weekly compensation equal to $\frac{2}{3}$ the difference, due to said injury, between his average weekly wages, earnings or salary before the accident and the weekly wages, earnings or salary which he is able to earn thereafter, but not more than \$35 a week; and in no case shall the period covered by such compensation be greater than 300 weeks from the date of the accident. (R. S. c. 26, § 12. 1949, c. 380, § 3. 1953, c. 357, § 2. 1955, c. 387, § 2. 1957, c. 404, § 2.)

Effect of amendments. — The 1955 amendment, effective November 30, 1955, substituted "\$30" for "\$27" in line six.

The 1957 amendment, effective November 30, 1957, substituted "\$35" for "\$30" in line six.

Sec. 13. Compensation for specified injuries; permanent impairment.—In cases of injuries included in the following schedule the incapacity in each such case shall be deemed to be total for the period specified; and after such specified period, if there be a total or partial incapacity for work resulting from the injury, the employee shall receive compensation while such total or partial incapacity continues under the provisions of sections 11 and 12 respectively. The specific periods during which compensation for presumed total incapacity is to be paid because of the injuries hereinafter specified shall be as follows:

For the loss of a thumb, 50 weeks.

For the loss of the first finger, commonly called the index finger, 32 weeks.

For the loss of the 2nd finger, commonly called the middle finger, 28 weeks.

For the loss of the 3rd finger, commonly called the ring finger, 20 weeks.

For the loss of the 4th finger, commonly called the little finger, 17 weeks.

The loss of the distal (second) phalanx of the thumb or the distal (third) phalanx of any finger shall be considered to be equal to the loss of $\frac{1}{2}$ of said thumb or finger, and the compensation therefor shall be $\frac{1}{2}$ the amount above

specified. The loss of more than one phalanx shall be considered as the loss of the entire thumb or finger. In no case shall the amount received for the loss of a thumb and more than one finger of the same hand exceed the amount specified in this schedule for the loss of a hand.

For the loss of the great toe, 25 weeks.

For the loss of one of the toes other than the great toe, 10 weeks.

For the loss of the distal (second) phalanx of the great toe or of the distal (third) phalanx of any other toe shall be considered to be equal to the loss of $\frac{1}{2}$ of said great toe or any other toe, and the compensation therefor shall be $\frac{1}{2}$ the amount above specified. The loss of more than one phalanx shall be considered as the loss of the entire toe.

For the loss of a hand, 150 weeks.

For the loss of an arm, or any part thereof above the wrist, 175 weeks.

For the loss of a foot, 150 weeks.

For the loss of a leg, or any part thereof above the ankle, 175 weeks.

For the loss of an eye, or the reduction of the sight of an eye, with glasses, to $\frac{1}{10}$ of the normal vision, or for diplopia, 100 weeks.

For the total and permanent loss of hearing in one ear, 50 weeks.

For the total and permanent loss of hearing in both ears, 100 weeks.

In all other cases of injury to the above-mentioned members or eyes where the usefulness of any physical function thereof is permanently impaired, the specific compensable periods for presumed total incapacity on account thereof shall bear such relation to the periods above specified as the percentage of permanent impairment due to the injury to such members or eyes shall bear to the total loss thereof. The commission upon petition therefor by either party shall determine such percentage. (R. S. c. 26, § 13. 1949, c. 405. 1953, c. 362, § 1. 1957, c. 201, §§ 1, 2; c. 252; c. 393, § 1.)

Effect of amendments.—The first 1957 amendment rewrote the first sentence of the seventh paragraph and deleted the words "provided, however, that" from the last sentence of such paragraph, and rewrote the first sentence of the tenth paragraph. The second 1957 amendment inserted the words "or for diplopia" in the fifteenth paragraph. The third 1957 amendment increased the weekly periods for specific injuries enumerated in this section and incorporated the changes made by the earlier 1957 amendments. Section 2 of the third amendatory act provided that such act should become effective on November 30, 1957.

Sec. 15. Compensation for death of employee; how apportioned.—

If death results from the injury, the employer shall pay the dependents of the employee, wholly dependent upon his earnings for support at the time of his accident a weekly payment equal to $\frac{2}{3}$ his average weekly wages, earnings or salary, but not more than \$35 nor less than \$15 a week, from the date of death for a period ending 300 weeks from the date of the accident, and in no case to exceed \$10,500. Provided, however, that if the dependent of the employee to whom compensation shall be payable upon his death is the widow of such employee, upon her death or remarriage compensation to her shall cease; and the compensation to which she would have been entitled thereafter but for such death or remarriage shall be paid to the child or children, if any, of the deceased employee, including adopted and stepchildren, under the age of 18 years, or over said age but physically or mentally incapacitated from earning, who are dependent upon the widow at the time of her death or remarriage. If the dependent is the widower, upon his death the remainder of the compensation which would otherwise have been payable to him shall be payable to the children above specified, if any, who at the time thereof are dependent upon him. In case there is more than 1 child thus dependent, the compensation shall be divided equally among them. Provided further, that except in the case of dependents who are physically or mentally incapacitated from earning, compensation payable to any dependent child under the age of 18 years

shall cease upon such child's reaching the age of 18 years or upon marriage.
(1955, c. 387, § 3. 1957, c. 404, § 3.)

Effect of amendments. — The 1955 amendment, effective November 30, 1955, substituted "\$30" for "\$27" in line five of the first sentence and "\$9,000" for "\$8,000" at the end of the first sentence.

The 1957 amendment, effective Novem-

ber 30, 1957, substituted "\$35" for "\$30" and "\$10,500" for "\$9,000" in said first sentence.

As the second paragraph was not changed by the amendments, it is not set out.

Sec. 20. Notice of accident within 30 days.

Applied in *Arndt v. Trustees of Gould Academy*, 151 Me. 424, 120 A. (2d) 218.

Sec. 21. Notice unnecessary if employer has knowledge; extension of period for notice.

Who is agent within meaning of this section.

Where injured employee was in charge of women's division of department of physical education, notice of injury to the director of physical education who had

charge of the men's division but had no control over employee's department, was not notice of injury to the trustees of an academy. *Arndt v. Trustees of Gould Academy*, 151 Me. 424, 120 A. (2d) 218.

Sec. 29. Industrial accident commission; appointment; tenure; duties; salary; clerk; seal.

The chairman shall receive a salary of \$9,000 per year, and the other commissioners a salary of \$8,450 each per year. The commissioner of labor and industry, in addition to his salary as such, shall receive for his services as a member of the commission \$1,000 per year. The members of the commission shall also receive their actual, necessary, cash expenses while away from their office on official business of the commission.

(1955, c. 473, § 9. 1957, c. 418, § 10.)

Effect of amendments. — The 1955 amendment increased the annual salary of the chairman from \$7,000 to \$8,000 and of the other commissioners from \$6,500 to \$7,500.

The 1957 amendment, effective July 1, 1957, increased the annual salary of the

chairman from \$8,000 to \$9,000 and of the other commissioners from \$7,000 to \$8,450, and carried appropriations for the fiscal years ending in 1958 and 1959.

As only the third paragraph was changed by the amendments, the rest of the section is not set out.

Sec. 33. Time limitations for filing petitions.—An employee's claim for compensation under the provisions of this act shall be barred unless an agreement or a petition as provided in section 32 shall be filed within one year after the date of the accident. Any time during which the employee is unable by reason of physical or mental incapacity to file said petition shall not be included in the period aforesaid. If the employee fails to file said petition within said year because of mistake of fact as to the cause and nature of the injury, he may file said petition within a reasonable time not to exceed 2 years from the date of the accident. In case of the death of the employee, there shall be allowed for filing said petition one year after such death. No petition of any kind may be filed more than 10 years following an accident. (R. S. c. 26, § 33. 1957, c. 325.)

Effect of amendment. — The 1957 amendment made a former proviso of the first sentence into a separate sentence, inserted the present third sentence, and made other minor changes.

Pleadings raising issue of reasonable notice and filing.—The respondents, who filed an answer of general denial, and a

special plea of failure of reasonable notice and filing placed both the date of accident and any legal excuse for delay in filing squarely in issue and it was thereafter incumbent upon the petitioner to prove reasonable notice and filing by the fair preponderance of the evidence. *Guay v. Waterville*, 152 Me. 146, 125 A. (2d) 665.

Sec. 35. Filing of answers.

And allegations of petition taken as admitted.

Material facts are admitted when not disputed in the answer. *Rowe v. Keyes Fibre Co.*, 152 Me. 317, 129 A. (2d) 210.

A defense to a petition which is not pleaded is waived.

An employer is limited in his defense by his answer. For example, a time

limitation for filing a petition and res adjudicata must be pleaded. *Rowe v. Keyes Fibre Co.*, 152 Me. 317, 129 A. (2d) 210.

General denial of liability is sufficient to permit the determination of disability and compensation for the entire period from accident to hearing. *Rowe v. Keyes Fibre Co.*, 152 Me. 317, 129 A. (2d) 210.

Sec. 37. Hearing; decision.

But in arriving at his conclusions, etc.

In accord with original. See *Prescott v. Old Town Furniture Co.*, 151 Me. 11, 116 A. (2d) 413.

Whether for or against the petitioner.

See *Guay v. Waterville*, 152 Me. 146, 125 A. (2d) 665; *Prescott v. Old Town Furniture Co.*, 151 Me. 11, 116 A. (2d) 413.

And a finding of fact by the commission must stand, etc.

In accord with 1st paragraph in original. See *Guay v. Waterville*, 152 Me. 146, 125 A. (2d) 665; *Prescott v. Old Town Furniture Co.*, 151 Me. 11, 116 A. (2d) 413; *Arndt v. Trustees of Gould Academy*, 151 Me. 424, 120 A. (2d) 218.

The findings of the industrial accident commission that the necessary elements of accident are not present, namely "unusual, unexpected and sudden event," are final if supported by competent and credible evidence. *McPherson v. Presque Isle*, 150 Me. 129, 107 A. (2d) 422.

Compensation not awarded on speculation, surmise, etc.

In accord with 1st paragraph in original. See *Prescott v. Old Town Furniture*

Co., 151 Me. 11, 116 A. (2d) 413.

And finding not supported by evidence should be set aside.

In accord with 3rd paragraph in original. See *Guay v. Waterville*, 152 Me. 146, 125 A. (2d) 665.

As should finding based on incompetent evidence.

In accord with 1st paragraph in original. See *Prescott v. Old Town Furniture Co.*, 151 Me. 11, 116 A. (2d) 413.

In accord with 2nd paragraph in original. See *Prescott v. Old Town Furniture Co.*, 151 Me. 11, 116 A. (2d) 413.

In workmen's compensation cases, it is not to be presumed that prejudice results from the receipt of inadmissible testimony, if there is sufficient competent evidence in the case on which the commissioner's findings may rest. *Prescott v. Old Town Furniture Co.*, 151 Me. 11, 116 A. (2d) 413.

Weight and credibility of evidence determined by commissioner.

In accord with 2nd paragraph in original. See *Guay v. Waterville*, 152 Me. 146, 125 A. (2d) 665.

Sec. 38. Petition for review of incapacity; for further compensation.

Review available only in case of agreement or decree.

This section provides for petitions for review of incapacity. It is operative "while compensation is being paid under

any agreement, award or decree." Only then may the incapacity "from time to time be reviewed." *Rowe v. Keyes Fibre Co.*, 152 Me. 317, 129 A. (2d) 210.

Sec. 41. Decision or approved agreement as basis for court decree; appeal.

Decree reviewable on appeal or on exceptions.

In accord with original. See *Rowe v. Keyes Fibre Co.*, 152 Me. 317, 129 A. (2d) 210.

Finding not open to question where no

report of evidence included in record.—A finding of "permanent impairment on November 3" cannot be questioned where no report of any evidence is included in the record before the law court. *Leclerc v. Gilbert*, 152 Me. 399, 131 A. (2d) 202.

The Occupational Disease Law.

Sec. 69. Occupational diseases.

Column 1 Description of disease	Column 2 Description of process
13. Dermatitis (venenata).	13. Any process involving the use of or direct contact with acids, alkalis, acids or oil, or with brick, cement, lime, concrete or mortar, or leather capable of causing dermatitis (venenata), but exclusive of soaps and cleaning materials.
16. Pulmonary and cardiac diseases, excluding common colds.	16. Caused to an active member of an organized fire department while participating at fires, and developing within 6 months of such participation.

(1945, c. 338. 1951, c. 261, § 1. 1953, c. 361, § 1. 1955, cc. 295, 391.)

Effect of amendments.—The first 1955 amendment changed paragraph numbered "13" by inserting in the description of process the words "or leather." The second 1955 amendment, effective November 30, 1955, added paragraph 16 at the end of the section. As the rest of the section was not changed, only paragraphs 13 and 16 are set out.

Chapter 32.

Department of Agriculture.

Division of Administration

Section 2-A. Bounty on Porcupine.

Division of Animal Industry

Sections 74-80. Brucellosis (Bang's Disease).

Section 113-A. Sale of Milk to Certain Institutions.

Division of Inspection

Section 228-A. Packing of Food.

Sections 236-A to 236-K. Maine Commercial Feed Law.

Section 267-A. Sardine Industry Advisory Board.

DIVISION OF ADMINISTRATION.

The Department; Commissioner; Duties.

Sec. 1. Department; commissioner.—The state department of agriculture, as heretofore established and hereinafter in this chapter called the "department," shall be maintained for the improvement of agriculture and the advancement of the interests of husbandry. A commissioner of agriculture, hereinafter in this chapter called the "commissioner," shall be elected by the legislature by joint ballot of the senators and representatives in convention, and shall hold his office for the term of 4 years and until his successor is elected and qualified. He shall receive an annual salary of \$9,000. He shall also receive his actual expenses incurred in the performance of his official duties. He may employ such clerical labor as may be required, subject to the provisions of the personnel law and he may expend such sums for postage, telephone, telegraph and other general office expenses as may be necessary in the performance of his duties, the same to be paid