

MAINE STATE LEGISLATURE

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EIGHTY-FOURTH LEGISLATURE

Senate Document

No. 273

S. P. 576

In Senate, February 28, 1929.

Taken from the table on motion by Senator Oakes of Cumberland and on further motion by same Senator referred to Committee on Judiciary and 1000 copies ordered printed. Sent down for concurrence.

ROYDEN V. BROWN, Secretary.

Presented by Senator Oakes of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD ONE THOUSAND NINE
HUNDRED AND TWENTY-NINE

AN ACT to Revise the Workmen's Compensation Act.

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

Chapter two hundred thirty-eight of the public laws of
2 nineteen hundred nineteen, known as the "Workmen's Com-
3 pensation Act," as amended by chapter two hundred twenty-
4 two of the public laws of nineteen hundred twenty-one, by
5 chapter two hundred one of the public laws of nineteen
6 hundred twenty-five, and by chapters one hundred fifty-
7 eight and two hundred fifty-two of the public laws of nine-

8 teen hundred twenty-seven, is hereby further amended, so
9 that as amended it shall read as follows:

‘Section 1. The first forty-eight sections of this chapter
2 shall be known, and may be cited and referred to in pro-
3 ceedings and agreements thereunder, as “The Workmen’s
4 Compensation Act;” the phrase “this act,” as used in said
5 sections, refers thereto.

Sect. 2. The following words and phrases as used in the
2 first forty-eight sections of this chapter shall, unless a dif-
3 ferent meaning is plainly required by the context, have the
4 following meaning:

I. “Employer” shall include corporations, partnerships,
2 natural persons, the state, counties, water districts and all
3 other quasi-municipal corporations of a similar nature, cities,
4 and also such towns as vote to accept the provisions of this
5 act; and if the employer is insured, it also includes the in-
6 surer unless the contrary intent is apparent from the con-
7 text or it is inconsistent with the purposes of this act.

II. “Employee” shall include every person in the service
2 of another under any contract of hire, express or implied,
3 oral or written, except: (a) persons engaged in maritime
4 employment, or in interstate or foreign commerce, who are
5 within the exclusive jurisdiction of admiralty law or the
6 laws of the United States; (b) any person whose employ-
7 ment is not in the usual course of the trade, business, pro-
8 fession or occupation of his employer. Employers who hire
9 workmen within this state to work outside the state, may

10 agree with such workmen that the remedies under this act
11 shall be exclusive as regards injuries received outside this
12 state by accident arising out of and in the course of such
13 employment; and all contracts of hiring in this state shall
14 be presumed to include such agreement. Any reference to
15 an employee who has been injured shall, when the employee
16 is dead, also include his legal representatives, dependents,
17 and other persons to whom compensation may be payable.

III. "Assenting employer" shall include all private em-
2 ployers who have complied with the provisions of section
3 six hereof and to whom a certificate authorized by said
4 section has been issued, but only so long as such certificate
5 remains in force. It shall also include all towns voting
6 to accept the provisions of the act. This act shall be com-
7 pulsory as to the state, counties, cities, water districts and
8 all other quasi-municipal corporations of a similar nature;
9 but the provisions of said section six shall not apply thereto
10 or to assenting towns.

IV. "Commission" shall mean the industrial accident
2 commission created by section twenty-eight hereof; except
3 that as to hearings on petitions authorized by sections nine,
4 fourteen, twenty-seven and thirty-nine it shall mean any
5 two or more members thereof designated from time to time
6 by the chairman. "Commissioner" shall mean any member
7 of the commission appointed under said section twenty-eight.
8 "Reviewing board" shall mean any three members of the

9 commission designated as such from time to time by the
10 chairman.

V. "Industrial Accident Insurance Policy" shall mean a
2 policy in such form as the insurance commissioner of the
3 state of Maine approves, issued by any stock or mutual
4 casualty insurance company or association that may now
5 or hereafter be authorized to do business in this state, which
6 in substance and effect guarantees the payment of the com-
7 pensation, medical and hospital services, and expenses of
8 burial herein provided for, in such installments, at such time
9 or times, and to such person or persons and upon such
10 conditions as in this act provided. Whenever a copy of a
11 policy is filed as herein provided, such copy certified by the
12 insurance commissioner shall be admissible as evidence in
13 any legal proceeding wherein the original would be ad-
14 missible.

VI. "Insurance Company" shall mean any casualty in-
2 surance company authorized to do business in the state of
3 Maine which may issue policies conforming to the provisions
4 of the preceding paragraph. Whenever in this act relating
5 to procedure the words "insurance company" are used they
6 shall apply only to cases in which the employer has elected
7 to file such policy, instead of furnishing satisfactory proof
8 of his ability to pay compensation and benefits hereinafter
9 provided direct to his employees.

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

3 ments may be made to dependents directly, or to executors
4 or administrators. If payments are made to the latter, they
5 shall forthwith pay the same to the dependents as the same
6 are hereinafter defined.

VIII. "Dependents" shall mean members of the em-
2 ployee's family or next of kin who are wholly or partly
3 dependent upon the earnings of the employee for support
4 at the time of the accident. The following persons shall
5 be conclusively presumed to be wholly dependent for sup-
6 port upon a deceased employee:

(a) A wife upon a husband with whom she lives, or from
2 whom she is living apart for a justifiable cause or because
3 he has deserted her, or upon whom she is actually depend-
4 ent at the time of the accident.

(b) A husband upon a wife with whom he lives, or upon
2 whom he is actually dependent at the time of the accident.

(c) A child or children, including adopted and step-
2 children under the age of eighteen years (or over said age,
3 but physically or mentally incapacitated from earning) upon
4 the parent with whom he is or they are living, or upon
5 whom he is or they are actually dependent at the time of
6 the accident to said parent, there being no surviving de-
7 pendent natural parent. In case there is more than one
8 child thus dependent, the compensation shall be divided
9 equally among them.

In all other cases questions of total or partial dependency
2 shall be determined in accordance with the fact, as the fact

3 may have been at the time of the accident. If there is more
4 than one person wholly dependent, the compensation shall
5 be divided equally among them, and persons partly depend-
6 ent, if any, shall receive no part thereof during the period
7 in which compensation is paid to persons wholly dependent.
8 If there is no one wholly dependent and more than one
9 person partly dependent, the compensation shall be divided
10 among them according to the relative extent of their de-
11 pendency. If a dependent is an alien residing outside of
12 the United States or of the Dominion of Canada, the com-
13 pensation paid to any such dependent shall be one-half that
14 hereinafter provided in case of the death of an employee.

IX. (a) "Average weekly wages, earnings or salary" of
2 an injured employee shall be taken as the amount which
3 he was receiving at the time of the accident for the hours
4 and days constituting a full working week in the business
5 or employment in which he was working at such time, pro-
6 vided such business or employment had continued for at
7 least two hundred fifty full working days during the year
8 immediately preceding such accident.

(b) In case such business or employment had not so con-
2 tinued for such two hundred fifty full working days, the
3 average wages, earnings or salary shall be determined by
4 dividing the entire amount of wages or salary earned therein
5 by the injured employee during said immediately preceding
6 year, by the total number of weeks employed during the
7 same period.

(c) In cases where the foregoing methods of arriving at
2 the “average weekly wages, earnings or salary” of the in-
3 jured employee cannot reasonably and fairly be applied,
4 such “average weekly wages” shall be taken at such sum
5 as, having regard to the previous wages, earnings or salary
6 of the injured employee and of other employees of the same
7 or most similar class, working in the same or most similar
8 employment in the same or a neighboring locality, shall
9 reasonably represent the weekly earning capacity of the in-
10 jured employee at the time of the accident in the employ-
11 ment in which he was working at such time.

(d) Where the employee is employed regularly during
2 the ordinary working hours concurrently by two or more
3 employers, for one of whom he works at one time and for
4 another he works at another time, his “average weekly
5 wages” shall be computed as if the wages, earnings or sal-
6 ary received by him from all such employers, were wages,
7 earnings or salary earned in the employment of the em-
8 ployer for whom he was working at the time of the accident.

(e) Where the employer has been accustomed to pay to
2 the employee a sum to cover any special expense incurred
3 by said employee by the nature of his employment, the sum
4 so paid shall not be reckoned as part of the employee’s
5 wages, earnings or salary.

(f) The fact that an employee has suffered a previous
2 injury or received compensation therefor, shall not preclude
3 compensation for a later injury or for death; but in deter-

4 mining the compensation for such later injury or death,
5 his "average weekly wages" shall be such sum as will rea-
6 sonably represent his weekly earning capacity at the time
7 of such later injury in the employment in which he was
8 working at such time, and shall be arrived at according to
9 and subject to the limitations of the previous provisions of
10 this section.

Sect. 3. In an action to recover damages for personal
2 injuries sustained by an employee in the course of his em-
3 ployment, or for death resulting from personal injury so
4 sustained, it shall not be a defense to an employer, except
5 as hereinafter specified, (a) that the employee was negli-
6 gent; (b) that the injury was caused by the negligence of
7 a fellow employee; (c) that the employee has assumed the
8 risk of the injury.

Sect. 4. The provisions of section three shall not apply
2 to employers who employ three or less workmen or opera-
3 tives regularly in the same business. Said provisions shall
4 not apply to actions to recover damages for personal in-
5 juries or for death resulting from personal injuries sus-
6 tained by employees engaged in domestic service or in agri-
7 culture; or in the operations of cutting, hauling or driving
8 logs, or in work incidental thereto. Any such logging oper-
9 ations, however, incidental to any business conducted by an
10 assenting employer shall be presumed to be covered by his
11 assent to the act as to such business unless expressly ex-
12 cluded in such assent.

Sect. 5. The provisions of said section three shall also
2 not apply to actions to recover damages for personal in-
3 juries or for death resulting from personal injuries sus-
4 tained by employees of an employer who has assented to
5 become subject to the provisions of this act. Assenting
6 employers, except as hereinafter provided by section seven,
7 shall be exempt from suits because of such injuries either
8 at common law or under section nine of chapter ninety-
9 two of the revised statutes, or under sections fifty-one to
10 fifty-eight, both inclusive, of chapter fifty of the revised
11 statutes as renumbered by section fifty of chapter two hun-
12 dred thirty-eight of the public laws of nineteen hundred
13 nineteen.

If an employer at the time of so assenting is engaged in
2 more than one kind of business, he shall specify the busi-
3 ness or businesses in which he is engaged and as to which
4 he desires to come under the provisions hereof. Election
5 by him to come under the act as to one or more businesses
6 does not, except as provided by the preceding section, bring
7 him under the act as to other businesses not so specified.

Sect. 6. I. Any private employer desiring to become an
2 assenting employer as herein provided shall file with the
3 commission at its office in Augusta his written assent in
4 such form as the commission approves, and may also file a
5 copy of an industrial accident insurance policy, said policy
6 being stamped with the approval of the insurance commis-
7 sioner.

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

Such written assent when once filed shall continue in force without renewal during the life of said original policy or during the life of any subsequent policy or policies in renewal of said original policy, provided a copy thereof is filed previous to the expiration of any immediately preceding policy so that there shall be no interim between

7 policies or between copies thereof kept on file with the com-
8 mission. In case there shall be such interim, then a new
9 assent must be filed with the policy terminating the in-
10 term. There shall be no interim however provided copy
11 of any renewal policy is received by the commission by the
12 next business day following the expiration of any imme-
13 diately preceding policy.

II. Any employer desiring to become an assenting em-
2 ployer as self-insurer may, in lieu of filing an insurance
3 policy as above provided, furnish satisfactory proof to the
4 commission of his solvency and financial ability to pay the
5 compensation and benefits herein provided, and also deposit
6 cash, satisfactory securities or a surety bond, in such sum
7 as the commission may determine; such bond to run to the
8 treasurer of state and his successor in office, and to be con-
9 ditional upon the faithful performance of all the provisions
10 of this act relating to the payment of compensation and
11 benefits to any injured employee. In case of cash being
12 deposited it shall be placed at interest by the treasurer of
13 state, and the accumulation of interest on said cash or se-
14 curities so deposited shall be paid to the employer deposit-
15 ing the same. Provided, however, that the commission may
16 at any time in its discretion deny to an assenting employer
17 the right to continue in the exercise of the option granted
18 by this paragraph.

III. Upon the filing of such assent and complying with
2 the provisions of paragraph I or II of this section, the com-

3 mission shall issue to such employer a certificate stating that
4 such employer has conformed to the provisions of this act,
5 and setting forth the date on which the policy filed under
6 paragraph I expires. The certificate thus issued shall re-
7 main in full force until the date of the expiration of such
8 policy or renewal thereof, or until the employer shall notify
9 the commission that he withdraws his assent or has can-
10 celled such policy; or until a certificate issued to a self-
11 insuring employer under paragraph II is withdrawn by the
12 commission, or such employer files an industrial accident
13 policy in place of the securities so deposited by him.

IV. Subject to the approval of the commission, any em-
2 ployer may continue with his employees in lieu of the com-
3 pensation, benefits and insurance provided by this act the
4 system thereof which was used by such employer on the
5 first day of January, nineteen hundred fifteen. No such
6 substitute system however shall be approved unless it con-
7 fers benefits upon injured employees at least equivalent to
8 the benefits provided by this act, nor if it requires con-
9 tributions from the employees, unless it confers benefits in
10 addition to those provided under this act at least commen-
11 surate with such contributions. Such substitute system may
12 be terminated by the commission on reasonable notice and
13 hearing to the interested parties if it shall appear that the
14 same is not fairly administered, or if its operation shall
15 disclose latent defects threatening its solvency, or if for
16 any substantial reason it fails to accomplish the purposes

17 of this act. An employer who is authorized to substitute
18 a plan under the provisions of this section shall give his
19 employees notice thereof in a form to be prescribed by the
20 commission, and a statement of the plan approved shall be
21 filed with the commission.

V. A notice in such form as the commission approves,
2 stating that the employer has conformed to the provisions
3 of this act, together with such further matters as the com-
4 mission determines, shall be posted by the employer and
5 kept posted by him at some place in each of his mills, fac-
6 tories or places of business, conspicuous and accessible to
7 his employees. For wilful failure to post such notices, the
8 employer shall be liable to a forfeiture of ten dollars for
9 each day of such wilful neglect, to be enforced by the com-
10 mission in an action of debt in the name of the state.

Sect. 7. An employee of an employer who shall have
2 assented to become subject to the provisions of this act shall
3 be held to have waived his right of action at common law
4 to recover damages for personal injuries, also under the
5 statutes specified in section five hereof, if he shall not have
6 given his employer at the time of his contract of hire notice
7 in writing that he claimed such right, and within ten days
8 thereafter have filed a copy thereof with the commission;
9 or, if the contract of hire was made before the employer
10 so elected, if the employee shall not have given the said
11 notice and filed the same with said commission within ten
12 days after notice by the employer, as above provided, of

13 such assent. Such waiver shall continue in force for the
14 term of one year, and thereafter without further act on
15 his part for successive terms of one year each, unless such
16 employee shall at least sixty days prior to the expiration
17 of such first or any succeeding year, file with the said com-
18 mission a notice in writing to the effect that he desires to
19 claim his said right of action at common law, and within
20 ten days thereafter shall give notice thereof to his employer.

A minor working at an age legally permitted under the
2 laws of this state shall be deemed sui juris for the purpose
3 of this act, and no other person shall have any cause of
4 action or right to compensation for an injury to such minor
5 employee except as expressly provided in this act; but if
6 said minor shall have a parent living or a guardian, such
7 parent or guardian, as the case may be, may give the notice
8 and file a copy of the same as provided by this section, and
9 such notice shall bind the minor in the same manner that
10 adult employees are bound under the provisions hereof. In
11 case no such notice is given, such minor shall be held to
12 have waived his right of action at common law or under
13 the statutes above referred to, to recover damages for per-
14 sonal injuries.

Any employee, or the parent or guardian of any minor
2 employee, who has given notice to the employer that he
3 claims his right of action at common law or under the stat-
4 utes aforesaid, may waive such claim by a notice in writing

5 which shall take effect five days after the delivery to the
6 employer or his agent.

Sect. 8. 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 pro-
4 vided in the preceding section, receives a personal injury
5 by accident arising out of and in the course of his employ-
6 ment, he shall be paid compensation and furnished medical
7 services, as hereinafter provided, by the employer who shall
8 have assented to become subject to the provisions of this
9 act.

Sect. 9. Following an accident the employer shall prompt-
2 ly furnish proper medical, surgical and hospital services,
3 nursing, medicines and mechanical surgical aids, and arti-
4 ficial limbs, eyes and teeth when they are needed. The
5 period during which such services and aids are to be fur-
6 nished shall not exceed three hundred weeks from the date
7 of the accident, nor shall the amount to be paid therefor
8 exceed five thousand dollars. In case of emergency or for
9 other justifiable cause the employee shall have the right to
10 select a physician other than the one provided by the em-
11 ployer, and his services shall be paid by the employer pro-
12 vided that they were necessary and adequate and the charges
13 therefor are reasonable. Whenever the parties are unable
14 to agree upon the amounts to be paid by the employer for
15 the services and aids aforesaid, such amounts shall be fixed
16 by the commission upon petition of the employee, or of the

17 insurance company or self-insuring employer, setting forth
18 the facts.

Sect. 10. No compensation or other benefits shall be al-
2 lowed for the injury or death of an employee where it is
3 proved that such was occasioned by his wilful intention to
4 bring about the injury or death of himself or of another,
5 or that the same resulted from his intoxication while on
6 duty. This provision as to intoxication shall not apply,
7 however, if the employer knew or in the exercise of ordi-
8 nary care might have known that the employee was intoxi-
9 cated or that he was in the habit of becoming intoxicated
10 while on duty.

Sect. 11. No compensation for incapacity to work shall
2 be paid during the first seven days after the accident. If
3 incapacity exists at the expiration of seven days, compen-
4 sation shall begin on the eighth day. If incapacity arises
5 after seven days, compensation shall begin on the date such
6 incapacity begins. In computing the seven-day waiting
7 period, so called, the day of the accident shall be counted
8 as one.

Sect. 12. 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 two-thirds his aver-
4 age weekly wages, earnings or salary, but not more than
5 eighteen dollars nor less than six dollars a week; and in no
6 case shall the period covered by such compensation be
7 greater than five hundred weeks from the eighth day fol-

8 lowing the accident, nor the amount more than six thou-
9 sand dollars. In the following cases it shall, for the pur-
10 poses of this act, be conclusively presumed that the injury
11 resulted in permanent total incapacity: the total and irrev-
12 cable loss of sight in both eyes, the loss of both feet at or
13 above the ankle, the loss of both hands at or above the wrist,
14 the loss of one hand and one foot, an injury to the spine
15 resulting in permanent and complete paralysis of the legs
16 or arms, and an injury to the skull resulting in incurable
17 imbecility or insanity.

Sect. 13. While the incapacity for work resulting from
2 the injury is partial, the employer shall pay the injured
3 employee a weekly compensation equal to two-thirds the
4 difference, due to said injury, between his average weekly
5 wages, earnings or salary before the accident and the week-
6 ly wages, earnings or salary which he is able to earn there-
7 after, but not more than eighteen dollars a week; and in
8 no case shall the period covered by such compensation be
9 greater than three hundred weeks from the eighth day fol-
10 lowing the accident.

Sect. 14. In cases of injuries included in the following
2 schedule the incapacity in each such case shall be deemed
3 to be total for the period specified; and after such specified
4 period, if there be a total or partial incapacity for work
5 resulting from the injury, the employee shall receive com-
6 pensation while such total or partial incapacity continues
7 under the provisions of sections twelve and thirteen re-

8 spectively. The specific periods during which compensation
9 for presumed total incapacity is to be paid because of the
10 injuries hereinafter specified shall be as follows:

For the loss of a thumb, fifty weeks.

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

For the loss of the second finger, commonly called the
2 middle finger, twenty-five weeks.

For the loss of the third finger, commonly called the ring
2 finger, eighteen weeks.

For the loss of the fourth finger, commonly called the little
2 finger, fifteen weeks.

The loss of the first phalanx of the thumb or of any finger
2 shall be considered to be equal to the loss of one-half of
3 said thumb or finger, and the compensation shall be one-
4 half the amount above specified. The loss of more than
5 one phalanx shall be considered as the loss of the entire
6 thumb or finger. Provided, however, that in no case shall
7 the amount received for the loss of a thumb and more than
8 one finger of the same hand exceed the amount specified
9 in this schedule for the loss of a hand.

For the loss of the great toe, twenty-five weeks.

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

The loss of the first phalanx of any toe shall be considered
2 to be equal to the loss of one-half of said toe, and the com-
3 pensation shall be one-half the amount above specified. The

4 loss of more than one phalanx shall be considered as the
5 loss of the entire toe.

For the loss of a hand, one hundred twenty-five weeks.

For the loss of an arm, or any part at or above the wrist,
2 one hundred fifty weeks.

For the loss of a foot, one hundred twenty-five weeks.

For the loss of a leg, or any part at or above the ankle,
2 one hundred fifty weeks.

For the loss of an eye, or the reduction of the sight of an
2 eye, with glasses, to one-tenth of the normal vision, one
3 hundred weeks.

In all other cases of injury to the above-mentioned mem-
2 bers where the usefulness or any physical function thereof
3 is permanently impaired, or where there is loss of vision,
4 uncorrectible by glasses, to injured eyes, the specific com-
5 pensable periods for presumed total incapacity on account
6 thereof shall bear such relation to the periods above speci-
7 fied as the percentage of permanent impairment to such
8 members or eyes shall bear to the total loss thereof; and
9 the commission shall determine such percentage.

Sect. 15. 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 accident,
4 a weekly payment equal to two-thirds his average weekly
5 wages, earnings or salary, but not more than eighteen dol-
6 lars nor less than six dollars a week, for a period of three
7 hundred weeks from the eighth day following the accident,

8 and in no case to exceed four thousand dollars. Provided,
9 however, that if the dependent of the employee to whom
10 compensation shall be payable upon his death is the widow
11 of such employee, upon her death or remarriage the com-
12 pensation thereafter payable to her under this act shall be
13 paid to the child or children of the deceased employee, in-
14 cluding adopted and step-children, under the age of eigh-
15 teen years, or over said age but physically or mentally in-
16 capacitated from earning, who are dependent upon the
17 widow at the time of her death or remarriage. In case
18 there is more than one child thus dependent, the compen-
19 sation shall be divided equally among them. If the em-
20 ployee leaves dependents only partly dependent upon his
21 earnings for support at the time of his injury, the employer
22 shall pay such dependents for the said period of three hun-
23 dred weeks, a weekly compensation equal to the same pro-
24 portion of the weekly payments herein provided for the
25 benefit of persons wholly dependent as the total amount
26 contributed by the employee to such partial dependents for
27 their support during the year prior to his accident bears to
28 the earnings of the employee during said period.

When weekly payments have been made to an injured em-
2 ployee before his death, the compensation to dependents
3 shall begin from the date of the last of such payments, but
4 shall not continue beyond the three hundred weeks afore-
5 said. If the employee shall die before having received com-
6 pensation to which he is entitled or which he is being paid

7 as provided in this act, the same shall be payable to the
8 dependents of the said employee for the unpaid period, and
9 the said dependents shall have the same rights and powers
10 under this act as the said employee would have had if he
11 had lived.

Sect. 16. If the employee dies as a result of the injury,
2 leaving no dependents at the time of the accident, the em-
3 ployer shall pay, in addition to any compensation and medi-
4 cal benefits provided for in this act, the reasonable expenses
5 of burial, which shall not exceed two hundred dollars. Pro-
6 vided, however, if dependents claim compensation within
7 one year after the death of the said employee, and such
8 compensation is allowed to them, the reasonable expenses
9 paid by the employer for burial as aforesaid shall be de-
10 ducted from the compensation so allowed.

Sect. 17. In case any employee following a disabling in-
2 jury is kept by a self-insuring employer on the payroll on
3 full pay or is given a pension on account thereof, such
4 pension or pay not actually earned shall be credited toward
5 any compensation and medical benefits that said employee
6 may be entitled to receive because of said injury. No sav-
7 ings or insurance however of the injured employee inde-
8 pendent of this act shall be taken into consideration in de-
9 termining the compensation to be paid hereunder, nor shall
10 benefits derived from any source other than the employer
11 be considered in fixing the compensation due.

Sect. 18. No proceedings for compensation under this act

2 shall be maintained unless a notice of the accident shall
3 have been given within thirty days after the occurrence
4 thereof. Such notice shall include the time, place, and cause
5 of the accident, and the nature of the injury, together with
6 the name and address of the person injured. It shall be
7 given by the person injured, or by a person in his behalf;
8 or, in the event of his death, by his legal representatives,
9 or by a dependent, or by a person in behalf of either.

Such notice shall be given to the employer, or to one em-
2 ployer if there are more employers than one; or, if the
3 employer is a corporation, to any official thereof; or to any
4 employee designated by the employer as one to whom re-
5 ports of accidents to employees should be made. It may
6 also be given to the general superintendent or to the fore-
7 man in charge of the particular work being done by em-
8 ployee at the time of the accident.

Sect. 19. 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 time, place or cause of the acci-
4 dent, the nature of the injury, or the name and address of
5 the person injured, unless it is shown that it was the in-
6 tention to mislead and that the employer was in fact mis-
7 led thereby. Want of notice shall not be a bar to proceed-
8 ings under this act if it be shown that the employer or his
9 agent had actual knowledge of the accident; or that failure
10 to give such notice was due to accident, mistake, or un-
11 foreseen cause, or to the employer's failure to keep posted

12 the notices of his assent to the act required by paragraph
13 V of section six hereof.

Sect. 20. No proceedings for compensation under this act
2 shall be maintained unless a claim for compensation shall
3 have been made by the employee within one year after the
4 occurrence of the accident; or, in case of his death during
5 said year, or if throughout said year he is prevented from
6 making such claim by reason of physical or mental inca-
7 pacity, then within one year after his death or the removal
8 of such physical or mental incapacity.

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 as
5 such under the laws of this state, to be selected and paid
6 by the employer. The employee shall have the right to have
7 a physician or surgeon selected and paid by himself present
8 at such examination, of which right the employer shall give
9 him notice when requesting such examination.

The commission or any commissioner may at any time
2 after the injury appoint a competent and impartial physi-
3 cian or surgeon to act as medical examiner, the reasonable
4 fees of whom shall be fixed and paid by the commission.
5 Such medical examiner shall thereupon and as often as the
6 commission or said commissioner may direct, examine such
7 injured employee in order to determine the nature, extent,
8 and probable duration of the injury, or the percentage of

9 permanent impairment. He shall file in the office of the
10 commission a report of every such examination, and a copy
11 thereof shall be sent to each of the parties, who upon re-
12 quest therefor shall be given the opportunity at a subse-
13 quent hearing, before decree is rendered, to question said
14 impartial examiner as to any matter included in such report.

If any employee refuses to submit himself to any exam-
2 ination provided for in this act, or in any way obstructs any
3 such examination, his rights to compensation shall be sus-
4 pended and his compensation during such period of sus-
5 pension may be forfeited.

Sect. 22. In case an injured employee is a minor or is
2 mentally incompetent or, where death results from the in-
3 jury, in case any of his dependents entitled to compensa-
4 tion are minors or mentally incompetent at the time when
5 any right, privilege or election accrues to him or them un-
6 der this act, his parent, guardian, or next friend, or some
7 disinterested person designated by the commission may, in
8 his behalf, claim and exercise such right, privilege or elec-
9 tion, or file any petition or answer, and no limitation of
10 time in this act provided shall run so long as such minor
11 or incompetent has no parent living or guardian.

In case the commission shall have reasonable grounds for
2 believing that compensation paid under this act, either in
3 weekly installments or in a lump sum, will be squandered
4 or wasted by the injured employee or his dependents, the
5 commission may designate in writing some disinterested per-

6 son to act as trustee for the said injured employee or said
7 dependents; and the said trustee shall file an account at
8 least once a year with the commission showing the amounts
9 of receipts and expenditures in behalf of said injured em-
10 ployee or said dependents.

Sect. 23. No agreement by an employee, unless approved
2 by the commission or by the commissioner of labor and in-
3 dustry, to waive his rights to compensation under this act
4 shall be valid. No claims for compensation under this act
5 shall be assignable, or subject to attachment, or liable in
6 any way for debt.

Sect. 24. When any injury for which compensation is
2 payable under this act shall have been sustained under cir-
3 cumstances creating in some person other than the employer
4 a legal liability to pay damages in respect thereto, the in-
5 jured employee may, at his option, either claim compen-
6 sation under this act or obtain damages from or proceed
7 at law against such other person to recover damages. Any
8 employer having paid compensation under this act or having
9 become liable therefor under any decree or approved agree-
10 ment shall be subrogated to the rights of the injured em-
11 ployee to recover against that person; provided, if the em-
12 ployer shall recover from such other person damages in
13 excess of the compensation already paid, or awarded or
14 agreed to be paid under this act, then any such excess shall
15 be paid to the injured employee less the employer's expenses
16 and costs of action. Settlement of such claims and the dis-

17 tribution of the proceeds therefrom must have the approval
18 of the court wherein litigation is pending; or if not in suit,
19 of the commission. The beneficiary shall be entitled to
20 reasonable notice and opportunity to be present in person
21 or by counsel at the approval proceedings.

The failure of the employer or compensation insurer in
2 interest to pursue his remedy against the third party within
3 ninety days after written demand by a compensation bene-
4 ficiary, shall entitle such beneficiary or his representatives
5 to enforce liability in his own name, the accounting for the
6 proceeds to be made on the basis above provided.

Sect. 25. A claim for compensation under this act, and
2 any decree or approved agreement therefor, shall be en-
3 titled to a preference over the unsecured debts of the em-
4 ployer to the same amount as the wages of labor are now
5 preferred by the laws of this state; but nothing herein shall
6 be construed as impairing any lien which the employee may
7 have acquired.

Sect. 26. If an employee receiving weekly payments under
2 this act shall cease to reside in the state, or if his residence
3 at the time of the accident is in an adjoining state, the com-
4 mission 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, authorize such payments
7 to be made monthly or quarterly instead of weekly.

Sect. 27. In any case where compensation is being paid
2 or is claimed on account of an injury or death, either the

3 employer, or the employee or his dependents, may petition
4 the commission for an order commuting all payments on
5 account thereof that may become due in the future to a
6 lump sum. Such petition may be summarily granted where
7 it is shown to the satisfaction of the commission that the
8 payment of a lump sum in lieu of future weekly payments,
9 or as a compromise settlement of a disputed claim, will be
10 for the best interests of the person or persons receiving or
11 claiming such compensation, or that the continuance of
12 weekly payments will, as compared with a lump sum pay-
13 ment, entail undue expense or hardship upon the employer
14 liable therefor, or that the person entitled to compensation
15 has removed or is about to remove from the United States.
16 Where the commutation is ordered, the commission shall
17 fix the lump sum to be paid at an amount which will equal
18 the total sum of the probable future payments capitalized
19 at their present value upon the basis of interest calculated
20 at five per cent per annum with annual rests.

Upon payment of any lump sum approved by the com-
2 mission the employer shall be discharged from all further
3 liability on account of such injury or death, and be entitled
4 to a duly executed release; upon filing which, or other due
5 proof of payment, the liability of such employer under any
6 agreement, award or decree shall be discharged of record,
7 and the employee accepting the lump sum settlement as
8 aforesaid shall receive no further compensation or other

9 benefits on account of said injury under the provisions of
10 this act.

Sect. 28. The industrial accident commission of the state
2 of Maine shall consist of five members, three of whom shall
3 be men learned in the law and members in good standing
4 of the bar of this state. They shall be appointed by the
5 governor, with the advice and consent of the council; one
6 of the commissioners, to be designated as chairman, for
7 the term of five years, and the other commissioners for the
8 term of four years each. The commissioner of labor and
9 industry and the commissioner of insurance shall be mem-
10 bers ex-officio.

The commissioners so appointed shall hold office for the
2 terms aforesaid, unless removed as herein provided, and
3 until their successors are appointed and qualified. They
4 shall all have the same authority and powers; but their re-
5 spective duties shall be determined by the chairman. They
6 shall be sworn, and for inefficiency, wilful neglect of duty,
7 or for malfeasance in office may after notice and hearing
8 be removed by the governor and council. In case of a va-
9 cancy occurring through death, resignation or removal, the
10 governor shall appoint a successor for the whole term of
11 the member whose place he takes, subject to removal as
12 aforesaid. In case the office of chairman becomes vacant,
13 the senior commissioner shall act as chairman until the gov-
14 ernor makes an appointment to fill such vacancy.

The chairman shall receive a salary of five thousand dol-

2 lars per annum, and the other commissioners a salary of
3 four thousand dollars each per annum. The commissioner
4 of labor and industry, in addition to his salary as such,
5 shall receive for his services as a member of the commis-
6 sion two thousand dollars per annum. The commissioner
7 of insurance, for his services as a member of the commis-
8 sion, shall receive the additional sum of one thousand dol-
9 lars per annum. The members of the commission shall also
10 receive their actual, necessary, cash expenses while away
11 from their office on official business of the commission.

The commission shall have a clerk and a reporter, ap-
2 pointed and removable by it, who shall be sworn to the
3 faithful performance of their duties. Their salaries shall
4 be fixed by the governor and council upon recommendation
5 of the commission.

The commission shall have a seal bearing the words "In-
2 dustrial Accident Commission of Maine." It shall have its
3 office and keep its records in the state house in Augusta,
4 but may hold sessions at any place within the state.

Sect. 29. The commission shall have general supervision
2 over the administration of this act, and shall have powers
3 to make rules and regulations not inconsistent with this act
4 or other laws of the state for the purpose of carrying out
5 the provisions hereof. It may prescribe forms and make
6 suitable orders as to procedure adapted to secure a speedy,
7 efficient, and inexpensive disposition of all proceedings here-
8 under. In interpreting this act it shall construe it liberally

9 and with a view to carrying out its general purpose. The
10 rule that statutes in derogation of the common law are to
11 be strictly construed shall have no application to this act.
12 It may also provide blank forms of reports, agreements,
13 petitions and other forms required.

Sect. 30. I. Any commissioner may, when the interests
2 of any of the parties or when the administration of the pro-
3 visions of this act demand, appoint a person to make a full
4 investigation of the circumstances surrounding any indus-
5 trial accident or any matter connected therewith, and report
6 the same without delay to the office of the commission.

II. Any commissioner may administer oaths, and issue
2 subpoenas for witnesses and subpoenas duces tecum to com-
3 pel the production of books, papers and photographs relat-
4 ing to any questions in dispute before the commission or
5 to any matters involved in a hearing. Witness fees in all
6 proceedings under this act shall be the same as for wit-
7 nesses before the supreme judicial court.

III. Depositions taken for the causes and in the manner
2 hereinafter mentioned, may be used in all hearings under
3 this act.

Any commissioner may issue commissions to take depo-
2 sitions to any United States consul or vice consul, any judge
3 of any court of record in the United States or any foreign
4 country, or to any notary public or justice of the peace in
5 the state of Maine, for either of the following causes:

1. When the deponent resides out of, or is absent from,
2 the state.

2. When the deponent is bound to sea, or is about to go
2 out of the state.

3. When the deponent is so aged, infirm or sick as to be
2 unable to attend at the place of hearing.

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

The deponent shall be duly sworn; and after his answers
2 have been written out, the deposition shall be signed and
3 sworn to by the deponent before the commissioner authorized
4 to take it, and shall by him be sealed up and sent to the
5 industrial accident commission at Augusta.

Sect. 31. If following an injury the employer and the
2 employee reach an agreement in regard to compensation
3 under this act, a memorandum of such agreement signed
4 by the parties shall be filed in the office of the commission.
5 If the commissioner of labor and industry finds that such
6 agreement is in conformity with the provisions of the act,
7 he shall approve the same. In case he shall find that such
8 agreement is not in conformity therewith and shall refuse
9 to approve the same, or if the employer and the employee

10 fail to reach an agreement in regard to compensation, either
11 employer or employee (and when death has resulted from
12 the injury and the dependents of the deceased employee en-
13 titled to compensation are, or the apportionment thereof
14 among them is, in dispute, any person in interest) may file
15 in the office of the commission a petition for award of com-
16 pensation, setting forth the names and residences of the
17 parties, the facts relating to the employment at the time of
18 the accident, the time, place and cause thereof, the character
19 and extent of the injury, and the knowledge of the em-
20 ployer or notice of the occurrence of the accident; and, if
21 an agreement had been reached between the parties which
22 had not been approved by the commissioner of labor and
23 industry, the form of such agreement, together with such
24 other facts as may be necessary and proper for the deter-
25 mination of the rights of the petitioner.

Sect. 32. An employee's claim for compensation under
2 this act shall be barred unless an agreement or a petition
3 as provided in the preceding section shall be filed within
4 two years after the occurrence of the accident; or, in case
5 of the death of the employee during said period, or if
6 throughout said period he is prevented from filing such
7 petition by reason of physical or mental incapacity, then
8 within one year after his death or the removal of such
9 physical or mental incapacity. No petition of any kind, ex-
10 cept for review of incapacity, may be filed more than seven
11 years following an accident.

Sect. 33. Within four days after the filing of the petition,
2 a copy thereof attested by the clerk of the commission shall
3 be mailed to the other parties named in the petition, or no-
4 tice be given in such other manner as the commission may
5 determine.

Sect. 34. Within ten days after the filing of such peti-
2 tion all the other parties interested in opposition shall file
3 an answer thereto and furnish a copy thereof to the peti-
4 tioner; which answer shall state specifically the contentions
5 of the opponents with reference to the claim as disclosed
6 by the petition. The commission or any commissioner may
7 grant further time for filing answer, and allow amendments
8 to said petition or answer at any stage of the proceedings.
9 If any party opposing such petition does not file an answer
10 within the time limited, the hearing shall proceed upon the
11 petition.

Sect. 35. The whole matter shall then be referred to a
2 single commissioner, who shall fix a time for hearing upon
3 a three days' notice given to all the parties. All hearings
4 shall be held in the town where the accident occurred unless
5 it is deemed advisable that any hearing be held in some
6 other place, in which case the commission may in its dis-
7 cretion reimburse the claimant for his actual traveling ex-
8 penses incurred in attending the hearing; any sum of money
9 paid for such expenses to be charged to the appropriation
10 of the commission.

Sect. 36. If from the petition and answer there appear

2 to be facts in dispute, the commissioner shall then hear such
3 witnesses as may be presented, or by agreement the claims
4 of both parties as to such facts may be presented by affi-
5 davits. If the facts are not in dispute, the parties may file
6 with the commission an agreed statement of facts for a
7 ruling upon the law applicable thereto. From the evidence
8 or statements thus furnished the commissioner shall in a
9 summary manner decide the merits of the controversy. His
10 decision, findings of fact and rulings of law, and any other
11 matters pertinent to the questions so raised, shall be filed
12 in the office of the commission, and a copy thereof attested
13 by the clerk of the commission mailed forthwith to all par-
14 ties interested. His decision, in the absence of fraud, upon
15 all question of fact shall be final.

Sect. 37. While compensation is being paid under any
2 agreement, award or decree, the incapacity of the injured
3 employee may from time to time be reviewed by a single
4 commissioner upon the petition of either party upon the
5 grounds that such incapacity has subsequently increased,
6 diminished or ended. Upon such review the commissioner
7 may increase, diminish or discontinue such compensation
8 in accordance with the facts, as the justice of the case may
9 require. If after compensation has been discontinued, by
10 decree or approved settlement receipt as provided by sec-
11 tion forty-four hereof, additional compensation is claimed
12 by an employee for further period of incapacity, he may
13 file with the commission a petition for further compen-

14 sation setting forth his claim therefor; hearing upon which
15 shall be held by a single commissioner. The provisions of
16 the four preceding sections as to procedure shall apply to
17 the petitions authorized by this section; and said provisions
18 shall also apply to the petitions authorized by sections nine,
19 fourteen, twenty-seven and thirty-nine, except that such
20 petitions shall be heard by the commission as therein pro-
21 vided.

Sect. 38. If after any petition (except for lump sum set-
2 tlement under section twenty-seven hereof) has been filed
3 the parties themselves reach an agreement as to payment
4 of compensation, the memorandum of which is approved
5 by the commissioner of labor and industry, or as to pay-
6 ment of medical benefits under section nine, the pending
7 petition shall thereupon be dismissed by the commission.
8 Any decree as to compensation or any agreement therefor
9 may be modified at any time by a subsequent agreement
10 between the parties so approved.

Sect. 39. Upon the petition of either party at any time
2 the commission may annul any agreement which has been
3 approved by the commissioner of labor and industry pro-
4 vided that it finds such agreement was entered into through
5 mistake of fact or through fraud; and provided further
6 that, except in the case of fraud upon his part, an employee
7 shall not be barred by any time limit from filing a proper
8 petition to have the matters covered by such agreement de-
9 termined in accordance with the provisions of this act as

10 though the agreement aforesaid had not been approved.

Sect. 40. Any party in interest may present copies, certified by the clerk of the commission, of any order or decision of the commission or of any commissioner, or of any memorandum of agreement approved by the commissioner of labor and industry, together with all papers in connection therewith, to the clerk of courts for the county in which the accident occurred; whereupon any justice of the supreme judicial court shall render a pro forma decree in accordance therewith and notify all parties. Such decree shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though rendered in a suit in equity duly heard and determined by said court, except that there shall be no appeal therefrom upon questions of fact found by said commission or by any commissioner, or where the decree is based upon a memorandum of agreement approved by the commissioner of labor and industry.

Upon any appeal therefrom the proceedings shall be the same as in appeals in equity procedure, 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 however from a decree based upon any order or decision of the commission or of any commissioner which has not been certified and presented to the court within twenty days after notice to

9 the parties of the filing thereof by the commission or by
10 any commissioner.

Sect. 41. As an alternative to the procedure for appeal
2 on questions of law provided by the preceding section, any
3 party at his election may, within the twenty days allowed
4 for appeal by said section, file with the commission a writ-
5 ten request for a review of any decree rendered by a single
6 commissioner. Such decree shall thereupon be suspended,
7 and the parties duly notified by the clerk of the commis-
8 sion. The chairman, after ten days' notice, shall then as-
9 sign a time and place for such review by the reviewing
10 board, which board shall not include the commissioner who
11 rendered the decree in question. If upon such review a
12 majority of said board are of the opinion that such decree
13 should be affirmed, a certificate to that effect signed by
14 them shall be filed with the clerk of the commission, and
15 attested copies thereof sent forthwith to all the parties;
16 whereupon the decree so reviewed shall again be in full
17 force and effect, and shall be final. If however a majority
18 of said board are of the opinion that such decree should
19 be modified in any way, a new decree may thereupon be
20 rendered by them upon the evidence already presented, or
21 the case may be assigned for further hearing as to the facts
22 or for rehearing; the new decree in either event to be sub-
23 ject to appeal on questions of law as provided by the pre-
24 ceding section.

In cases where after appeal or review aforesaid by an

2 employer the original decree rendered by the commission
3 or by any commissioner is affirmed, there shall be added
4 to any amounts payable thereunder interest to the date of
5 payment.

Sect. 42. Any pro forma decree rendered under the pro-
2 visions of section forty hereof shall be enforceable by the
3 supreme judicial court by any suitable process including
4 execution against the goods, chattels and real estate, and
5 including proceedings for contempt for wilful failure or
6 neglect to obey the orders or decrees of the court, or in
7 any other manner that decrees in equity may be enforced.
8 Upon the presentation to it however of a certified copy of
9 any subsequent decision of the commission or of any com-
10 missioner increasing, diminishing, terminating, or commut-
11 ing to a lump sum any payments of compensation on ac-
12 count of the same injury, or of any agreement for modi-
13 fication of such compensation approved by the commis-
14 sioner of labor and industry, the court shall revoke or mod-
15 ify any such pro forma decree based upon any prior de-
16 cision of the commission or of any commissioner, or upon
17 any agreement so approved, to conform to such subsequent
18 decision or agreement.

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 representatives or by any person entitled to
4 compensation by reason of said death under the provisions
5 of this act.

Sect. 44. All assenting employers shall make prompt re-

2 port to the commission of all accidents to their employees
3 in the course of employment, with the average weekly wages
4 or earnings of such employee, together with such other par-
5 ticulars as the commission may require; and shall also re-
6 port whenever the injured employee shall resume his em-
7 ployment, and the amount of his wages or earnings.

Whenever any settlement is made with an injured em-
2 ployee, either by the employer or insurance company, for
3 compensation covering any specified period under an ap-
4 proved agreement or a decree, or covering any period of
5 incapacity, total or partial, that has ended, a duplicate copy
6 of the settlement receipt or agreement signed by said em-
7 ployee showing the total amount of money paid to him for
8 such period or periods shall be filed with the commission,
9 but shall not be binding without its approval. Any em-
10 ployer or insurance company that shall wilfully neglect or
11 refuse to make such reports, pay any compensation due
12 under any decree or approved agreement, or file any re-
13 cepts or agreements as to settlements within ten days after
14 being requested by the commission so to do, shall be liable
15 to a forfeiture of ten dollars for each day of such wilful
16 neglect or refusal, to be enforced by the commission in an
17 action of debt in the name of the state.

Sect. 45. Every insurance company insuring employers
2 under this act shall fill out any blanks and answer all ques-
3 tions submitted to it that may relate to policies, premiums,
4 amount of compensation paid, and such other information
5 as the commission or the insurance commissioner may deem

6 important, either for the proper administration of this act
7 or for statistical purposes. Any insurance company which
8 shall refuse to fill out such blanks or answer such questions
9 shall be liable to a forfeiture of ten dollars for each day
10 of such refusal, to be enforced by the commission in an
11 action of debt in the name of the state. All moneys recov-
12 ered under this section, or under sections six or forty-four
13 hereof, shall be paid into the state treasury and credited
14 to the appropriation for the administration of this act.

Sect. 46. The commission shall make a report to the gov-
2 ernor and council for the biennial period ending December
3 thirty-first of each even year, giving such statistical infor-
4 mation as may be contained in its department in relation
5 to the administration of this act, particularly with reference
6 to the number of employees under the act, the number in-
7 jured, the amount of compensation and other benefits paid,
8 and the cost of the same to the employers.

Sect. 47. If for the purpose of obtaining any benefit or
2 payment under the provisions of this act, either for him-
3 self or for any other person, any one wilfully makes a false
4 statement or representation he shall be guilty of a misde-
5 meanor and liable to a fine of not exceeding fifty dollars,
6 and shall forfeit all right to compensation under this act.

Sect. 48. 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.'