

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 1598

H. P. 1162

House of Representatives, March 17, 1971

Referred to Committee on Labor. Sent up for concurrence and ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mr. McTeague of Brunswick.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

AN ACT Creating the Maine Workmen's Disability Insurance Act.

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

R. S., T. 39, c. 7, additional. Title 39 of the Revised Statutes is amended by adding a new chapter 7 to read as follows:

CHAPTER 7

WORKMEN'S DISABILITY INSURANCE ACT

SUBCHAPTER 1

GENERAL PROVISIONS

§ 301. Short title

This chapter shall be known as the "Workmen's Disability Insurance Act"; the phrase "this Act", as used in this chapter, refers thereto.

§ 302. Findings and purpose

The Legislature finds and declares that disabilities resulting from nonoccupational injuries and illness annually cause great hardship and loss to the people of this State. Such loss is occasioned by the fact that during such nonoccupational disabilities, workmen must absorb both the medical expenses incurred by such disabilities and the loss of income.

The Legislature further finds and declares that such nonoccupational disabilities result in a hardship not only to the workmen and the families directly concerned, but to all the people of this State. The burden of supplying goods and services and in providing for the health and welfare of workmen

and their families who have occasioned loss due to nonoccupational disability of such workmen, has historically been born by the people of this State and the communities wherein such workmen reside.

The purpose of this Act is to provide a temporary wage replacement to employees who suffer injury, illness or disease not arising out of nor in the course of any employment and resulting in incapacity or disability.

§ 303. 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. 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 injury or onset of the illness resulting in any disability 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 injury or illness. Except that in the case of piece workers or 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 salaries earned therein by the disabled employee during said immediately preceding year, by the total number of weeks, any part of which the employee worked, during this said period. The week in which employment began, if it began during the week immediately preceding said injury or illness, and the week in which the injury or illness 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 disabled employee cannot reasonably and fairly be applied, said "average weekly wages, earnings or salary" 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 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 in any week concurrently by 2 or more employers, for one of whom he works at one time and another he works at another time, his "average weekly wages" shall be computed separately for each employer under one of the above systems.

E. Where the employer has been accustomed to paying 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 previously received compensation under this Act or chapter 1 shall not preclude compensation for a later disability; but in determining the compensation for such later disability, his "average weekly wages" shall be such sum as will reasonably represent his weekly earning capacity at the time of such later disability, and shall be arrived at according to and subject to the limitations of this section.

2. Benefits. "Benefits" means the money allowance during disability payable to an employee who is eligible to receive such benefits, as provided in this Act.

3. Commission; commissioner. "Commission" shall mean the Industrial Accident Commission created by section 91 and as defined in section 2, subsection 3. "Commissioner" shall mean any member of such commission.

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 disability. The following persons shall be conclusively presumed to be wholly dependent for support upon a diseased 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 disability. A wife living apart from her husband shall produce a 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 disability.

C. A child or children, including adopted and step-children, 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 disability 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 disability. If there is more than one person wholly dependent, the compensation shall be divided equally among them, and the persons partly dependent, if any, shall receive no part thereof during the period in which the 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 de-

pendency. If a dependent is an alien residing outside the United States or the Dominion of Canada, the compensation paid to any such dependent shall be $\frac{1}{2}$ that provided by law.

5. Disability; disabled. "Disability" or "disabled" shall include both mental or physical illness and mental or physical injury. An individual shall be deemed disabled in any day in which, because of his physical and mental condition, he is unable to perform his regular or customary work. Disability during employment means the inability of an employee, as a result of injury or sickness not arising out of and in the course of an employment, to perform the regular duties of his employment or the duties of any other employment which his employer may offer him at his regular wages and which his injury or sickness does not prevent him from performing.

6. Employee. "Employee" shall mean every person in the service of another under contract of hire, express or implied, oral or written, except:

A. Employees or officials of the State, counties, cities, towns, water districts and all other quasi-municipal corporations of a similar character;

B. Every duly elected or appointed executive officer of a charitable, religious, educational or other nonprofit organization;

C. 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;

D. 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. All contracts of hiring in this State, whether the work is to be performed within this State or outside this State, shall be within this Act. Any reference to an employee who has been disabled shall, when the employee is dead, include his legal representatives, dependents and other persons to whom compensation may be payable; and

E. Notwithstanding any other provisions of this Act, any charitable, religious, educational or other nonprofit corporation that may be or become subject to this Act may cause any duly elected or appointed executive officer to be an employee of such corporation by specifically including such executive officer among those to whom such corporation secures payment of compensation in conformity with this Act; and such executive officer shall remain an employee of such corporation under this Act while such payment is so secured. With respect to any such corporation that secures payment of benefits by making a contract of health and accident insurance, specific inclusion of such executive officer in such contract shall cause such officer to be an employee of such corporation under this Act.

7. Employer. "Employer" shall include corporations, firms, partnerships, natural persons, and all other legal entities except the State, counties, water districts, sanitary districts and all other quasi-municipal corporations of a similar nature, cities and towns; 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.

8. Insurance company. "Insurance company" shall mean any health and accident insurance company or association authorized to do business in this State which may issue policies conforming to subsection 9. 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 benefits by insuring such payment under an insurance policy, instead of furnishing satisfactory proof of his ability to pay benefits directly to his employees.

9. Insurance policy. "Insurance policy" shall mean a policy in such form as the Insurance Commissioner approves, issued by any stock or mutual health or accident 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 benefits 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.

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

§ 304. Applicability

This Act shall not apply to any employer who employs:

1. Three or less workmen or operators in the same business, or
2. Any employees engaged in domestic service, or
3. Any employees engaged in agriculture as seasonal or casual laborers.

For purposes of this section, "casual" shall mean, occasional, irregular or incidental; and "seasonal" shall mean farm laborers engaged in agricultural employment beginning at or after the commencement of the planting season and terminating at or before the completion of the harvest season.

SUBCHAPTER II

BENEFITS AND SERVICES; CONTRIBUTIONS;

INSURANCE AND SELF-INSURERS

WAIVER

§ 321. Disability during employment

An employee who becomes disabled by reason of any illness of injury not arising out of nor in the course of any employment shall be paid disability benefits by his employer as provided in this section.

1. Disability benefits shall be paid to an employee for disabilities commencing after the effective date of this Act beginning with the 8th consecu-

tive day of disability and thereafter during the continuance of such disability, subject to the limitations as stated below. Successive period of disability caused by the same or related injury or sickness shall be deemed a single period of disability unless separated by a period of no less than 3 months.

2. During the period of disability the employer shall pay the employee a weekly benefit equal to $\frac{2}{3}$ of the employee's average weekly wages, earnings or salary but not more than $\frac{2}{3}$ of the average weekly wage in the State of Maine as computed by the Employment Security Commission, nor less than \$18 weekly. For any period of disability less than a full week, the benefits payable shall be calculated by dividing the weekly benefit by the number of the employee's normal work days per week and multiplying the quotient by the number of normal work days in such period of disability. The weekly benefit for a disabled employee who is concurrently eligible for benefits in the employment of more than one employer shall be allocated among the employers in the proportion of their respective average weekly wage payments to such employee prior to his disability.

§ 322. Exceptions

No employee shall be entitled to benefits under this Act:

1. For more than 26 weeks during a period of 52 consecutive calendar weeks or during any one period of disability; or

2. For any period of disability during which an employee is not under the care of a physician or for any other reasonable cause established to the satisfaction of the commission; or

3. For any period of disability, caused by or arising in conjunction with a pregnancy, except any such period occurring after return to employment with an employer for a period of 2 consecutive weeks following termination of such pregnancy;

4. For any disability occasioned by the willful intention of the employee to bring about injury to or the sickness of himself or another, or resulting in any injury or sickness sustained in the perpetration by the employee of an illegal act; or

5. For any day of disability during which the employee performed work for remuneration or profit; or

6. For any day of disability for which the employee is entitled to receive from his employer, or from a fund to which the employer has contributed, remuneration or maintenance in amount equal to or greater than that to which he would be entitled under this Act; but any voluntary contribution or aid which an employer may make to an employee shall not be considered as continued remuneration or maintenance for this purpose; or

7. For any disability due to an act of war declared or undeclared, if such act shall occur after the effective date of this Act; or

8. For any disability commencing before the employee becomes eligible for benefits hereunder or commencing prior to the effective date of this Act,

but shall not preclude benefits for recurrence after the effective date of this Act, of a disability commencing prior thereto.

§ 323. Nonduplication of benefits

No employee shall be entitled to disability benefits under this Act:

1. With respect to any week for which payments are received under the unemployment insurance law of this State or any similar law of this State or any other state or of the United States;

2. With respect to any week for which payments are received under the workmen's compensation law of this State or any other state or of the United States.

§ 324. Payment of benefits

Benefits provided under this Act shall be paid periodically and promptly and, except as to a contested period of disability, without any decision by the commission. The first payment of benefits shall be due on the 14th day of disability and benefits for that period shall be paid directly to the employee within 4 business days thereafter or within 4 business days after the filing of required proof of claim, whichever is later. Thereafter benefits shall be due and payable weekly and in like manner. The commission may determine the benefits may be paid monthly or semimonthly if wages were so paid, or may authorized deviation from the foregoing requirements to facilitate prompt payment of benefits.

In any case where benefits are being paid or are claimed, either the employer, or the employee or his dependents, may petition the commission for an order commuting all payments on account of such disability 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 benefits, 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 benefits has removed or is about to remove from the United States. Upon payment of any lump sum approved by the commission, the employer shall be discharged from all further liability on account of said disability 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 benefits for such disability under this Act.

§ 325. Payment of benefits

Every employer shall provide disability benefits to his employees in one or more of the following ways:

1. By insuring and keeping insured the payment of such benefits under a health and accident insurance policy. The insurance company shall file with

the commission notice, in such form as the commission approves, of the issuance of any such policy to an 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 a health and accident insurance policy from another insurance company, or has otherwise secured the payment of benefits as provided in this section, then 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.

2. By furnishing satisfactory proof to the commission of his solvency and financial ability to pay the required benefits, and deposit cash, satisfactory securities or a surety bond in such sum as the commission may deem necessary, conditioned on the payment by the employer of his obligations under this Act and in form approved by the commission; such bond to run to the Treasurer of the State and his successor in office. In case of cash being deposited, it shall be placed at interest by the Treasurer of the State, and the accumulation of interest on said cash or securities so deposited shall be paid to the employer depositing the same.

3. By a plan or agreement in existence on the effective date of this Act or by any new plan or agreement. Subject to the approval of the commission, any employer may maintain with his employees in lieu of the benefits or insurance required by this Act, the system which was in effect between such employer and employees on the effective date of this Act, or such new system as may be agreed upon by the employer and employees. No such substitute system shall be approved unless it confers benefits upon such employees at least equivalent to the benefits provided by this Act. Any such plan or agreement may be extended, with or without modification, provided the benefits under such plan or agreement, as extended or modified, shall be found by the commission to be at least as favorable as the benefits provided by this Act. Any such plan or agreement or any extension thereof 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 other substantial reason it fails to accomplish the purposes of this Act. An employer who is authorized to utilize such plan or agreement under this subsection 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.

4. If any plan or agreement authorized under subsection 3 covers less than all of the employees of an employer, this Act shall apply with respect to the remaining employees not covered under such plan or agreement.

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

Every insurance company issuing accident and health insurance policies covering the payment of benefits provided for in this Act shall file with the Insurance Commissioner a copy of the form of such policies, and no policy

shall be issued until he has approved said form. It shall file its classification of risks in 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 disability 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.

§ 327. Voluntary coverage

Any employer not required by this Act to provide the payment of disability benefits to his employees, or to any class or classes thereof, may become subject to this Act or bring within this Act such employees or class or classes thereof by voluntarily electing to provide for the payment of such benefits in one or more of the ways set forth in section 325. Upon giving notice to the commission of such election to provide benefits, all the provisions of this Act shall become and continue applicable as if the employer were otherwise subject to this Act. The employer shall give notice of such election to his employees in such form and manner as may be prescribed by the commission. The obligation to continue as subject to this Act, with respect to employees for whom provision of benefits is not required under this Act, may be discontinued by such employer on 90 days notice to the commission in writing and to his employees, after he has provided for payment of benefits for not less than one year and with such provision for payment of obligations incurred on and prior to the termination date as the commission may approve.

§ 328. Disability benefit rights inalienable

Any agreement by an employee to waive his rights under this Act shall be void. Disability benefits payable under this Act shall not be assigned or released, except as provided in this Act, and shall be exempt from all claims of creditors, from levy execution and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived.

§ 329. Benefits unpaid at death

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

§ 330. Guardians and other representatives for minors and incompetents

In case any disabled employee is a minor or is mentally incompetent or, where death results from the injury or illness occasioning such disability, in

case any of his dependents entitled to benefits are minors or mentally incompetent and 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 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.

§ 331. Preference of claim

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 their 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.

SUBCHAPTER III

NOTICE; ADMINISTRATION; APPEALS; PENALTIES

§ 351. Notice

No proceedings for benefits under this Act, except as provided, shall be maintained unless a notice of the disability shall have been given within 30 days after the date of the onset thereof. Such notice shall include the time, place and cause of the injury or illness resulting in such disability, together with the name and address of the employee. It shall be given by the employee 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 an official thereof; or to any employee designated by the employer as one to whom such reports should be made.

A notice given under this section 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 disability, 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, or 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.

§ 352. Medical examinations of employees

Every employee shall after an injury or after or during an illness resulting in disability at all reasonable times during 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 during the disability appoint a competent and impartial physician or surgeon to act as medical examiner, the reasonable fees of which shall be fixed 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 disabled employee in order to determine the nature, extent and probable duration of the disability. 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 the 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 benefits shall be forfeited during the period of said infractions if the commission finds that there is adequate cause to do so.

§ 353. Administration

The Industrial Accident Commission, as established by section 91, 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 this State for the purpose of carrying out this Act. It may prescribe forms or make suitable orders as to procedure adapted to secure 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.

§ 354. Determination of contested claims for disability benefits

In any case where the parties are not able to reach an agreement in regard to benefits, or the commission refuses to approve an agreement under section 356, either the employer or the employee, or where death has resulted from such disability, the dependents of such employee who are entitled to benefits, or where the apportionment among them is in dispute, any such person in interest may file with the commission a petition for award of benefits. Such petition shall set forth the names and residences of the parties, the facts relating to the disability, including time and place of occurrence, nature and length of the disability, the knowledge of the employee of such disability or notice thereof, and the claims of the petitioner with reference thereto; togeth-

er with such facts as may be necessary and proper for the determination of the rights of the petitioner relative to said claims.

The commission shall have full power and authority to determine all issues in relation to every such claim for disability benefits required or provided under this chapter, and shall file its decision in the office of the commission. Upon such filing, the commission shall send to the parties a copy of the decision. Either party may present evidence and be represented by counsel at any hearing on such claim. The provisions for investigations, subpoenas, depositions, time for filing petitions on contested claims, notice on petitions, filing or answers, time and place of hearing and hearing and decision as enacted by sections 93, 95, 96, 97, 98, 99, respectively, shall govern the conduct of hearings prescribed by this section insofar as they are applicable.

§ 355. Modification of commission decisions or orders

Upon its own motion or upon the application of any party in interest, the commission may at any time review any decision or order and, on such review, make a decision ending, diminishing or increasing the benefits previously ordered, and shall state the reason therefor. Upon the filing of such decision, the chairman shall send to each of the parties a copy thereof. No such review shall affect any previous decision as regards any monies already paid, except that a decision increasing the benefit rate may be made effective from the date of commencement of disability, and except that, if any part of the benefits due is unpaid, a decision decreasing the benefit rate may be made effective from the commencement of disability, and any payments made prior thereto in excess of such decreased rate shall be deducted from future benefits in such manner and by such method as may be determined by the commission.

§ 356. Approval of agreements

If following any injury or illness resulting in a disability the employer and the employee reach an agreement in regard to benefits 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, the agreement shall be void and unenforceable and the parties shall make such new agreement as may be necessary or shall proceed pursuant to section 354.

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

If after any petition, except for lump sum settlement under section 324, has been filed, the parties themselves reach an agreement as to payment, the memorandum of which is approved by the Commissioner of Labor and Industry, the pending petition shall thereupon be dismissed by the commission. The weekly rate of benefits payable for disability 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 disability.

§ 358. 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 determination to have the matters covered by such agreement determined in accordance with this Act as though the agreement had not been approved.

§ 359. 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 party resides. 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 commissioner 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 proceeding 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.

§ 360. Enforcement or modification of decree

Any pro forma decree rendered under section 359 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 decree of the court, or in any other manner that decrees for equitable relief may be enforced. 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 payment or benefits on account of disability or of any agreement or modification of such benefits 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 agreements so approved, to conform to such subsequent order or decision or such approved agreement.

§ 361. 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 benefits by reason of said death under this Act.

§ 362. Information from insurance companies

Every insurance company insuring employers under this Act shall fill out any blanks and answer any questions submitted to it that may relate to policies, premiums, amount of benefits 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 monies recovered under this section shall be paid into the State Treasury and credited to the appropriation for the administration of this Act.

§ 363. Noncompliance

Whenever an employer does not comply with this Act by providing for the payment of disability benefits to any of his employees in one or more of the ways provided in section 325, then such employer shall be fully and directly liable to each of such employees for the payment of benefits provided by this Act.

§ 364. Penalties

Any employer who fails to make provisions for payment of disability benefits as required by this Act shall be guilty of a misdemeanor and upon conviction be punished by a fine of not more than \$1,000. Where the employer is a corporation, the president, secretary, treasurer or officers exercising corresponding functions shall each be guilty of a misdemeanor.

Any person who willfully makes a false statement of misrepresentation or who fails to disclose material facts for the purpose of obtaining any benefit or payment under this Act or for the purpose of influencing any determination regarding any benefit payment either for himself or for any other person shall be guilty of a misdemeanor and upon conviction be punished by a fine of not more than \$50, and shall forfeit all rights which he may have to benefits under this Act.

§ 365. Witness and attorney's fees

When the commission finds that an employee has instituted proceedings under this chapter on reasonable grounds and in good faith or that the employee through or under his insurance company has instituted proceedings under this Act, the commission may assess the employer costs of witness fees and reasonable attorney's fees, when in the commission's or commissioner's judgment the said witness and the services of the said attorney were necessary to the proper and expeditious disposition of the case.

STATEMENT OF FACT

The purpose of this Act is as stated in the findings and purpose. This bill would provide for a temporary wage replacement to employees who suffer non-occupational injury and illnesses resulting in a disability to such employees. At the present time there is no provision in Maine Statutes to provide that employees suffering disability off-the-job may receive any compensation for such disability. It is a severe hardship to such persons and to their families when such disability occurs.

This bill provides that all employees in the State make a minimum contribution to a disability insurance program. Employers would be required to purchase insurance or be self-insurers and would provide whatever cost is required beyond the weekly contributions of their employees. With the exception of the contributions by employees, the plan is essentially the same as that found in the Maine Workmen's Compensation Law. A disabled workman would be entitled to a wage replacement amount to $\frac{2}{3}$ of his weekly wage for up to six months in any one year. The Act would not entail the creation of any new administrative body, since it provides that it shall be administered by the Industrial Accident Commission. The procedures for handling contested claims for disability benefits are almost identical to those provided under the Maine Workmen's Compensation Law. This bill entails no appropriation, because it would be administered entirely by the Industrial Accident Commission, and it is anticipated that such administration would not require additional State funds.