

MAINE STATE LEGISLATURE

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SEVENTY-SEVENTH LEGISLATURE

SENATE

NO. 5

In Senate, Jan. 19, 1915.

Ordered, that five hundred copies be printed and that the same be referred to the Committee on Judiciary.

Committee of Reference.

Presented by Mr. Cole of York.

STATE OF MAINE

IN THE YEAR OF OUR LORD ONE THOUSAND NINE
HUNDRED AND FIFTEEN

AN ACT Relative to Compensation to Employees for Personal Injuries Received in the Course of Their Employment and to the Prevention of Such Injuries.

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

Section 1. The following words and phrases as used in 2 this act shall, unless a different meaning is plainly required 3 by the context, have the following meaning:

I. "Employer" shall include corporations, partnerships, 5 natural persons, the state, counties, water districts and all 6 other quasi municipal corporations of a similar nature, cities 7 and also such towns as vote to accept the provisions of this

8 act, and if employer is insured, it includes the insurer so far
9 as practicable.

11 II. "Employee" shall include every person in the service
11 of another under any contract of hire, express or implied,
12 oral or written, except: (a) farm laborers; (b) domestic
13 servants; (c) persons whose employment is but casual, or
14 is not in the usual course of the trade, business, profession
15 or occupation of his employer; (d) officials of the state,
16 counties, cities, towns or water districts and other quasi
17 municipal corporations of a similar character. Policemen
18 and firemen shall be deemed employees within the meaning
19 of this act. If, however, any policeman or fireman claims
20 compensation under this act, there shall be deducted from
21 such compensation any sum which such policeman, fireman
22 or other person may be entitled to receive for any pension
23 or other benefit fund to which the state or municipal body
24 may contribute. Any reference to an employee who has
25 been injured shall, when the employee is dead, also include
26 his legal representatives, dependents and other persons to
27 whom compensation may be payable.

29 III. "Assenting employer" shall include all employers
29 who have complied with the provisions of Section 6 hereof,
30 and to whom a certificate authorized by said section has
31 been issued, but only so long as such certificate remains in
32 force.

34 IV. "Commissioner" shall mean the Commissioner of La-
bor and Industry of the State of Maine.

V. "Industrial Accident Insurance Policy" shall mean a
36 policy in such form as the Insurance Commissioner of the
37 State of Maine approves, issued by any stock or mutual cas-
38 ual insurance company that may be now or hereafter author-
39 ized to do business in this state, which in substance and ef-
40 fect guarantees the payment of the compensation, medical
41 and hospital services, and expense of sickness and burial
42 herein provided for, in such installments, at such time or
43 times, and to such person or persons and upon such condi-
44 tions as in this act provided. Whenever a policy or certifi-
45 cate of renewal thereof is filed as herein provided, a copy
46 of such policy certified by the Insurance Commissioner of
47 the State of Maine or his deputy, shall be admissible as evi-
48 dence in any legal proceeding wherein the original would be
49 admissible.

VI. "Insurance Company" shall mean any casual insur-
51 ance company authorized to do business in the State of
52 Maine, which may issue policies conforming to the pro-
53 visions of the paragraph next preceding. Whenever in this
54 act relating to procedure the word "Insurance Company" is
55 used, it shall be held to apply only to cases in which the
56 employer has elected to file such policy, instead of furnish-
57 ing satisfactory proof of his ability to pay compensations
58 and benefits hereinafter provided direct to his employees.

VII. "Representatives" may include executors, adminis-
60 trators, and the dependents of deceased employees. Pay-

61 ments may be made to dependents directly, or to executors or
62 administrators. If payments are made to the latter, they
63 shall forthwith pay the same to the dependents as the same
64 are hereinafter defined.

VIII. "Dependents" shall mean members of the em-
66 ployee's family or next of kin, who are wholly or partly
67 dependent upon the earnings of the employee for support at
68 the time of the injury. The following persons shall be con-
69 consively presumed to be wholly dependent for support upon
70 a deceased employee :

(a) A wife upon a husband with whom she lives, or upon
72 whom she is dependent at the time of his death.

(b) A husband upon a wife with whom he lives, or upon
74 whom he is dependent at the time of her death.

(c) A child or children, including adopted and step-
76 children, under the age of eighteen years (or over said age,
77 but physically or mentally incapacitated from earning) upon
78 the parent with whom he is or they are living, or upon whom
79 he is or they are dependent at the time of the death of said
80 parent, there being no surviving dependent parent. In case
81 there is more than one child thus dependent, the compensa-
82 tion shall be divided equally among them.

In all cases questions of entire or partial dependency
84 shall be determined in accordance with the fact, as the fact
85 may have been at the time of the injury. In such other
86 cases, if there is more than one person wholly dependent

87 the compensation shall be divided equally among them, and
88 persons partly dependent, if any, shall receive no part there-
89 of during the period in which compensation is paid to per-
90 sons wholly dependent. If there is anyone wholly depend-
91 ent and more than one person partly dependent, the com-
92 pensation shall be divided among them according to the rela-
93 tive extent of their dependency. If a dependent is an alien
94 residing outside of the United States, or of the Dominion
95 of Canada, the compensation paid to any such dependent
96 shall be one-half that hereinafter provided in case of the
97 death of an employee.

IX. "Average weekly wages, earnings or salary" of an
99 injured employee shall be computed as follows:

(a) If the injured employee has worked in the same em-
101 ployment in which he was working at the time of the acci-
102 dent, whether for the same employer or not, during sub-
103 stantially the whole of the year immediately preceding his
104 injury, his "average weekly wages" shall be three hundred
105 times the average daily wages, earnings or salary which he
106 has earned in such employment during the days when so
107 employed and working the number of hours constituting
108 a full working day in such employment, divided by fifty-
109 two. But where the employee is employed concurrently
110 by two or more employers, for one of whom he works at
111 one time and for another he works at another time, his
112 "average weekly wages" shall be computed as if the wages,

113 earnings or salary received by him from all such employers
114 were wages, earnings or salary earned in the employment
115 of the employer for whom he was working at the time of
116 the accident.

(b) If the injured employee has not so worked in such
118 employment during substantially the whole of such imme-
119 diately preceding year, his "average weekly wages" shall
120 be three hundred times the average daily wages, earnings
121 or salary which an employee of the same class working
122 substantially the whole of such immediately preceding year
123 in the same or a similar employment, in the same or a neigh-
124 boring place, has earned in such employment during the
125 days when so employed and working the number of hours
126 constituting a full working day in such employment, divided
127 by fifty-two.

(c) In cases where the foregoing methods of arriving at
129 the "average weekly wages, earnings or salary" of the
130 injured employee cannot reasonably and fairly be applied,
131 such "average weekly wages" shall be taken at such sum
132 as, having regard to the previous wages, earnings or salary
133 of the injured employee, and of other employees of the
134 same or most similar class, working in the same or most
135 similar employment in the same or a neighboring locality,
136 shall reasonably represent the weekly earning capacity of
137 the injured employee at the time of the accident in the em-
138 ployment in which he was working at such time.

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

(e) The fact that an employee has suffered a previous
145 injury, or received compensation therefor, shall not pre-
146 clude compensation for a later injury or for death; but in
147 determining the compensation for the later injury or death,
148 his "average weekly wages" shall be such sum as will rea-
149 sonably represent his weekly earning capacity at the time
150 of the later injury, in the employment in which he was
151 working at such time, and shall be arrived at according to
152 and subject to the limitations of the previous provisions of
153 this section.

In the sections of this act relating to notices and procedure,
155 all powers and rights granted to, or duties and obligations
156 imposed upon employers or employees, shall inure to the
157 benefit of and may be exercised by guardians of minors or
158 other incapacitated persons and the legal representatives
159 of deceased persons.

Sect. 2. In an action to recover damages for personal in-
2 jury sustained by an employee in the course of his employ-
3 ment, or for death resulting from personal injury so sus-
4 tained, it shall not be a defense (a) that the employee was
5 negligent; (b) that the injury was caused by the negligence

6 of a fellow employee; (c) that the employee had assumed
7 the risk of the injury.

Sect. 3. The provisions of this act shall not apply to em-
2 ployers who employ five or less workmen or operatives reg-
3 ularly in the same business, and in case of the employer be-
4 ing engaged in more than one kind of business, in one of
5 which he employs five or more workmen or operatives reg-
6 ularly, and in another employs five or less workmen or oper-
7 atives, the fact that he elects to become subject to the pro-
8 visions of this act shall not bring him within the provisions
9 of it as to any such business in which he employs five or less
10 workmen or operatives, and at the time of electing to be-
11 come subject to the provisions of this act, if engaged in
12 more than one kind of business, he shall specify the business
13 or businesses in which he is engaged and concerning which
14 he desires to come under the provisions hereof.

Sect. 4. The provisions of this act shall not apply to ac-
2 tions to recover damages for personal injuries or for death
3 resulting from personal injuries sustained by employees en-
4 gaged in domestic service or agriculture.

Sect. 5. The provisions of Section 2 shall not apply to
2 actions to recover damages for personal injuries or for death
3 resulting from personal injuries sustained by employees of
4 an employer who has elected to become subject to this act
5 in the manner provided in Section 6 hereof. In the case
6 of personal injury sustained by an employee in the course
7 of his employment or of death resulting from personal in-

8 jury so sustained, assenting employers shall be exempt from
9 suits either at common law or under Section 9, Chapter 89,
10 of the Revised Statutes, or Chapter 258 of the Public Laws
11 of 1909.

Sect. 6. I. Any employer desiring to become an assent-
2 ing employer as herein provided, may file with the commis-
3 sioner of labor and industry at his office in Augusta, his
4 written assent in such form as the commissioner approves
5 and also file with said commissioner a copy of an industrial
6 accident insurance policy in any stock or mutual insurance
7 company authorized to do business in the state of Maine,
8 said policy being stamped with the approval of the insurance
9 commissioner of said State of Maine.

Before any such industrial accident insurance policy shall
11 be filed with the commissioner of labor and industry, it shall
12 be first presented to the insurance commissioner of the State
13 of Maine and be approved by him as to form and determine
14 whether or not the company issuing such policy is qualified
15 to do business in this state.

II. Any employer desiring to become an assenting em-
17 ployer as herein provided, may file with the commissioner
18 his written assent in such form as said commissioner ap-
19 proves, together with a certificate from the insurance com-
20 missioner of the State of Maine that said employer has fur-
21 nished satisfactory proof to said insurance commissioner
22 of his solvency and financial ability to pay the compensation

23 and benefits herein provided and make such payments direct
24 to his employees. Such certificates shall be issued by the
25 insurance commissioner only upon being furnished satisfac-
26 tory proof of the solvency and financial ability of an em-
27 ployer to pay the compensation and benefits herein pro-
28 vided, and upon the deposit of cash, satisfactory securities or
29 a bond, as the insurance commissioner may determine, such
30 bond to run to the state treasurer and his successor in office
31 in such sum as said insurance commissioner may determine
32 and shall be conditioned upon the faithful performance of
33 all the provisions of this act relating to the payment of com-
34 pensations and benefits to any injured employee. In case of
35 cash being deposited it shall be placed at interest by the state
36 treasurer and the accumulation of interest on said cash or
37 any securities so deposited shall be paid to the employer
38 depositing the same.

III. Upon the filing of such assent the commissioner shall
40 issue to such employer a certificate stating that such em-
41 ployer has conformed to the provisions of this act and set-
42 ting forth the date on which the policy filed under paragraph
43 II expires. The certificate thus issued shall remain in full
44 force until the date of the expiration of such policy, or un-
45 til the employer assenting under paragraph II shall notify
46 the commissioner that he withdraws his assent, or files an
47 industrial accident policy in place of the securities so de-
48 posited by him.

A notice in such form as the commissioner approves, stating that the employer has conformed to the provisions of this act and the date of the expiration of the policy filed, together with such further matters as the commissioner determines, shall be posted by the employer and kept posted by him at some place in each of his mills, factories or place of business, conspicuous and accessible to his employees. For wilful failure to post such notices, the employer shall be subject to a forfeiture of ten dollars per day for every day of such wilful neglect. Such failure to so post said notices shall not, however, affect the rights or liabilities of the employer or the employee hereunder.

Sect. 7. An employee of an employer who shall have elected to become subject to the provisions of this act as provided in section 6 of this act shall be held to have waived his right of action at common law to recover damages for personal injuries; also under section 9 of chapter 89, R. S., or chapter 258 of the public laws of 1909, 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 ten days thereafter have filed a copy thereof with the commissioner of labor and industry, or, if the contract of hire was made before the employer so elected, if the employee shall not have given the said notice and filed the same with said commissioner within ten days after notice by the employer, as above provided, of such election, and such waiver

15 shall continue in force for the term of one year, and there-
16 after without further act on his part, for successive terms
17 of one year, each, unless such employee shall at least sixty
18 days prior to the expiration of such first or any succeeding
19 year, file with the said commissioner a notice in writing to
20 the effect that he desires to claim his said right of action at
21 common law and within ten days thereafter shall give notice
22 thereof to his employer. A minor working at an age legally
23 permitted under the laws of this state shall be deemed *sui*
24 *juris* for the purpose of this act and no other person shall
25 have any cause of action or right to compensation for an
26 injury to such minor employee except as expressly provided
27 in this act; but if said minor shall have a parent living or
28 a guardian, such parent or guardian, as the case may be,
29 may give the notice and file a copy of the same as herein
30 provided by this section, and such notice shall bind the minor
31 in the same manner that adult employees are bound under
32 the provisions of this act. In case no such notice is given,
33 such minor shall be held to have waived his right of action
34 at common law, or under the statutes above referred to, to
35 recover damages for personal injuries. Any employee, or
36 the parent or guardian of any minor employee, who has
37 given notice to the employer that he claimed his right of
38 action at common law, or under the statutes above referred
39 to, may waive such claim by a notice in writing which shall
40 take effect five days after the delivery to the employer or
41 his agent.

Sect. 8. No compensation shall be allowed for the injury
2 or death of an employee where it is proved that his injury
3 or death was occasioned by his wilful intention to bring
4 about the injury or death of himself or of another, or that
5 the same resulted from his intoxication while on duty.

Sect. 9. No compensation except as provided by section
2 10 of this act shall be paid under this act for any injury
3 which does not incapacitate the employee for a period of at
4 least two weeks from earning full wages, but, if such in-
5 capacity extends beyond the period of two weeks, compen-
6 sation shall begin on the fifteenth day after the injury.

Sect. 10. During the first two weeks after the injury the
2 employer shall furnish reasonable medical and hospital serv-
3 ices, and medicines when they are needed, but the amount
4 of the charge for such services and medicines shall not ex-
5 ceed the sum of thirty dollars, unless in case of surgical
6 operations being required, and the employer and employee
7 being unable to agree upon the same, the amount to be
8 allowed for such medical services or medicines shall be fixed
9 by any justice of the supreme judicial court in term time
10 or vacation the court upon petition by either party setting
11 forth the facts.

Sect. 11. If an employee who has not given notice of his
2 claim of common law or statutory rights of action, or who
3 has given such notice and has waived the same, as provided
4 in section 7 of this act, receives a personal injury by acci-
5 dent arising out of and in the course of his employment,

6 he shall be paid compensation as hereinafter provided, by
7 the employer who shall have elected to become subject to
8 the provisions of this act.

Sect. 12. If death results from the injury, the employer
2 shall pay the dependents of the employee wholly dependent
3 upon his earnings for support at the time of his injury a
4 weekly payment equal to one-half his average weekly wages,
5 earnings or salary, but not more than ten dollars nor less
6 than four dollars a week, for a period of three hundred
7 weeks from the date of the injury: Provided, however, that
8 if the dependent of the employee to whom the compensation
9 shall be payable upon his death is the widow of such em-
10 ployee, upon her death the compensation thereafter payable
11 under this act shall be paid to the child or children of the
12 deceased employee, including adopted and step-children, un-
13 der the age of eighteen years, or over said age but physically
14 or mentally incapacitated from earning, dependent upon the
15 widow at the time of her death. In case there is more than
16 one child thus dependent, the compensation shall be divided
17 equally among them. If the employee leaves dependents
18 only partly dependent upon his earnings for support at the
19 time of his injury, the employer shall pay such dependents
20 for a period of three hundred weeks from the date of the
21 injury a weekly compensation equal to the same proportion
22 of the weekly payments herein provided for the benefit of
23 persons wholly dependent as the amount contributed annu-

24 ally by the employee to such partial dependents bears to the
25 annual earnings of the deceased at the time of injury. When
26 weekly payments have been made to an injured employee
27 before his death, the compensation to dependents shall begin
28 from the date of the last of such payments, but shall not
29 continue more than three hundred weeks from the date of
30 the injury. Provided, however, that if the deceased leaves
31 no dependents at the time of the injury, the employer shall
32 not be liable to pay compensation under this act except as
33 specifically provided in section 13 of this act.

Sect. 13. If the employee dies as a result of the injury
2 leaving no dependents at the time of the injury, the em-
3 ployer shall pay, in addition to any compensation provided
4 for in this act, the reasonable expense of his last sickness
5 and burial, which shall not exceed two hundred dollars.

Sect. 14. While the incapacity for work resulting from
2 the injury is total, the employer shall pay the injured em-
3 ployee a weekly compensation equal to one-half his average
4 weekly wages, earnings or salary, but not more than ten
5 dollars nor less than four dollars a week; and in no case
6 shall the period covered by such compensation be greater
7 than five hundred weeks from the date of the injury, nor
8 the amount more than three thousand dollars. In the fol-
9 lowing cases it shall, for the purposes of this act, be con-
10 clusively presumed that the injury resulted in permanent
11 total disability, to wit: The total and irrevocable loss of
12 sight in both eyes, the loss of both feet at or above the

13 ankle, the loss of both hands at or above the wrist, the loss
14 of one hand and one foot, an injury to the spine resulting
15 in permanent and complete paralysis of the legs or arms,
16 and an injury to the skull resulting in incurable imbecility
17 or insanity.

Sect. 15. While the incapacity for work resulting from
2 the injury is partial, the employer shall pay the injured em-
3 ployee a weekly compensation equal to one-half the differ-
4 ence between his average weekly wages, earnings or salary,
5 before the injury and the average weekly wages, earnings
6 or salary which he is able to earn thereafter, but not more
7 than ten dollars a week; and in no case shall the period
8 covered by such compensation be greater than three hun-
9 dred weeks from the date of the injury.

Sect. 16. In cases included in the following schedule
2 the disability in each such case shall be deemed to be total
3 for the period specified and after such specified period, if
4 there be a partial incapacity for work resulting from the
5 injury specified, the employee shall receive compensation
6 while such partial incapacity continues under the provisions
7 of section 15, but in no case shall compensation continue
8 more than three hundred weeks after the injury. The com-
9 pensation to be paid for the injuries hereinafter specified
10 shall be as follows, to wit:

For the loss of a thumb, one-half the average weekly wages
12 during fifty weeks.

For the loss of the first finger, commonly called the index
14 finger, one-half the average weekly wages during thirty
15 weeks.

For the loss of the second finger, one-half the average
17 weekly wages during twenty-five weeks.

For the loss of the third finger, one-half the average weekly
19 wages during eighteen weeks.

For the loss of the fourth finger, commonly called the little
21 finger, one-half the average weekly wages during fifteen
22 weeks.

The loss of the first phalange of the thumb or of any finger,
24 shall be considered to be equal to the loss of one-half of
25 said thumb or finger, and the compensation shall be one-
26 half the amount above specified. The loss of more than
27 one phalange shall be considered as a loss of the entire
28 thumb or finger; provided, however, that in no case shall
29 the amount received for the loss of more than one finger
30 exceed the amount specified in this schedule for the loss of
31 a hand.

For the loss of the great toe, one-half the average weekly
33 wages during twenty-five weeks.

For the loss of one of the toes other than the great toe,
35 one-half the average weekly wages during ten weeks.

The loss of the first phalange of any toe shall be consid-
37 ered to be equal to the loss of one-half of said toe and the
38 compensation shall be one-half of the amount above speci-
39 fied.

The loss of more than one phalange shall be considered as
41 the loss of the entire toe.

For the loss of a hand, one-half the average weekly wages
43 during one hundred weeks.

For the loss of an arm, or any part above the wrist, one-
45 half the average weekly wages during one hundred and fifty
46 weeks.

For the loss of a leg, or any part above the ankle, one-half
48 the average weekly wages during one hundred and fifty
49 weeks.

For the loss of a foot, one-half the average weekly wages
51 for one hundred weeks.

For the loss of an eye or the reduction of the sight of an
53 eye, with glasses, to one-tenth of the normal vision, one-
54 half the average weekly wages during one hundred weeks.

The amounts specified in this section are all subject to the
56 same limitations as to maximum and minimum amounts,
57 that is, of not more than ten and not less than four dollars
58 a week, as provided for total or partial incapacity.

Sect. 17. No proceedings for compensation for an injury
2 under this act shall be maintained unless a notice of the
3 injury shall have been given to the employer within thirty
4 days after the happening thereof; and unless the claim for
5 compensation with respect to such injury shall have been
6 made within one year after the occurrence of the same, or,
7 in case of his physical or mental incapacity, within one year

8 after death or the removal of such physical or mental in-
9 capacity.

Sect. 18. Such notice shall be in writing and shall state
2 in ordinary language the nature, time, place and cause of
3 the injury, and the name and address of the person injured
4 and shall be signed by the person injured, or by a person in
5 his behalf, or, in the event of his death, by his legal repre-
6 sentatives, or by a dependent, or by a person in behalf of
7 either.

Sect. 19. Such notice shall be served upon the employer,
2 or upon one employer, if there are more employers than
3 one, or, if the employer is a corporation, upon any officer
4 or agent upon whom process may be served, by delivering
5 the same to the person to whom it is to be served, or by
6 leaving it at his last known residence or place of business,
7 or by sending it by registered mail addressed to the person
8 to be served, or in the case of a corporation, to the corpo-
9 ration itself, at his or its last known residence or place of
10 business; and such mailing of the notice shall constitute
11 completed service.

Sect. 20. A notice given under the provisions of this act
2 shall not be held invalid or insufficient by reason of any
3 inaccuracy in stating the nature, time, place or cause of the
4 injury, or the name and address of the person injured, un-
5 less it is shown that it was the intention to mislead and the
6 employer was in fact misled thereby. Want of notice shall

7 not be a bar to proceedings under this act, if it be shown
8 that the employer or his agent had knowledge of the injury,
9 or that failure to give such notice was due to accident, mis-
10 take or unforeseen cause.

Sect. 21. The employee shall after the injury, at all rea-
2 sonable times during the continuance of his disability, if so
3 requested by his employer, submit himself to an examina-
4 tion by a physician or surgeon authorized to practice medi-
5 cine under the laws of this state, to be selected and paid for
6 by the employer. The employee shall have the right to have
7 a physician or surgeon selected and paid for by himself,
8 present at such examination.

Any justice of the supreme judicial court may at any time
10 after the injury on petition of the employer or employee,
11 appoint a competent and impartial physician or surgeon to
12 act as a medical examiner, and the reasonable fees of such
13 medical examiner as fixed by the justice appointing him,
14 shall be paid by the party moving for such appointment.

Such medical examiner being first duly sworn to the faith-
16 ful performance of his duties before the justice appointing
17 him, or the clerk of the court, shall thereupon and as often
18 as necessary, examine such injured employee in order to
19 determine the nature, extent and probable duration of the
20 injury. Such medical examiner shall file a report of every
21 examination made of such employee in the office of the com-
22 missioner of labor and industry, and a copy thereof certified

23 by said commissioner may be produced in evidence in any
24 hearing or proceedings to determine the amount of com-
25 pensation due said employee under the provisions of this
26 act. If such employee refuses to submit himself to exam-
27 ination provided for in this act, or in any way obstructs any
28 such examination, his rights to compensation shall be sus-
29 pended and his compensation during such period of sus-
30 pension may be forfeited.

Sect. 22. No savings or insurance of the injured employee,
2 independent of this act, shall be taken into consideration in
3 determining the compensation to be paid hereunder, nor
4 shall benefits derived from any other source than the em-
5 ployer be considered in fixing the compensation under this
6 act.

Sect. 23. In case an injured employee is mentally incom-
2 petent, or, where death results from the injury, in case any
3 of his dependents entitled to compensation hereunder are
4 mentally incompetent or minors at the time when any right,
5 privilege or election accrues to him or them under this act,
6 his guardian, or next friend may, in his behalf, claim and
7 exercise such right, privilege or election, and no limitation
8 of time in this act provided shall run so long as such incom-
9 petent or minor has no guardian.

Sect. 24. No agreement by an employee, except as pro-
2 vided in section 30, to waive his rights to compensation under
3 this act shall be valid.

Sect. 25. No claims for compensation under this act shall

2 be assignable, or subject to attachment, or liable in any way
3 for debts.

Sect. 26. Employers, who hire workmen within this state
2 to work outside of the state, may agree with such workmen
3 that the remedies under this act shall be exclusive as re-
4 gards injuries received outside this state by accident arising
5 out of and in the course of such employment; and all con-
6 tracts of hiring in this state shall be presumed to include
7 such an agreement.

Sect. 27. When any injury for which compensation is
2 payable under this act shall have been sustained under cir-
3 cumstances creating in some other person than the employer
4 a legal liability to pay damages in respect thereto, the in-
5 jured employee may, at his option, either claim compensa-
6 tion under this act or obtain damages from or proceed at
7 law against such other person to recover damages; and if
8 compensation is claimed and awarded under this act, any
9 employer having paid the compensation or having become
10 liable therefor shall be subrogated to the rights of the in-
11 jured employee to recover against that person, provided,
12 if the employer shall recover from such other person dam-
13 ages in excess of the compensation already paid or awarded
14 to be paid under this act, then any such excess shall be paid
15 to the injured employee less the employer's expenses and
16 costs of action.

Sect. 28. The claim for compensation under this act, and

2 any decree on any such claim, shall be entitled to a prefer-
3 ence over the unsecured debts of the employer hereafter
4 contracted to the same amount as the wages of labor are
5 now preferred by the laws of this state; but nothing herein
6 shall be construed as impairing any lien which the employee
7 may have acquired.

Sect. 29. In case payments have continued for not less
2 than six months either party may, upon due notice to the
3 other party, petition the supreme judicial court for an order
4 commuting the future payments to a lump sum. Such peti-
5 tion shall be considered by the court and may be summarily
6 granted where it is shown to the satisfaction of the court
7 that the payment of a lump sum in lieu of future weekly
8 payments will be for the best interest of the person or
9 persons receiving or dependent upon such compensation, or
10 that the continuance of weekly payments will, as compared
11 with lump-sum payments, entail undue expense or undue
12 hardship upon the employer liable therefor, or that the per-
13 son entitled to compensation has removed or is about to
14 remove from the United States. Where the commutation
15 is ordered, the court shall fix the lump sum to be paid at
16 an amount which will equal the total sum of the probable
17 future payments, capitalized at their present value upon the
18 basis of interest calculated at five per centum per annum
19 with annual rests. Upon payment of such amount the em-
20 ployer shall be discharged from all further liability on

21 account of the injury or death, and be entitled to a duly
22 executed release, upon filing which, or other due proof of
23 payment, the liability of such employer under any agree-
24 ment, award, findings, or decree shall be discharged of
25 record.

Sect. 30. If the employer and employee reach an agree-
2 ment in regard to compensation under this act, a memo-
3 randum of such agreement signed by the parties shall be
4 filed in the office of the commissioner of labor and industry.
5 If the commissioner upon advice of the attorney general,
6 who shall at all times furnish such legal assistance in the
7 interpretation of this act as said commissioner may require,
8 finds that such agreement is in conformity with the pro-
9 visions of this act, he shall approve the same and record
10 it in a book kept for that purpose. In case the commis-
11 sioner, with the advice of the attorney general, shall find
12 that any such agreement is not in conformity with the pro-
13 visions of this act and shall refuse to approve the same,
14 or if the employer and employee fail to reach an agree-
15 ment in regard to compensation under this act, either em-
16 ployer or employee; and when death has resulted from the
17 injury and the dependents of the deceased employee en-
18 titled to compensation are, or the apportionment thereof
19 among them is in dispute, any person in interest, may file
20 in the office of the clerk of the supreme judicial court in
21 the county in which the employer or employee resides, or

22 the business of the employer is located, a petition in the
23 nature of a petition in equity, setting forth the names and
24 residences of the parties, the facts relating to the employ-
25 ment at the time of the injury, the cause, extent and char-
26 acter of the injury and the knowledge of the employer or
27 notice of the occurrence of the injury, and if an agreement
28 had been reached between the parties which had not been
29 approved by the commissioner, the form of such agreement
30 and such other facts as may be necessary and proper for
31 the information of the court, and shall state the matter in
32 dispute and the claims of the petitioner with reference
33 thereto.

Sect. 31. Within four days after the filing of the peti-
2 tion, a copy thereof attested by the clerk of the court in
3 which the same is filed, shall be served upon the other par-
4 ties named in the petition.

Sect. 32. Within ten days after the filing of such peti-
2 tion, all the other parties interested as defendants shall file
3 an answer to said petition and furnish a copy thereof to
4 the petitioner, which answer shall state the claims of the
5 defendants with reference to the matter in dispute as dis-
6 closed by the petition. No other pleadings than the peti-
7 tion and answer shall be required to bring the case to a
8 hearing for final determination. The court may grant fur-
9 ther time for filing answer and allow amendments to said
10 petition and answer at any stage of the proceedings. If
11 the defendant does not file an answer the case shall pro-

12 ceed without formal default or decree *pro confesso*. If
13 the defendant be an infant or person under disability, the
14 court may appoint a guardian *ad litem* for such infant or
15 person under disability. Such guardian *ad litem* may be
16 appointed at any time after service of the copy referred
17 to in section 29 upon motion of any party, after notice
18 given of such notice, and an opportunity to said infant or
19 person under disability to be heard in regard to the choice
20 of said guardian *ad litem*. The guardian *ad litem* so ap-
21 pointed shall then file the answer required by this section.

Sect. 33. The case may then be set for hearing upon
2 petition and answer on motion of either party at any time
3 upon a three days' notice given to the other party.

Sect. 34. If from the petition and answer there appear
2 to be facts in dispute, the court shall then hear such wit-
3 nesses as may be presented by each party, or may refer
4 the case to a master to take evidence relating to the facts
5 in dispute, or by agreement the claims of both parties as
6 to the facts in dispute may be presented by affidavits. The
7 expense of taking the evidence before a master, including
8 that of a stenographer if the court deems one necessary
9 and shall so order, shall be borne by the county in which
10 the original petition is filed. From the evidence thus fur-
11 nished the court shall, in a summary manner, decide the
12 merits of the controversy. His decision shall be filed in
13 writing with the clerk and a decree shall be entered thereon.
14 Such decree shall be enforceable by any suitable process,

15 including execution against the goods, chattels and real
16 estate, and including proceedings for contempt for wilful
17 failure or neglect to obey the provisions of said decree, or
18 in any other manner that decrees in equity may be enforced.
19 The decree of the court shall contain findings of fact which
20 in the absence of fraud shall be final and conclusive. The
21 court may award as costs the actual expenditures or such
22 part thereof as to the court shall seem meet, but not in-
23 cluding counsel fees, and shall include such costs in its
24 decree. The court may refuse to award costs and no costs
25 shall be awarded against an infant or person under dis-
26 ability or against a guardian *ad litem*. The court may pre-
27 scribe forms and make suitable orders as to procedure
28 adapted to secure a speedy, efficient and inexpensive dis-
29 position of all proceedings under this act; and in inter-
30 preting this act the court shall construe it liberally and with
31 a view to carrying out its general purpose. The rule that
32 statutes in derogation of the common law are to be strictly
33 construed shall have no application to this act.

Sect. 35. An agreement between employer and employee
2 filed with the commissioner of labor and industry and ap-
3 proved by him, shall have the same effect as a decision of
4 the court, and a copy thereof certified to by said commis-
5 sioner and filed with the clerk of the court of the county
6 in which either the employer or employee resides, or where
7 the business of the employer is located, shall be enforce-
8 able by the supreme judicial court by the same processes

9 that its decrees are enforced under section 32, or in equity.

Sect. 36. Any person aggrieved by the final decree of
2 the court under this act, or by any proceeding or ruling
3 prior to the final decree, the appellant first having his ob-
4 jections noted to any ruling on matter of law to which he
5 objects made during the progress of the trial at the time
6 such ruling was made, may appeal to the law court, where-
7 upon the appellant shall take the following steps:

(a) Within ten days after entry of said final decree he
9 shall file a claim of appeal and, if a transcript of the testi-
10 mony and rulings or any part thereof be desired, a written
11 request therefor.

(b) Within such time as the justice who heard the peti-
13 tion, or, in case of the inability to act from any cause within
14 such time as any other justice thereof shall fix, whether
15 by original fixing of the time, or by extension thereof, or
16 by a new fixing after any expiration thereof, the appellant
17 shall file reasons of appeal stating specifically all the ques-
18 tions of law or equity decided adversely to him which he
19 desires to include in his reasons of appeal, together with a
20 transcript of as much of the testimony and rulings as may
21 be required. The court upon motion may allow amend-
22 ments of said reasons of appeal. Upon the filing of said
23 reasons of appeal and transcript, the clerk of the court shall
24 present the transcript to the justice who heard the cause
25 for allowance. The justice after hearing and examination,

26 shall restore the transcript to the files of the clerk with a
27 certificate of his action thereon made within twenty days
28 after filing the transcript. In other respects and in any
29 particulars not expressly covered by this section, the course
30 of proceedings in such an appeal shall be the same as pro-
31 vided in appeals from decrees in equity under chapter 79
32 of the revised statutes.

Upon the restoration of the transcript to the files, or, if
34 there be no transcript, then upon the filing of the reasons
35 of appeal, the clerk of the court shall certify the cause and
36 all papers to the next term of said law court.

Sect. 37. The claim of an appeal shall suspend the opera-
2 tion of the decree appealed from, but, in case of default
3 in taking the procedure required, such suspension shall cease,
4 and the court upon motion of any party shall proceed as if
5 no claim of appeal had been made, unless it be made to
6 appear to the court that the default no longer exists.

Sect. 38. The law court may on such appeal affirm, re-
2 verse or modify the decree to the court below or remand
3 the cause for further proceedings as it deems proper.

Sect. 39. No process for the execution of a final decree
2 of the court from which an appeal may be taken shall issue
3 until the expiration of ten days after the entry thereof,
4 unless all parties against whom such decree is made waives
5 an appeal by a writing filed with the clerk or by causing
6 an entry thereof to be made on the docket.

Sect. 40. If, in the court of the proceedings in any cause,

2 any question of law shall arise which in the opinion of the
3 court is of such doubt and importance, and so affects the
4 merits of the controversy, that it ought to be determined
5 by the court before further proceedings, the court may
6 certify such question to the law court for that purpose,
7 and stay all further proceedings except such as are neces-
8 sary to preserve the rights of the parties.

Sect. 41. At any time before the expiration of two years
2 from the date of the approval of an agreement by the com-
3 missioner, or the entry of a decree fixing compensation, but
4 not afterwards, and before the expiration of the period
5 for which compensation has been fixed by such agreement
6 or decree, but not afterwards, any agreement, award, find-
7 ings or decree may be from time to time reviewed by the
8 court upon the application of either party, after due notice
9 to the other party, upon the ground that the incapacity of
10 the injured employee has subsequently ended, increased or
11 diminished. Upon such review the court may increase,
12 diminish, or discontinue the compensation from the date
13 of the application for review, in accordance with the facts,
14 or make such other order as the justice of the case may
15 require, but shall order no change of the status existing
16 prior to the application for review. The finding of the
17 court upon such review shall be served on the parties and
18 filed with the clerk of the court having jurisdiction, in like
19 time and manner and subject to like disposition as in the
20 case of original decrees; provided that an agreement for

21 compensation may be modified at any time by a subsequent
22 agreement between the parties approved by the commis-
23 sioner in the same manner as original agreements in regard
24 to compensation are required to be approved by the pro-
25 visions of section 30 of this act.

Sect. 42. The court may prescribe forms and make suit-
2 able orders as to procedure adapted to secure a speedy,
3 efficient and inexpensive disposition of all proceedings un-
4 der this act; and in interpreting this act the court shall
5 construe it liberally and with a view to carrying out its
6 general purpose. The rule that statutes in derogation of
7 the common law are to be strictly construed shall have no
8 application to this act.

Sect. 43. No proceedings under this act shall abate be-
2 cause of the death of the petitioner, but may be prosecuted
3 by his legal representative or by any person entitled to com-
4 pensation by reason of said death, under the provisions of
5 this act.

Sect. 44. An employee's claim for compensation under
2 this act shall be barred unless an agreement or a petition,
3 as provided in section 30 shall be filed within two years
4 after the occurrence of the injury, or, in case of the death
5 of the employee, or in the event of his physical or mental
6 incapacity, within two years after the death of the employee
7 or the removal of such physical or mental incapacity.

Sect. 45. If an employee receiving a weekly payment un-

2 der this act shall cease to reside in the state, or, if his resi-
3 dence at the time of the accident is in an adjoining state,
4 the court, upon application of either party, may, in its dis-
5 cretion, having regard to the welfare of the employee and
6 the convenience of the employer, order such payment to
7 be made monthly or quarterly instead of weekly.

Sect. 46. All questions arising under this act, if not set-
2 tled by agreement of the parties interested therein, shall,
3 except as otherwise herein provided, be determined by the
4 supreme judicial court.

Sect. 47. If any part or section of this act be decided by
2 the courts to be unconstitutional or invalid, the same shall
3 not affect the validity of the act as a whole, or any part
4 thereof which can be given effect without the part so de-
5 cided to be unconstitutional or invalid.

Sect. 48. If for the purpose of obtaining any benefit or
2 payment under the provisions of this act, either for himself
3 or for any other person, any one wilfully makes a false
4 statement or representation, he shall be guilty of a mis-
5 demeanor and liable to a fine of not exceeding fifty dol-
6 lars, and he shall forfeit all right to compensation under
7 this act after conviction for such offense.

Sect. 49. The provisions of this act shall not apply to
2 injuries sustained, or accidents which occur, prior to the
3 taking effect hereof.

Sect. 50. The commissioner of labor and industry shall

2 have authority to provide blank forms of notices, agree-
3 ments and other forms required in his department under
4 this act; also to employ an additional clerk at a salary not
5 to exceed _____ dollars, which shall be paid
6 in monthly installments.

Sect. 51. All acts and parts of acts inconsistent with this
2 act are hereby repealed.

Sect. 52. This act may be cited as the Workmen's Com-
2 pensation Act.