

MAINE STATE LEGISLATURE

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S. 1954, 200

TITLE 39
WORKMEN'S COMPENSATION

Chap.	Sec.
1. Workmen's Compensation	1
3. Employer's Liability	141
5. Occupational Diseases	181

CHAPTER 1
WORKMEN'S COMPENSATION

Subch.	Sec.
I. General Provisions	1
II. Insurance; Self-Insurers; Benefit System; Notices; Waiver	21
III. Compensation and Services	51
IV. Administration; Procedure; Review; Penalties	91

SUBCHAPTER I
GENERAL PROVISIONS

Sec.
1. Short title.
2. Definitions.
3. Common-law defenses lost.
4. Applicability to certain actions and employers; exemptions.

§ 1. Short title

This chapter shall be known, and may be cited and referred to in proceedings and agreements thereunder, as "The Workmen's Compensation Act;" the phrase "this Act," as used in said chapter, refers thereto.

R.S.1954, c. 31, § 1.

§ 2. Definitions

The following words and phrases as used in this Act shall, unless a different meaning is plainly required by the context, have the following meaning:

1. **Assenting employer.** "Assenting employer" shall include all private employers who have become assenting employ-

ers in accordance with sections 21 to 27, and it shall include all towns voting to accept the Act. This Act shall be compulsory as to the State, counties, cities, water districts and all other quasi-municipal corporations of a similar nature, but said sections 21 to 27 shall not apply thereto or to assenting towns.

1961, c. 178, § 1.

2. Average weekly wages.

A. "Average weekly wages, earnings or salary" of an injured employee shall be taken as the amount which he was receiving at the time of the accident for the hours and days constituting a regular full working week in the employment or occupation in which he was engaged when injured, provided such employment or occupation had continued on the part of the employer for at least 200 full working days during the year immediately preceding said accident. Except that in the case of piece workers and other employees whose wages during said year have generally varied from week to week, such wages shall be averaged in accordance with the method provided under paragraph B.

B. In case such employment or occupation had not so continued for said 200 full working days, the "average weekly wages, earnings or salary" shall be determined by dividing the entire amount of wages or salary earned therein by the injured employee during said immediately preceding year, by the total number of weeks, any part of which the employee worked, during the same period. The week in which employment began, if it began during the year immediately preceding the accident, and the week in which the accident occurred, together with the amounts earned in said weeks, shall not be considered in computations under this paragraph if their inclusion would reduce said "average weekly wages, earnings or salary".

C. In cases where the foregoing methods of arriving at the "average weekly wages, earnings or salary" of the injured employee cannot reasonably and fairly be applied, said "average weekly wages" shall be taken at such sum as, having regard to the previous wages, earnings or salary of the injured employee and of other employees of the same or most similar class, working in the same or most similar employment in the same or a neighboring locality, shall reasonably represent the weekly earning capacity of the injured employee at the time of the accident in the employment in which he was working at such time.

D. Where the employee is employed regularly during the ordinary working hours in any week concurrently by 2 or more employers, for one of whom he works at one time and for another he works at another time, his "average weekly wages" shall be computed as if the wages, earnings or salary received by him from all such employers were wages, earnings or salary earned in the employment of the employer for whom he was working at the time of the accident.

E. Where the employer has been accustomed to pay to the employee a sum to cover any special expense incurred by said employee by the nature of his employment, the sum so paid shall not be reckoned as part of the employee's wages, earnings or salary.

F. The fact that an employee has suffered a previous injury or received compensation therefor shall not preclude compensation for a later injury or for death; but in determining the compensation for such later injury or death, his "average weekly wages" shall be such sum as will reasonably represent his weekly earning capacity at the time of such later injury in the employment in which he was working at such time, and shall be arrived at according to and subject to the limitations of this section.

3. Commission; commissioner. "Commission" shall mean the Industrial Accident Commission created by section 91, except that as to hearings on petitions authorized by sections 52 and 102, it shall mean any 2 or more members thereof designated from time to time by the chairman, and except in any such case by agreement of the parties the authority of the commission may be exercised by a single commissioner. "Commissioner" shall mean any member of the commission appointed under section 91.

1961, c. 392, § 1.

4. Dependents. "Dependents" shall mean members of an employee's family or next of kin who are wholly or partly dependent upon the earnings of the employee for support at the time of the accident. The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employee:

A. A wife upon a husband with whom she lives, or from whom she is living apart for a justifiable cause or because he has deserted her, or upon whom she is actually dependent in any way at the time of the accident. A wife living apart from her husband shall produce court order or other competent evidence as to separation and actual dependency.

B. A husband upon a wife with whom he lives, or upon whom he is actually dependent in any way at the time of the accident.

C. A child or children, including adopted and stepchildren, under the age of 18 years, or over said age but physically or mentally incapacitated from earning, upon the parent with whom he is or they are living, or upon whom he is or they are actually dependent in any way at the time of the accident to said parent, there being no surviving dependent parent. "Child" shall include any posthumous child whose mother is not living and dependent. In case there is more than one child dependent, the compensation shall be divided equally among them.

In all other cases questions of total or partial dependency shall be determined in accordance with the fact, as the fact may have been at the time of the accident. If there is more than one person wholly dependent, the compensation shall be divided equally among them, and persons partly dependent, if any, shall receive no part thereof during the period in which compensation is paid to persons wholly dependent. If there is no one wholly dependent and more than one person partly dependent, the compensation shall be divided among them according to the relative extent of their dependency. If a dependent is an alien residing outside of the United States or of the Dominion of Canada, the compensation paid to any such dependent shall be $\frac{1}{2}$ that provided in case of the death of an employee.

1961, c. 392, § 2.

5. 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:

A. Persons engaged in maritime employment, or in interstate or foreign commerce, who are within the exclusive jurisdiction of admiralty law or the laws of the United States;

B. Any person whose employment is not in the usual course of the business, profession, trade or occupation of his employer. Policemen and firemen shall be deemed employees within the meaning of this Act. Employers who hire workmen within this State to work outside the State may agree with such workmen that the remedies under this Act shall be exclusive as regards injuries received outside this State by

accident arising out of and in the course of such employment; and all contracts of hiring in this State, unless otherwise specified, shall be presumed to include such agreement. Any reference to an employee who has been injured shall, when the employee is dead, include his legal representatives, dependents and other persons to whom compensation may be payable.

1955, c. 282.

6. Employer. "Employer" shall include corporations, partnerships, natural persons, the State, counties, water districts and all other quasi-municipal corporations of a similar nature, cities, and such towns as vote to accept this Act; and if the employer is insured, it includes the insurer unless the contrary intent is apparent from the context or it is inconsistent with the purposes of this Act.

7. Industrial accident insurance policy. "Industrial accident insurance policy" shall mean a policy in such form as the Insurance Commissioner approves, issued by any stock or mutual casualty insurance company or association that may now or hereafter be authorized to do business in this State, which in substance and effect guarantees the payment of the compensation, medical benefits and expenses of burial provided for, in such installment, at such time or times, and to such person or persons and upon such conditions as in this Act provided. Whenever a copy of a policy is filed, such copy certified by the Insurance Commissioner shall be admissible as evidence in any legal proceeding wherein the original would be admissible.

8. Insurance company. "Insurance company" shall mean any casualty insurance company or association authorized to do business in this State which may issue policies conforming to subsection 7. Whenever in this Act relating to procedure the words "insurance company" are used they shall apply only to cases in which the employer has elected to secure the payment of compensation and other benefits by insuring such payment under an industrial accident insurance policy, instead of furnishing satisfactory proof of his ability to pay compensation and benefits direct to his employees.

1961, c. 178, § 2.

9. Representatives. "Representatives" shall include executors and administrators.

R.S.1954, c. 31, § 2; 1955, c. 282; 1961, c. 178, §§ 1, 2; c. 392, §§ 1, 2.

§ 3. Common-law defenses lost

In an action to recover damages for personal injuries sustained by an employee by accident arising out of and in the course of his employment, or for death resulting from such injuries, it shall not be a defense to an employer, except as hereinafter specified:

1. **Employee negligent.** That the employee was negligent;
2. **Fellow employee negligent.** That the injury was caused by the negligence of a fellow employee;
3. **Employee assumed risk.** That the employee has assumed the risk of the injury.

R.S.1954, c. 31, § 3.

§ 4. Applicability to certain actions and employers; exemptions

Section 3 shall not apply to employers who employ 5 or less workmen or operatives regularly in the same business. Said section 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. Section 3 shall not apply to actions to recover damages for the injuries aforesaid, or for death resulting from such injuries, sustained by employees of an employer who has become subject to this Act by securing the payment of compensation in conformity with sections 21 to 27. Such assenting employers, except as provided by section 28, shall be exempt from civil actions because of such injuries either at common law or under sections 141 to 148 or under Title 18, sections 2551 to 2553.

R.S.1954, c. 31, §§ 4, 5; 1957, c. 343; 1961, c. 178, § 3.

SUBCHAPTER II

INSURANCE; SELF-INSURERS; BENEFIT SYSTEM; NOTICES; WAIVER

Sec.

21. Presumption as to employer; liability of nonassenting employer.
22. Approval of insurance policies and rates by Insurance Commissioner.
23. Insurance by assenting employer; requirements as to self-insurers.

Sec.

24. Voluntary election.
25. Approval of benefit system in use January 1, 1915.
26. Notices of assent to be kept posted.
27. Preservation of existing employer status.
28. Waiver of common-law right of action unless claimed.

§ 21. Presumption as to employer; liability of nonassenting employer

Every private employer subject to this Act, who has secured the payment of compensation in conformity with sections 21 to 27 shall be conclusively presumed to be an assenting employer with respect to employees other than those engaged in domestic service or in agriculture, subject to the provisions hereinafter stated.

Any private employer other than those who employ 5 or less workmen or operators regularly in the same business who has elected not to be an assenting employer by not securing the payment of compensation under sections 21 to 27 shall, in a civil action brought by the employee other than one engaged in domestic service or in agriculture to recover for personal injuries or death sustained after such election by the employer, arising out of and in the course of his employment shall not be entitled to the defenses set forth in section 3.

Any employer whose assent is thus presumed may cease to be an assenting employer effective upon the first day of any month, provided said employer gives to the commission at its office in Augusta written notice in such form as the commission approves, not less than 30 days prior to the date on which said employer desires his election to cease to be an assenting employer to become effective, and provided that said employer shall post in conspicuous places in his several places of employment written or printed notices to the effect that on and after the first day of the month upon which such election shall become effective, said employer will not be subject to this Act, which notices shall be posted at least 30 days prior to the date such election shall become effective and shall be kept continuously posted thereafter in sufficient places frequented by the employees of said employer to reasonably notify such employees of such election.

Any private employer who has thus elected not to be an assenting employer may thereafter at any time become an assenting employer by filing with the commission at its office in Augusta his written notice in such form as the commission approves withdrawing his election not to be an assenting employer and by

securing the payment of compensation in conformity with sections 21 to 27.

R.S.1954, c. 31, § 6; 1961, c. 178, § 4; 1963, c. 156, § 1.

§ 22. Approval of insurance policies and rates by Insurance Commissioner

Every insurance company issuing industrial accident insurance policies covering the payment of compensation and benefits provided for in this Act shall file with the Insurance Commissioner a copy of the form of such policies and no such policy shall be issued until he has approved said form. It shall file its classification of risks and premium rates relating thereto, and any subsequent proposed classification thereof, none of which shall take effect until the Insurance Commissioner has approved the same as adequate for the risks to which they respectively apply. He may require the filing of specific rates for workmen's compensation insurance including classifications of risks, experience or any other rating information from insurance companies authorized to transact such insurance in Maine, and may make or cause to be made such investigations as may be deemed necessary to satisfy himself that such rates are correct and proper before giving his approval and permitting such rates to be promulgated for the use of said companies. The Insurance Commissioner may at any time withdraw his approval of any classification of risks or premium rates relating thereto and approve a revised classification thereof.

R.S.1954, c. 31, § 6.

§ 23. Insurance by assenting employer; requirements as to self-insurers

Every assenting employer shall secure such compensation and other benefits to his employees in one or more of the following ways:

1. By insuring and keeping insured the payment of such compensation and other benefits under an industrial accident insurance policy. The insurance company shall file with the commission notice, in such form as the commission approves, of the issuance of any industrial accident policy to an assenting employer. Such insurance shall not be cancelled within the time limited in such policy for its expiration until at least 30 days after mailing to the commission and to the employer a notice of the cancellation of such insurance. In the event that the employer has obtained an industrial accident policy from another insurance

company, or has otherwise secured compensation as provided in this section, and such insurance or other security becomes effective prior to the expiration of said 30 days, cancellation shall be effective as of the effective date of such other insurance or receipt of security.

1963, c. 156, § 2.

2. By furnishing satisfactory proof to the commission of his solvency and financial ability to pay the compensation and benefits, and deposit cash, satisfactory securities or a surety bond, in such sum as the commission may determine; such bond to run to the Treasurer of State and his successor in office, and to be conditional upon the faithful performance of this Act relating to the payment of compensation and benefits to any injured employee. In case of cash being deposited it shall be placed at interest by the Treasurer of State, and the accumulation of interest on said cash or securities so deposited shall be paid to the employer depositing the same. The commission may at any time in its discretion deny to an assenting employer the right to continue in the exercise of the option granted by this section.

3. The effective date of the assent of an employer shall be the date of the insurance policy filed or in the case of a self-insurer the date of the bond or the receipt of the securities required. (1963, c. 156, § 3.)

R.S.1954, c. 31, § 6; 1961, c. 178, § 5; 1963, c. 156, §§ 2, 3.

§ 24. Voluntary election

Any private employer of 5 or less employees may become an assenting employer with respect to his employees and any private employer may become an assenting employer with respect to his employees engaged in domestic service or in agriculture, and the act of the employer in securing the payment of compensation to such employee or class of employees in conformity with sections 21 to 27 shall constitute as to such employer his election to become an assenting employer without any further act on his part, but only with respect to that employee or that class of employees with respect to whom the employer has secured compensation as provided in sections 21 to 27, provided that, as to any employer who secures compensation by making a contract of industrial accident insurance, such election shall be deemed to have been made on the effective date of the insurance policy. Such election to be an assenting employer shall be deemed to continue as long as compensation continues to be secured as provided.

R.S.1954, c. 31, § 6; 1961, c. 178, § 6.

§ 25. Approval of benefit system in use January 1, 1915

Subject to the approval of the commission, any employer may continue with his employees in lieu of the compensation, benefits and insurance provided by this Act the system thereof which was used by such employer on the first day of January, 1915. No such substitute system shall be approved unless it confers benefits upon injured employees 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 commission on reasonable notice and hearing to the interested parties, if it shall appear that the same is not fairly administered, or if its operation shall disclose latent defects threatening its solvency, or if for any substantial reason it fails to accomplish the purposes of this Act. An employer who is authorized to substitute a plan under sections 21 to 27 shall give his employees notice thereof in a form to be prescribed by the commission, and a statement of the plan approved shall be filed with the commission.

R.S.1954, c. 31, § 6.

§ 26. Notices of assent to be kept posted

A notice in such form as the commission approves, stating that the employer has conformed to this Act, together with such further matters as the commission determines, shall be posted by the employer and kept posted by him at some place in each of his mills, factories or places of business, conspicuous and accessible to his employees. For willful failure to post such notices, the employer shall be liable to a forfeiture of \$10 for each day of such willful neglect, to be enforced by the commission in a civil action in the name of the State.

R.S.1954, c. 31, § 6; 1961, c. 317, § 64.

§ 27. Preservation of existing employer status

An employer with a currently approved industrial accident policy, or a currently accepted self-insurer, within sections 21 to 27 shall be considered in compliance with this Act until the expiration or cancellation date of the current assent based thereon.

1961, c. 178, § 7.

§ 28. Waiver of common-law right of action unless claimed

An employee of an employer, who shall have assented to become subject to this Act as provided in sections 21 to 27 shall be

held to have waived his right of action at common law to recover damages for the injuries sustained by him, and under the statutes specified in section 4, if he shall not have given his employer at the time of his contract of hire notice in writing that he claimed such right, and within 10 days thereafter have filed a copy thereof with the commission; or, if the contract of hire was made before the employer so elected, if the employee within 10 days after knowledge by him of such assent shall not have given said notice and filed a copy thereof with the commission. Such waiver of common law and statutory rights shall continue in force for the term of one year, and thereafter without further act on his part for successive terms of one year each, unless the employee shall at least 60 days prior to the expiration of such first or any succeeding year, give his employer notice of claim of such rights and file a copy thereof with the commission.

A minor working at an age legally permitted under the laws of this State shall be deemed *sui juris* for the purpose of this Act, and no other person shall have any cause of action or right to compensation for an injury to such minor employee except as expressly provided; but if said minor shall have a parent living or a guardian, such parent or guardian, as the case may be, may give the notice and file a copy thereof as provided in this section, and such notice shall bind the minor in the same manner that adult employees are bound. In case no such notice is given, such minor shall be held to have waived his right of action at common law or under the statutes referred to, to recover damages for such injuries sustained by him.

Any employee, or the parent or guardian of any minor employee, who has given said notice to the employer that he claimed his right of action at common law or under the statutes aforesaid, may waive such claim by a subsequent notice in writing which shall take effect 5 days after the delivery thereof to the employer or his agent. Copy of such notice shall be sent forthwith by the employer to the commission.

R.S.1954, c. 31, § 7.

SUBCHAPTER III

COMPENSATION AND SERVICES

Sec.

51. Entitlement to compensation and services generally.
52. Duties and rights of parties as to medical and other services; costs.
53. Waiting period; when compensation payable.
54. Compensation for total incapacity.
55. Compensation for partial incapacity.
56. Compensation for particular injuries; permanent impairment.
57. Permanent total incapacity due partly to prior injury; Second Injury Fund.
58. Death benefits; apportionment.
59. Burial expenses.
60. Compensation unpaid at death.
61. Injury or death due to willful intention or intoxication.
62. Compensation unaffected by savings or insurance.
63. Notice of accident within 30 days.
64. Sufficiency of notice; knowledge of employer; extension of time for notice.
65. Medical examinations of employees; acceptance of treatment or vocational rehabilitation.
66. Guardians and other representatives for minors and incompetents.
67. Invalidity of waiver of rights; claims not assignable.
68. Liability of third persons; election of employee; subrogation.
69. Preference of claims.
70. Nonresidents.
71. Lump-sum payments.

§ 51. Entitlement to compensation and services generally

If an employee who has not given notice of his claim of common law or statutory rights of action, or who has given such notice and has waived the same, as provided in section 28 receives a personal injury by accident arising out of and in the course of his employment, he shall be paid compensation and furnished medical and other services by the employer who shall have assented to become subject to this Act.

R.S.1954, c. 31, § 3.

§ 52. Duties and rights of parties as to medical and other services; cost

An employee sustaining personal injury by accident arising out of and in the course of his employment shall be entitled to reasonable and proper medical, surgical and hospital services, nursing, medicines and mechanical, surgical aids, as needed, paid for by the employer.

Upon knowledge or notice of such injury the employer shall promptly furnish to the employee the services and aids. In case the employer fails to furnish any of said services or aids, or in case of emergency or other justifiable cause, the employee may procure said services or aids and the commission may order the employer to pay for the same provided that they were necessary and adequate, and the charges therefor are reasonable. In every case where any of said services or aids are procured by the employee, it shall be his duty to see that the employer is given prompt notice thereof. The commission in its discretion may require the employer to furnish artificial limbs, eyes, teeth, orthopedic appliances and physical aids made necessary by such injury, and to replace and renew the same when deemed necessary from wear and tear or physical change of the injured employee, but no employer shall be obligated to replace or renew any such items after 500 weeks from the date of injury. In case artificial limbs, eyes and teeth, in use by an employee at the time of the accident as substitutes for natural parts of the body, are themselves injured or destroyed, they shall be repaired or replaced by the employer.

Whenever, because of the nature of such injury or the subsequent condition of the employee following such injury, it appears that vocational rehabilitation is necessary and desirable to restore the injured employee to gainful employment, the employee shall be entitled to reasonable and proper rehabilitation service for a period not exceeding 52 weeks, which period may be extended for a further period not to exceed another 52 weeks if such extended period is found to be necessary and proper by any member of the commission. Such vocational rehabilitation service may be arranged in consultation with the Division of Vocational Rehabilitation, Department of Education, or in cases of blindness with the Division of Eye Care and Special Services of the Department of Health and Welfare, as provided in section 106, subject to the following conditions and limitations:

- 1. Course of instruction.** The employee must undertake the course of instruction within 60 days from the date when he has

sufficiently recovered from his injury to permit of his so doing, or as soon thereafter as the person or agency having charge of his instruction shall provide opportunity for his rehabilitation.

1961, c. 384, § 1.

2. Rehabilitation training. The employee must continue in rehabilitation training with such reasonable regularity as his health and situation will permit.

1961, c. 384, § 1.

3. Determination of rights. The commission shall determine the rights and liabilities of the parties under this section in like manner and with like effect as it does other issues under the Workmen's Compensation Act.

1961, c. 384, § 1.

Whenever there is any disagreement as to the proper costs of the services or aids, or the periods during which they shall be furnished, or as to the apportionment thereof among the parties, any interested person may file a petition with the commission for the determination thereof.

R.S.1954, c. 31, § 9; 1959, c. 289; 1961, c. 384, § 1; 1963, c. 156, § 4; c. 348, §§ 1, 2.

§ 53. Waiting period; when compensation payable

No compensation for incapacity to work shall be payable for the first 7 days of incapacity. In case incapacity continues for more than 21 days, compensation shall be allowed from the date of incapacity.

R.S.1954, c. 31, § 10; 1963, c. 348, § 3.

§ 54. 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 \$42 nor less than \$18 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 \$21,000 exclusive of the cost of rehabilitation and of sustenance and travel during said rehabilitation which in no case shall be more than \$2,000 in the first 52 weeks of said rehabilitation and if such a period is extended as provided in section 52, not more than \$500 in the second 52 weeks of said rehabilitation. 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 one hand and one 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.

Whenever a program of vocational rehabilitation has been inaugurated, either by approved agreement or commission decree, the employer shall pay the injured employee, in addition to compensation, if he is totally or partially incapacitated, a sum not to exceed \$20 per week for sustenance and travel as may be determined by the commission during the period of such rehabilitation within the limitations as prescribed in this section and section 52.

R.S.1954, c. 31, § 11; 1955, c. 387, § 1; 1957, c. 404, § 1; 1959, c. 338, § 1; 1961, c. 384, §§ 2, 3; 1963, c. 348, § 4.

§ 55. 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 \$42 a week; and in no case shall the period covered by such compensation be greater than 300 weeks from the date of the accident except for vocational rehabilitation services provided under sections 52 and 54.

R.S.1954, c. 31, § 12; 1955, c. 387, § 2; 1957, c. 404, § 2; 1959, c. 338, § 2; 1961, c. 384, § 4; 1963, c. 348, § 5.

§ 56. Compensation for particular 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 sections 54 and 55 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, eyes or hearing 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, eyes or hearing shall bear to the total loss thereof. The commission upon petition therefor by either party shall determine such percentage. A petition for determination of the percentage of permanent hearing impairment due to an injury shall be filed with the commission within 2 years from the date of the accident.

R.S.1954, c. 31, § 13; 1957, c. 201, §§ 1, 2; c. 252; c. 393, § 1; 1959, c. 264.

**§ 57. Permanent total incapacity due partly to prior injury;
Second Injury Fund**

If an employee who has previously lost, or lost the use of, one hand, one arm, one foot, one leg or one eye, becomes permanently and totally incapacitated through the loss or loss of use of another member or organ, the employer shall be liable only for the compensation payable for such second injury. In addition to such compensation and after the completion of the payments therefor, the employee shall be paid the remainder of the compensation that would be due for permanent total incapacity, out of a special fund known as the "Second Injury Fund," and created for such purpose in the following manner:

In every case of the death of an employee under this Act where there is no person entitled to compensation, the employer shall pay to the Industrial Accident Commission the sum of \$500, to be deposited with the Treasurer of State for the benefit of said fund, and the commission shall direct the distribution thereof.

R.S.1954, c. 31, § 14; 1961, c. 384, § 5.

§ 58. Death benefits; apportionment

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 \$42 nor less than \$18 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 \$12,600. 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 specified, if any, who at the time thereof are dependent upon him. In case there is more than one child thus dependent, the compensation shall be divided equally among them. 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.

If the employee leaves dependents only partly dependent upon his earnings for support at the time of his accident, the employer shall pay such dependents for the said period of 300 weeks, a weekly compensation equal to the same proportion of the weekly payments provided for the benefit of persons wholly dependent as the total amount contributed by the employee to such partial dependents for their support during the year prior to his accident bears to the earnings of the employee during said period.

R.S.1954, c. 31, § 15; 1955, c. 387, § 3; 1957, c. 404, § 3; 1959, c. 338, § 3; 1963, c. 348, § 6.

§ 59. Burial expenses

If the employee dies as a result of the injury, the employer shall pay, in addition to any compensation and medical benefits provided for in this Act, the reasonable expenses of burial, not to exceed \$450.

R.S.1954, c. 31, § 16; 1959, c. 263.

§ 60. Compensation unpaid at death

If the employee shall die before having received the entire amount of compensation to which he is entitled under this Act, the compensation payable to him before his death shall be paid to his dependents, if any; otherwise to his executor or administrator. No compensation is payable for presumed total incapacity for any period following the death of an employee.

R.S.1954, c. 31, § 17.

§ 61. Injury or death due to willful intention or intoxication

No compensation or other benefits shall be allowed for the injury or death of an employee where it is proved that such was occasioned by his willful intention to bring about the injury or death of himself or of another, or that the same resulted from his intoxication while on duty. This provision as to intoxication shall not apply, if the employer knew that the employee was intoxicated or that he was in the habit of becoming intoxicated while on duty.

R.S.1954, c. 31, § 18.

§ 62. Compensation unaffected by savings or insurance

No savings or insurance of the injured employee independent of this Act shall be taken into consideration in determining the compensation to be paid, nor shall benefits derived from any source other than the employer be considered in fixing the compensation due.

R.S.1954, c. 31, § 19.

§ 63. Notice of accident within 30 days

No proceedings for compensation under this Act, except as provided, shall be maintained unless a notice of the accident shall have been given within 30 days after the date thereof. Such notice shall include the time, place and cause of the accident, and the nature of the injury, together with the name and address of the person injured. It shall be given by the person injured or by a person in his behalf; or, in the event of his death, by his legal representatives, or by a dependent or by a person in behalf of either.

Such notice shall be given to the employer, or to one employer if there are more employers than one; or, if the employer is a corporation, to any official thereof; or to any employee designated by the employer as one to whom reports of accidents to employees should be made. It may be given to the general superintendent or to the foreman in charge of the particular work being done by the employee at the time of the accident.

R.S.1954, c. 31, § 20.

§ 64. Sufficiency of notice; knowledge of employer; extension of time for notice

A notice given under section 63 shall not be held invalid or insufficient by reason of any inaccuracy in stating any of the facts

therein required for proper notice, unless it is shown that it was the intention to mislead and that the employer was in fact misled thereby. Want of such notice shall not be a bar to proceedings under this Act if it be shown that the employer or his agent had knowledge of the accident. Any time during which the employee is unable by reason of physical or mental incapacity to give said notice, or fails to do so on account of mistake of fact, shall not be included in the 30-day period specified. In case of the death of the employee within said period, there shall be allowed for giving said notice 3 months after such death.

R.S.1954, c. 31, § 21.

§ 65. Medical examinations of employees; acceptance of treatment or vocational rehabilitation

Every employee shall after an injury, at all reasonable times during the continuance of his disability if so requested by his employer, submit himself to an examination by a physician or surgeon authorized to practice as such under the laws of this State, to be selected and paid by the employer. The employee shall have the right to have a physician or surgeon selected and paid by himself present at such examination, of which right the employer shall give him notice when requesting such examination.

The commission or any commissioner may at any time after the injury appoint a competent and impartial physician or surgeon to act as medical examiner, the reasonable fees of whom shall be fixed and paid by the commission. Such medical examiner, after being furnished with such information in regard to the matter as may be deemed essential for the purpose, shall thereupon and as often as the commission or the said commissioner may direct, examine such injured employee in order to determine the nature, extent and probable duration of the injury or the percentage of permanent impairment. He shall file in the office of the commission a report of every such examination, and a copy thereof shall be sent to each of the interested parties, who upon request therefor shall be given the opportunity at a hearing, before decree is rendered, to question said impartial examiner as to any matter included in such report.

If any employee refuses or neglects to submit himself to any reasonable examination provided for in this Act, or in any way obstructs any such examination, or if he declines proper medical, surgical treatment or vocational rehabilitation offered by the employer, upon petition of said employer such employee's rights to

compensation shall be suspended, and his compensation during such period of suspension shall be forfeited.

R.S.1954, c. 31, § 22; 1961, c. 384, § 6.

§ 66. Guardians and other representatives for minors and incompetents

In case an injured employee is a minor or is mentally incompetent or, where death results from the injury, in case any of his dependents entitled to compensation are minors or mentally incompetent at the time when any right, privilege or election accrues to him or them under this Act, his parent, guardian or next friend, or some disinterested person designated by the commission may, in his behalf, claim and exercise such right, privilege or election, or file any petition or answer, and no limitation of time in this Act provided shall run so long as such minor or incompetent has no parent living or guardian.

In case the commission shall have reasonable grounds for believing that compensation paid under this Act, either in weekly installments or in a lump sum, will be squandered or wasted by the injured employee or his dependents, the commission may designate in writing some disinterested person to act as trustee for the said injured employee or said dependents. The said trustee shall file an account at least once a year with the commission showing the amounts of receipts and expenditures in behalf of said injured employee or said dependents.

R.S.1954, c. 31, § 23.

§ 67. Invalidity of waiver of rights; claims not assignable

No agreement by an employee, unless approved by the commission or by the Commissioner of Labor and Industry, to waive his rights to compensation under this Act shall be valid. No claims for compensation under this Act shall be assignable or subject to attachment or liable in any way for debt.

R.S.1954, c. 31, § 24.

§ 68. Liability of third persons; election of employee; subrogation

When any injury or death for which compensation or medical benefits are payable under this Act shall have been sustained under circumstances creating in some person other than the employer a legal liability to pay damages in respect thereto, the injured

employee may, at his option, either claim such compensation and benefits or obtain damages from or proceed at law against such other person to recover damages. Any employer having paid such compensation or benefits or having become liable therefor under any decree or approved agreement shall be subrogated to the rights of the injured employee to recover against that person. If the employer shall recover from such other person damages in excess of the compensation and benefits so paid or for which he has thus become liable, then any such excess shall be paid to the injured employee less the employer's expenses and cost of action or collection. Settlement of such subrogation claims and the distribution of the proceeds therefrom must have the approval of the court wherein the subrogation action is pending or to which it is returnable; or, if not in suit, of a single commissioner. When the court in which such subrogation action is pending or to which it is returnable is in vacation, the judge of the court, or, if the action is pending in or returnable to the Superior Court, any Justice of the Superior Court, shall have the power to approve the settlement of such action and the distribution of the proceeds therefrom. The beneficiary shall be entitled to reasonable notice and the opportunity to be present in person or by counsel at the approval proceedings.

The failure of the employer or compensation insurer in interest to pursue his remedy against the third party within 30 days after written demand by a compensation beneficiary shall entitle such beneficiary or his representatives to enforce liability in his own name, the accounting for the proceeds to be made on the basis provided.

R.S.1954, c. 31, § 25; 1961, c. 392, § 3; c. 417, § 90.

§ 69. Preference of claims

A claim for compensation under this Act, and any decree or approved agreement therefor, shall be entitled to a preference over the unsecured debts of the employer to the same amount as the wages of labor are preferred by the laws of this State. Nothing herein shall be construed as impairing any lien which the employee may have acquired.

R.S.1954, c. 31, § 26.

§ 70. Nonresidents

If an employee receiving weekly payments under this Act shall cease to reside in the State, or if his residence at the time

of the accident is in another state, the commission upon application of either party may, in its discretion, having regard to the welfare of the employee and the convenience of the employer, authorize such payments to be made monthly or quarterly instead of weekly.

R.S.1954, c. 31, § 27.

§ 71. Lump-sum payments

In any case where compensation is being paid or is claimed on account of an injury or death, either the employer, or the employee or his dependents, may petition the commission for an order commuting all payments on account of such injury or death that may become due in the future, to a lump sum. Such petition may be granted where it is shown to the satisfaction of the commission that the payment of a lump sum in lieu of future weekly payments, or as an agreed compromise settlement of a disputed claim, will be for the best interests of the person or persons receiving or claiming such compensation, or that the continuance of weekly payments will, as compared with a lump sum payment, entail undue expense or hardship upon the employer liable therefor, or that the person entitled to compensation has removed or is about to remove from the United States. Where such commutation is ordered, the commission shall fix the lump sum to be paid at 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 5% per year with annual rests.

Upon payment of any lump sum approved by the commission, the employer shall be discharged from all further liability on account of said injury or death and be entitled to a duly executed release; upon filing which, or other due proof of payment, the liability of such employer under any agreement, award or decree shall be discharged of record, and the employee accepting the lump sum settlement shall receive no further compensation or other benefits on account of said injury or death under this Act.

R.S.1954, c. 31, § 28.

SUBCHAPTER IV

**ADMINISTRATION; PROCEDURE; REVIEW;
PENALTIES**

Sec.

91. Industrial Accident Commission.
92. Authority of commission; forms and procedure.
93. Investigations; subpoenas; depositions.
94. Approval of compensation or vocational rehabilitation agreement; petition for award.
95. Time for filing petitions.
96. Notice on petitions.
97. Filing of answers.
98. Time and place of hearing.
99. Hearing and decision.
100. Petition for review of incapacity.
101. Petition, decree or agreement as affected by subsequent agreement.
102. Agreement through mistake of fact or fraud.
103. Court decree; appeal.
104. Enforcement or modification of decree.
105. Death of petitioner.
106. Reports by employers.
107. Information from insurance companies.
108. Biennial report of commission.
109. False statements.

§ 91. Industrial Accident Commission

The Industrial Accident Commission, as heretofore established, shall consist of 5 members, 3 of whom shall be men learned in the law and members in good standing of the bar of this State. They shall be appointed by the Governor, with the advice and consent of the Council. One of the commissioners, to be designated as chairman, shall be appointed for the term of 5 years, and the other commissioners for the term of 4 years each. The title of the members which was heretofore "associate legal member" shall be "commissioner". The Commissioner of Labor and Industry and the Commissioner of Insurance shall be members ex officio.

The commissioners so appointed shall hold office for the terms aforesaid, unless removed, and until their successors are appointed and qualified. They shall all have the same authority

and powers, but their respective duties shall be determined by the chairman. They shall be sworn, and for inefficiency, willful neglect of duty or for malfeasance in office may, after notice and hearing, be removed by the Governor and Council. In case of a vacancy occurring through death, resignation or removal, the Governor shall appoint a successor for the whole term of the member whose place he takes, subject to removal. In case the office of chairman becomes vacant, the senior commissioner shall act as chairman until the Governor makes an appointment to fill such vacancy.

The chairman shall receive a salary of \$10,000 per year, and the other commissioners a salary of \$9,000 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 receive their actual, necessary, cash expenses while away from their office on official business of the commission.

The commission shall appoint a clerk and full-time or part-time reporters and such clerical assistance as may be necessary, subject to the Personnel Law.

The commission shall have a seal bearing the words "Industrial Accident Commission of Maine". It shall have its office and keep its records in the State House in Augusta, but may hold sessions at any place within the State.

R.S.1954, c. 31, § 29; 1955, c. 473, § 9; 1957, c. 418, § 10; 1959, c. 361, § 9; 1963, c. 385, § 1.

§ 92. Authority of commission; forms and procedure

The commission shall have general supervision over the administration of this Act, and shall have powers to make rules and regulations not inconsistent with this Act or other laws of the State for the purpose of carrying out the provisions hereof. It may prescribe forms and make suitable orders as to procedure adapted to secure a speedy, efficient and inexpensive disposition of all proceedings. In interpreting this Act it shall construe it liberally and with a view to carrying out its general purpose. The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this Act. It may provide blank forms of reports, agreements, petitions and other forms required.

R.S.1954, c. 31, § 30.

§ 93. Investigations; subpoenas; depositions

1. Investigators. Any commissioner may, when the interests of any of the parties or when the administration of this Act demand, appoint a person to make a full investigation of the circumstances surrounding any industrial accident or any matter connected therewith, and report the same without delay to the office of the commission.

2. Subpoenas. Any commissioner may administer oaths and any commissioner, justice of the peace, notary public or clerk of any Superior Court may issue subpoenas for witnesses and subpoenas duces tecum to compel the production of books, papers and photographs relating to any questions in dispute before the commission or to any matters involved in a hearing. Witness fees in all proceedings under this Act shall be the same as for witnesses before the Superior Court. When a witness, subpoenaed and obliged to attend before the commission or any member thereof, fails to do so without reasonable excuse, the Superior Court or any justice thereof may, on application of the Attorney General made at the written request of a member of the commission, compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

1961, c. 392, § 4.

3. Depositions. Depositions taken for the causes and in the manner mentioned may be used in all hearings under this Act. Any commissioner may issue commissions to take depositions to any United States consul or vice consul, any judge of any court of record in the United States or any foreign country, or to any notary public or justice of the peace in this State for any of the following causes:

- A.** When the deponent resides out of, or is absent from, the State;
- B.** When the deponent is bound to sea, or is about to go out of the State;
- C.** When the deponent is so aged, infirm or sick as to be unable to attend at the place of hearing.

Such deposition shall be taken by written interrogatories to be filed with the said commissioner, and the adverse party shall have 10 days after written notice of such filing to him or his attorney, in which to file cross-interrogatories thereto. If cross-interrogatories are not so filed within 10 days after such notice, the right of cross-examination shall be considered waived.

The deponent shall be duly sworn; and after his answers have been written out, the deposition shall be signed and sworn to by the deponent before the commissioner authorized to take it, and shall by him be sealed up and sent to the Industrial Accident Commission at Augusta.

R.S.1954, c. 31, § 31; 1961, c. 392, § 4.

§ 94. Approval of compensation or vocational rehabilitation agreement; petition for award

If following an injury the employer and the employee reach an agreement in regard to compensation under this Act, a memorandum of such agreement signed by the parties shall be filed in the office of the commission. If the Commissioner of Labor and Industry finds that such agreement is in conformity with the Act, he shall approve the same. In case he shall find that such agreement is not in conformity therewith and shall refuse to approve the same, or if the employer and the employee fail to reach an agreement in regard to compensation, either employee or employer, and when death has resulted from the injury and the dependents of the deceased employee entitled to compensation are, or the apportionment thereof among them is, in dispute, any person in interest may file in the office of the commission a petition for award of compensation, setting forth the names and residences of the parties, the facts relating to the employment at the time of the accident, the time, place and cause of the accident, the knowledge of the employer or notice of the occurrence thereof, the character and extent of the injury and the claims of the petitioner with reference thereto; together with such other facts as may be necessary and proper for the determination of the rights of the petitioner relative to said claims.

If following an injury the employer and the employee reach an agreement in regard to vocational rehabilitation under this Act, a memorandum of such agreement signed by the parties shall be filed in the office of the commission. If any member of the commission finds that such agreement as to vocational rehabilitation is in conformity with the Act, he shall approve the same. In case he shall find that such agreement is not in conformity therewith and shall refuse to approve the same, or if the employer and the employee fail to reach an agreement in regard to vocational rehabilitation, either employee or employer may file in the office of the commission a petition for award of vocational rehabilitation, setting forth the names and residences of the par-

ties, the facts relating to the employment at the time of the accident, the time, place and cause of the accident, the character and extent of the injury, and need of vocational rehabilitation, and the claims of the petitioner with reference thereto; together with such other facts as may be necessary and proper for the determination of the rights of the petitioner relative to said claims.

R.S.1954, c. 31, § 32; 1961, c. 384, § 7.

§ 95. Time for filing petitions

An employee's claim for compensation under this Act shall be barred unless an agreement or a petition as provided in section 94 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.1954, c. 31, § 33; 1957, c. 325.

§ 96. Notice on petitions

Within 4 days after the filing of the petition for award, a copy thereof attested by the clerk of the commission shall be mailed to the other parties named in the petition, or notice be given in such other manner as the commission may determine.

R.S.1954, c. 31, § 34:

§ 97. Filing of answers

Within 15 days after notice of the filing of such petition all the other parties interested in opposition shall file an answer thereto and furnish a copy thereof for the petitioner, which answer shall state specifically the contentions of the opponents with reference to the claim as disclosed by the petition. The commission or any commissioner may grant further time for filing answer, and allow amendments to said petition or answer at any stage of the proceedings. If any party opposing such petition does not file an answer within the time limited, the hearing shall proceed upon the petition.

R.S.1954, c. 31, § 35; 1961, c. 392, § 5.

§ 98. Time and place of hearing

The whole matter shall then be referred to a single commissioner, who shall fix a time for hearing upon at least a 5 days' notice given to all the parties. All hearings shall be held at such towns and cities geographically distributed throughout the State as the commission shall designate. In case the place of hearing so designated is more than 10 miles distant from the place where the accident occurred, the employer shall provide transportation or reimburse the employee for reasonable mileage in traveling within the State to and from said hearing. The amount so allowed for such travel shall be determined by the commissioner or commission and awarded separately in the decree.

R.S.1954, c. 31, § 36; 1961, c. 392, § 6.

§ 99. Hearing and decision

If from the petition and answer there appear to be facts in dispute, the commissioner shall then hear such witnesses as may be presented, or by agreement the claims of both parties as to such facts may be presented by affidavits. If the facts are not in dispute, the parties may file with the commission an agreed statement of facts for a ruling upon the law applicable thereto. From the evidence or statements thus furnished the commissioner shall in a summary manner decide the merits of the controversy. His decision, findings of fact and rulings of law, and any other matters pertinent to the questions so raised shall be filed in the office of the commission, and a copy thereof attested by the clerk of the commission mailed forthwith to all parties interested. His decision, in the absence of fraud, upon all questions of fact shall be final but whenever in a decree the commission expressly rules that any party has or has not sustained the burden of proof cast upon him, the said finding shall not be considered a finding of fact but shall be deemed to be a conclusion of law and shall be reviewable as such.

R.S.1954, c. 31, § 37; 1961, c. 316.

§ 100. Petition for review of incapacity

While compensation is being paid or vocational rehabilitation is being provided under any agreement, award or decree, the incapacity of the injured employee due to the injury, the need or progress of the vocational rehabilitation may from time to time be reviewed by a single commissioner upon the petition of either party upon the grounds that such incapacity has subsequently in-

creased, diminished or ended or that the need of the continuation of vocational rehabilitation has ended. Pending a hearing and final decision upon such petition for review, and except in such cases as the employer and employee may reach a new agreement under section 94, the payment of compensation shall not be decreased or suspended unless and until a certificate of the employer or his insurance carrier is filed with the commission stating that the employee has left the State or that his present whereabouts are unknown, or that he has resumed work, or that he has refused to submit to a medical examination, or unless a certificate of a physician or surgeon is filed with the commission stating that in his opinion from a current examination the employee is able to resume work. Upon such review the commissioner may increase, diminish or discontinue such compensation or vocational rehabilitation in accordance with the facts, as the justice of the case may require. If after compensation or vocational rehabilitation has been discontinued, by decree or approved settlement receipt as provided by section 106, additional compensation or further vocational rehabilitation is claimed by an employee for further period of incapacity, he may file with the commission a petition for further compensation or vocational rehabilitation setting forth his claim therefor, hearing upon which shall be held by a single commissioner. The provisions of sections 96 to 99 as to procedure shall apply to the petitions authorized by this section and by section 65; and said provisions shall apply to the petitions authorized by sections 52, 56, 71 and 102, except that such petitions shall be heard by the commission.

R.S.1954, c. 31, § 38; 1961, c. 290; c. 384, § 8; c. 417, § 91.

§ 101. Petition, decree or agreement as affected by subsequent agreement

If after any petition, except for lump sum settlement under section 71, has been filed the parties themselves reach an agreement as to payment of compensation, the memorandum of which is approved by the Commissioner of Labor and Industry, or as to payment of medical benefits under section 52, the pending petition shall thereupon be dismissed by the commission. The weekly rate of compensation payable for actual incapacity under any decree or approved agreement may be modified at any time by an approved agreement between the parties as to any subsequent period of incapacity.

R.S.1954, c. 31, § 39.

§ 102. Agreement through mistake of fact or fraud

Upon the petition of either party at any time the commission may annul any agreement which has been approved by the Commissioner of Labor and Industry provided it finds that such agreement was entered into through mistake of fact by said petitioner or through fraud. Except in the case of fraud upon his part, an employee shall not be barred by any time limit from filing a proper petition to have the matters covered by such agreement determined in accordance with this Act as though the agreement had not been approved.

R.S.1954, c. 31, § 40.

§ 103. Court decree; appeal

Any party in interest may present copies, certified by the clerk of the commission, of any order or decision of the commission or of any commissioner, or of any memorandum of agreement approved by the Commissioner of Labor and Industry, together with all papers in connection therewith, to the clerk of courts for the county in which the accident occurred; or if the accident occurred without the State, to the clerk of courts for the County of Kennebec. Whereupon any Justice of the Superior Court shall render a pro forma decree in accordance therewith and cause all interested parties to be notified. Such decree shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though rendered in an action in which equitable relief is sought, duly heard and determined by said court, except that there shall be no appeal therefrom upon questions of fact found by said commission or by any commissioner, or where the decree is based upon a memorandum of agreement approved by the Commissioner of Labor and Industry.

Upon any appeal therefrom the proceedings shall be the same as in appeals in actions in which equitable relief is sought and the law court may, after consideration, reverse or modify any decree so made by a justice based upon an erroneous ruling or finding of law. There shall be no appeal from a decree based upon any order or decision of the commission or of any commissioner unless said order or decision has been certified and presented to the court within 20 days after notice of the filing thereof by the commission or by any commissioner; and unless appeal has been taken from such pro forma decree within 10 days after such certified order or decision has been so presented. In cases where after appeal by an employer the original order or decision rendered by the commission or by any commissioner is affirmed, there shall be

added to any amounts payable under said order or decision, the payment of which is delayed by such appeal, interest to the date of payment. In all cases of appeal the law court may order a reasonable allowance to be paid to the employee by the employer for expenses incurred in the proceedings of the appeal including the record, not however to include expenses incurred in other proceedings in the case.

R.S.1954, c. 31, § 41; 1961, c. 317, §§ 65, 66.

§ 104. Enforcement or modification of decree

Any pro forma decree rendered under section 103 shall be enforceable by the Superior Court by any suitable process including execution against the goods, chattels and real estate, and including proceedings for contempt for willful failure or neglect to obey the orders or decrees of the court, or in any other manner that decrees for equitable relief may be enforced. Upon the presentation to it of a certified copy of any subsequent order or decision of the commission or of any commissioner increasing, diminishing, terminating or commuting to a lump sum any payments of compensation on account of said injury, or of any agreement for modification of such compensation approved by the Commissioner of Labor and Industry, the court shall revoke or modify any such pro forma decree based upon such prior order or decision of the commission or of any commissioner, or upon any agreement so approved, to conform to such subsequent order or decision or such approved agreement.

R.S.1954, c. 31, § 42; 1961, c. 317, § 67.

§ 105. Death of petitioner

No proceedings under this Act shall abate because of the death of the petitioner, but may be prosecuted by his legal representatives or by any person entitled to compensation by reason of said death under this Act.

R.S.1954, c. 31, § 43.

§ 106. Reports by employers

Whenever any employee has reported to an employer under the Act any injury by accident arising out of and in the course of his employment which has caused the employee to lose a day's work or has required the services of a physician, or whenever the employer has knowledge of any such injury by accident, every such employer shall within 7 days after said notice or knowledge

make report thereof to the commission, with the average weekly wages or earnings of such employee, together with such other particulars as the commission may require; and shall report whenever the injured employee shall resume his employment, and the amount of his wages or earnings at such time. If at the end of a period of 6 months following the date of injury or the date of amputation of any member, or the date of loss of one or both eyes or the loss of hearing in one or both ears, the employee is still incapacitated, every such employer shall make a report thereof to the commission, on such form as the commission shall prescribe, giving full information as to the date and nature of the original injury and a description of the physical handicap resulting from such injury. Upon receipt of such notice from the employer, or upon any knowledge or notice received prior to such notice, the commission shall forthwith refer such case to the Division of Vocational Rehabilitation of the Department of Education, or in cases of blindness to the Division of Eye Care and Special Services of the Department of Health and Welfare, and may thereafter cooperate and work with those divisions in the matter of rehabilitation of the injured employee. Any employer who willfully neglects or refuses to make any report required by this section shall be subject to a penalty of not more than \$100 for each such neglect or refusal, to be enforced by the commission in a civil action in the name of the State. In the event the employer has sent the report to the insurance carrier for transmission by such insurance carrier to the commission, the insurance carrier willfully neglecting or refusing to transmit the report shall be liable for the said penalty.

Whenever any settlement is made with an injured employee, either by the employer or insurance company, for compensation covering any specified period under an approved agreement or a decree, or covering any period of incapacity, total or partial, that has ended, a duplicate copy of the settlement receipt or agreement signed by said employee showing the total amount of money paid to him for such period or periods shall be filed with the commission, but shall not be binding without its approval.

R.S.1954, c. 31, § 44; 1961, c. 317, § 68; c. 384, § 9; 1963, c. 156, § 5.

§ 107. Information from insurance companies

Every insurance company insuring employers under this Act shall fill out any blanks and answer all questions submitted to it that may relate to policies, premiums, amount of compensation

paid and such other information as the commission or the Insurance Commissioner may deem important, either for the proper administration of this Act or for statistical purposes. Any insurance company which shall refuse to fill out such blanks or answer such questions shall be liable to a forfeiture of \$10 for each day of such refusal, to be enforced by the commission in a civil action in the name of the State. All moneys recovered under this section or section 106, or under sections 21 to 27, shall be paid into the State Treasury and credited to the appropriation for the administration of this Act.

R.S.1954, c. 31, § 45; 1961, c. 317, § 69.

§ 108. Biennial report of commission

The commission shall make a report to the Governor and Council for the biennial period ending December 31st of each even year, giving such statistical information as may be contained in its department in relation to the administration of this Act, particularly with reference to the number of employees under the Act, the number injured, the amount of compensation and other benefits paid and the cost of the same to the employers.

R.S.1954, c. 31, § 46.

§ 109. False statements

If for the purpose of obtaining any benefit or payment under this Act, either for himself or for any other person, anyone willfully makes a false statement or representation, he shall be guilty of a misdemeanor and liable to a fine of not exceeding \$50, and shall forfeit all right which he may have to compensation under this Act.

R.S.1954, c. 31, § 47.