

# MAINE STATE LEGISLATURE

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# ONE HUNDRED AND FIRST LEGISLATURE

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**Legislative Document**

**No. 1362**

H. P. 928

House of Representatives, February 13, 1963

Referred to Committee on Labor. Sent up for concurrence and 1,000 copies ordered printed.

HARVEY R. PEASE, Clerk

Presented by Mr. Ewer of Bangor.

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## STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SIXTY-THREE

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### AN ACT Revising the Workmen's Compensation Act.

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

**Sec. 1. R. S., c. 31, § 4, amended.** Section 4 of chapter 31 of the Revised Statutes, as amended by chapter 343 of the public laws of 1957, is further amended to read as follows:

**'Sec. 4. Section 3 not applicable to certain actions; 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.'~~

**Sec. 2. R. S., c. 31, § 6, sub-§ I, amended.** The 2nd paragraph of subsection I of section 6 of chapter 31 of the Revised Statutes, as repealed and replaced by section 4 of chapter 178 of the public laws of 1961, is amended to read as follows:

**'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 ~~this~~ section 6 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.'**

**Sec. 3. R. S., c. 31, § 6, sub-§ IV, amended.** Subsection IV of section 6 of chapter 31 of the Revised Statutes, as repealed and replaced by section 6 of chapter 178 of the public laws of 1961, is amended to read as follows:

**IV. 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 this section 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 this section, 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.'

**Sec. 4. R. S., c. 31, § 9, amended.** The first and 2nd paragraphs of section 9 of chapter 31 of the Revised Statutes, as amended, are repealed and the following enacted in place thereof:

'An employee injured 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. An injured employee shall have the right to make his own selection of a physician or surgeon authorized to practice as such under the laws of the State, for the services set forth.

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 employer shall then make prompt payment for same provided said costs were necessary and adequate, and the charges therefor reasonable. 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. 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.'

**Sec. 5. R. S., c. 31, § 10, amended.** Section 10 of chapter 31 of the Revised Statutes is amended to read as follows:

'Sec. 10. When compensation payable. ~~No compensation~~ Compensation for incapacity to work shall be payable for from the first 7 days day of incapacity; provided, however, that in case incapacity continues for more than 28 days, compensation shall be allowed from the date of incapacity.'

**Sec. 6. R. S., c. 31, § 11, amended.** The first paragraph of section 11 of chapter 31 of the Revised Statutes, as amended, is repealed and the following enacted in place thereof:

'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. 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 of 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 and legs and an injury to the skull resulting in incurable imbecility or insanity. In the event of such permanent total incapacity, the employer shall pay the employee a weekly compensation equal to  $\frac{2}{3}$  his average weekly wage, earnings, or salary for life. If the said totally incapacitated employee dies, leaving dependents who were dependent upon his earnings at the time of his accident, then payments shall be made to said dependents in accordance with the procedures established by section 15.'

**Sec. 7. R. S., c. 31, § 12, amended.** Section 12 of chapter 31 of the Revised Statutes, as amended, is further amended to read as follows:

'**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 \$39 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 9 and 11.~~

**Sec. 8. R. S., c. 31, § 13, amended.** The first paragraph of section 13 of chapter 31 of the Revised Statutes is repealed and the following enacted in place thereof:

'In addition to the benefits provided for in sections 11 and 12, when an employee sustains an injury which is included in the following schedule, the incapacity in each such case shall be deemed to be total for the period specified and the injured employee shall receive a lump sum payment for said injury which shall be determined by multiplying the average weekly wage, as determined by section 2, subsection IX, by the period of presumed total incapacity hereinafter set forth. The specific periods of presumed total incapacity because of injuries hereinafter specified shall be as follows:'

**Sec. 9. R. S., c. 31, § 15, repealed and replaced.** Section 15 of chapter 31 of the Revised Statutes, as amended, is repealed and the following enacted in place thereof:

'**Sec. 15. Compensation for death of employee; how apportioned.** If death results from the injury, the employer shall pay the dependents of the employee, 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 from the date of death, until such time as provided for in the following paragraph:

If the dependent of the employee to whom compensation will 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 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 a weekly compensation equal to the same proportion of the weekly payments herein provided for the benefit of persons 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.

Sec. 10. R. S., c. 31, § 22, repealed and replaced. Section 22 of chapter 31 of the Revised Statutes, as amended, is repealed and the following enacted in place thereof:

'Sec. 22. Employee may be examined by employer's physician or impartial examiner; to accept proper medical 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 of his own selection present at such examination, whose costs shall be paid by the employer. The employer shall give the employee notice of said right at the time he requests 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 a service which the employer is required to provide under this act, then, upon petition of said employer and hearing before the commission, such employee's rights to compensation shall be forfeited during the period of said infractions if the commission finds that there is adequate cause to do so.'

Sec. 11. R. S., c. 31, § 33, repealed and replaced. Section 33 of chapter 31 of the Revised Statutes, as amended, is repealed and the following enacted in place thereof:

'Sec. 33. Time limitations 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 32 shall be filed within 2 years 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 period because of mistake of fact as to the cause and nature of the injury, he may file said petition within a reasonable time. In case of the death of the employee, there shall be allowed for filing said petition 1 year after such death. No petition of any kind may be filed more than 10 years following an accident.'

Sec. 12. R. S., c. 31, § 38, amended. The 2nd sentence of section 38 of chapter 31 of the Revised Statutes, as last repealed and replaced by section 91 of chapter 417 of the public laws of 1961, is amended to read as follows:

'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 32, 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.'~~

Sec. 13. R. S., c. 31, §§ 47-A and 47-B, additional. Chapter 31 of the Revised Statutes is amended by adding 2 new sections, to be numbered 47-A and 47-B, to read as follows:

'Sec. 47-A. Witness and attorney's fees allowable. When the commission or commissioner finds that an employee has instituted proceedings under this chapter on reasonable grounds and in good faith, the said commission or commissioner may assess the employer costs of witness fees and a reasonable attorney's fee, when in the commission's or commissioner's judgment the said witnesses and the services of the said attorney were necessary to the proper and expeditious disposition of the case.

**Sec. 47-B. Cost of living adjustment; commission to make determination. The commission shall adjust compensation payments being made under this act at the close of each fiscal year to reflect increases or decreases in the cost of living based upon the national cost of living index as determined by the Bureau of Labor Statistics of the United States Department of Labor.'**