

MAINE STATE LEGISLATURE

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NEW DRAFT

EIGHTY-FOURTH LEGISLATURE

Senate Document

No. 410

S. P. 761

In Senate, April 1, 1929.

Reported by Senator Oakes of Cumberland from Committee on Judiciary and laid on table to be printed under joint rules.

ROYDEN V. BROWN, Secretary.

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 and thirty-eight of the public laws 2 of nineteen hundred and nineteen, known as "The Work- 3 men's Compensation Act," as amended by chapter two hun- 4 dred and twenty-two of the public laws of nineteen hun- 5 dred and twenty-one, by chapter two hundred and one of 6 the public laws of nineteen hundred and twenty-five, and 7 by chapters one hundred and fifty-eight and two hundred 8 and fifty-two of the public laws of nineteen hundred and 9 twenty-seven, is hereby further amended, so that as amend- 10 ed the same shall read as follows:

'Section 1. The first forty-seven sections of this chapter shall be known, and may be cited and referred to in proceedings and agreements thereunder, as "The Workmen's Compensation Act;" the phrase "this act," as used in said sections, refers thereto.

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

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

II. "Employee" shall include every person in the service of another under any contract of hire, express or implied, oral or written, except: (a) persons engaged in maritime employment, or in interstate or foreign commerce, who are within the exclusive jurisdiction of admiralty law or the laws of the United States; (b) any person whose employment is not in the usual course of the business, profession, trade or occupation of his employer. Employers who hire workmen within this state to work outside the state, may agree with such workmen that the remedies under this act shall be exclusive as regards injuries received outside this state by accident arising out of and in the

13 course of such employment; and all contracts of hiring in
14 this state, unless otherwise specified, shall be presumed to
15 include such agreement. Any reference to an employee
16 who has been injured shall, when the employee is dead, also
17 include his legal representatives, dependents, and other per-
18 sons 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 thirteen, twenty-seven and thirty-nine it shall mean any
5 two or more members thereof designated from time to time
6 by the chairman, one of whom shall at all times be a legal
7 member. "Commissioner" shall mean any member of the
8 commission appointed under said section twenty-eight.

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 benefits and expenses of burial herein
8 provided for, in such installments, at such time or times,
9 and to such person or persons and upon such conditions as
10 in this act provided. Whenever a copy of a policy is filed
11 as herein provided, such copy certified by the insurance
12 commissioner shall be admissible as evidence in any legal
13 proceeding wherein the original would be admissible.

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

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

VIII. "Dependents" shall mean members of an 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
2 from whom she is living apart for a justifiable cause or
3 because he has deserted her, or upon whom she is actually
4 dependent 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
3 age, but physically or mentally incapacitated from earning)
4 upon 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 parent. In case there is more than one child thus
8 dependent, the compensation shall be divided equally among
9 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 depend-
8 ent. If there is no one wholly dependent and more than
9 one person partly dependent, the compensation shall be
10 divided among them according to the relative extent of
11 their dependency. If a dependent is an alien residing out-
12 side of the United States or of the Dominion of Canada,

13 the compensation paid to any such dependent shall be one-
14 half that hereinafter provided in case of the death of an
15 employee.

IX. (a) "Average weekly wages, earnings or salary"
2 of 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 regular full working week in the
5 employment or occupation in which he was engaged when
6 injured, provided such employment or occupation had con-
7 tinued for at least two hundred fifty full working days
8 during the year immediately preceding said accident.

(b) In case such employment or occupation had not
2 so continued for said two hundred and fifty full working
3 days, the "average weekly wages, earnings or salary" shall
4 be determined by dividing the entire amount of wages or
5 salary earned therein by the injured employee during said
6 immediately preceding year, by the total number of weeks,
7 any part of which the employee worked, during the same
8 period. Provided, however, if such employment or occu-
9 pation was seasonal only, that the entire amount of wages
10 or salary earned by the employee at any work during said
11 immediately preceding year, shall be divided by fifty-two.

(c) In cases where the foregoing methods of arriving
2 at the "average weekly wages, earnings or salary" of the
3 injured employee cannot reasonably and fairly be applied,
4 said "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
7 same or most similar class, working in the same or most
8 similar employment in the same or a neighboring locality,
9 shall reasonably represent the weekly earning capacity of
10 the injured employee at the time of the accident in the
11 employment 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 salary
6 received by him from all such employers, were wages, earn-
7 ings or salary earned in the employment of the employer
8 for whom he was working at the time of the accident.

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

(f) The fact that an employee has suffered a previous
2 injury or received compensation therefor, shall not pre-
3 clude compensation for a later injury or for death; but in
4 determining 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
10 of this section.

Sect. 3. In an action to recover damages for personal
2 injuries sustained by an employee by accident arising out
3 of and in the course of his employment, or for death re-
4 sulting from such injuries, it shall not be a defense to an
5 employer, except as hereinafter specified, (a) that the em-
6 ployee was negligent; (b) that the injury was caused by
7 the negligence of a fellow employee; (c) that the employee
8 has assumed the risk of the injury.

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

Sect. 5. The provisions of said section three shall also
2 not apply to actions to recover damages for the injuries
3 aforesaid, or for death resulting from such injuries, sus-
4 tained by employees of an employer who has assented to
5 become subject to the provisions of this act. If an em-

6 ployer at the time of so assenting is engaged in two or more
7 independent businesses, he shall be held to come under the
8 provisions of the act only as to the business or businesses
9 specified in his assent. Assenting employers, except as here-
10 inafter provided by section seven, shall be exempt from
11 suits because of such injuries either at common law or
12 under section nine of chapter ninety-two of the revised stat-
13 utes, or under sections fifty-one to fifty-eight, both inclusive,
14 of chapter fifty of the revised statutes as renumbered by
15 section fifty of chapter two hundred and thirty-eight of the
16 public laws of nineteen hundred and nineteen.

Sect. 6. I. Any private employer desiring to become
2 an 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
5 a copy of an industrial accident insurance policy in form
6 approved by the insurance commissioner, said policy if
7 found correct in all respects to be stamped with his approv-
8 al. Such written assent shall continue in force during the
9 life of said original policy or during the life of any sub-
10 sequent policy or policies in renewal thereof and dating
11 from the expiration of any immediately preceding policy,
12 provided a copy of such renewal policy is filed not more
13 than ten days following such expiration. In case there shall
14 be an interim of more than ten days aforesaid between copies
15 of such policies on file with the commission, then a new as-
16 sent must be filed with the policy terminating such interim.

II. Every insurance company issuing industrial accident insurance policies covering the payment of compensation and benefits provided for in this act shall file with the insurance commissioner a copy of the form of such policies, and no such policy shall be issued until he has approved said form. It shall 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.

III. Any private employer desiring to become an assenting employer as self-insurer may, in lieu of filing an insurance policy as above provided, furnish satisfactory proof to the commission of his solvency and financial ability to pay the compensation and benefits herein provided, and

6 also deposit cash, satisfactory securities or a surety bond,
7 in such sum as the commission may determine; such bond
8 to run to the treasurer of state and his successor in office,
9 and to be conditional upon the faithful performance of all
10 the provisions of this act relating to the payment of com-
11 pensation and benefits to any injured employee. In case of
12 cash being deposited it shall be placed at interest by the
13 treasurer of state, and the accumulation of interest on said
14 cash or securities so deposited shall be paid to the employer
15 depositing the same. Provided, however, that the commis-
16 sion may at any time in its discretion deny to an assenting
17 employer the right to continue in the exercise of the option
18 granted by this paragraph.

IV. Upon the filing of such assent and complying with
2 the provisions of paragraph I or III of this section, the
3 commission shall issue to such employer a certificate stat-
4 ing that said employer has conformed to the provisions
5 of this act, and setting forth the date on which the policy
6 filed under paragraph I expires. The certificate thus issued
7 shall remain in full force until the date of expiration of
8 such policy or renewal thereof; or until the employer shall
9 notify the commission that he withdraws his assent or has
10 cancelled such policy; or until a certificate issued to a self-
11 insuring employer under paragraph III is withdrawn by
12 the commission, or such employer files an industrial acci-
13 dent insurance policy in place of the securities so deposited
14 by him.

V. Subject to the approval of the commission, any employer may continue with his employees in lieu of the compensation, benefits and insurance provided by this act the system thereof which was used by such employer on the first day of January, nineteen hundred and fifteen. No such substitute system, however, shall be approved unless it confers benefits upon injured employees at least equivalent to the benefits provided by this act, nor if it requires contributions from the employees, unless it confers benefits in addition to those provided under this act at least commensurate with such contributions. Such substitute system may be terminated by the commission on reasonable notice and hearing to the interested parties if it shall appear that the same is not fairly administered, or if its operation shall disclose latent defects threatening its solvency, or if for any substantial reason it fails to accomplish the purposes of this act. An employer who is authorized to substitute a plan under the provisions of this section shall give his employees notice thereof in a form to be prescribed by the commission, and a statement of the plan approved shall be filed with the commission.

VI. A notice in such form as the commission approves, stating that the employer has conformed to the provisions of this act, together with such further matters as the commission determines, shall be posted by the employer and kept posted by him at some place in each of his mills, factories or places of business, conspicuous and accessible to

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 as
3 provided in the preceding section, shall be held to have
4 waived his right of action at common law to recover dam-
5 ages for the injuries aforesaid sustained by him, also under
6 the statutes specified in section five hereof, if he shall not
7 have given his employer at the time of his contract of hire
8 notice in writing that he claimed such right, and within
9 ten days thereafter have filed a copy thereof with the com-
10 mission; or if the contract of hire was made before the
11 employer so elected, if the employee within ten days after
12 knowledge by him of such assent shall not have given said
13 notice and filed a copy thereof with the commission as above
14 provided. Such waiver of common law and statutory
15 rights shall continue in force for the term of one year, and
16 thereafter without further act on his part for successive
17 terms of one year each, unless the employee shall at least
18 sixty days prior to the expiration of such first or any suc-
19 ceeding year, give his employer notice of claim of such
20 rights and file a copy thereof with the commission as afore-
21 said.

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 herein; but if said
6 minor shall have a parent living or a guardian, such parent
7 or guardian, as the case may be, may give the notice and
8 file a copy thereof as provided in this section, and such
9 notice shall bind the minor in the same manner that adult
10 employees are bound under the provisions hereof. In case
11 no such notice is given, such minor shall be held to have
12 waived his right of action at common law or under the
13 statutes above referred to, to recover damages for such
14 injuries sustained by him.

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

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 provided
4 in the preceding section, receives a personal injury by acci-
5 dent arising out of and in the course of his employment,
6 he shall be paid compensation and furnished medical and
7 other services, as hereinafter provided, by the employer

8 who shall have assented to become subject to the provisions
9 of this act.

Sect. 9. During the first thirty days after an injury afore-
2 said the employee shall be entitled to reasonable and proper
3 medical, surgical and hospital services, nursing, medicines
4 and mechanical surgical aids when they are needed. The
5 amount of such services and aids shall not exceed one hun-
6 dred dollars unless a longer period or a greater sum is al-
7 lowed by the commission, which in its discretion it may
8 allow when the nature of the injury or the process of re-
9 covery requires it.

Upon knowledge or notice of such injury the employer
2 shall promptly furnish to the employee the services and
3 aids aforesaid. In case, however, the employer fails to fur-
4 nish any of said services or aids, or in case of emergency
5 or other justifiable cause, the employee may procure said
6 services or aids and the commission may order the employ-
7 er to pay for the same provided that they were necessary
8 and adequate, and the charges therefor are reasonable. In
9 every case where any of said services or aids are procured
10 by the employee, it shall be his duty to see that the employer
11 is given prompt notice thereof. The commission in its dis-
12 cretion may also require the employer to furnish to the in-
13 jured employee, but not more than once each for an injury
14 aforesaid, artificial limbs, eyes and teeth made necessary
15 by such injury.

Whenever there is any disagreement as to the proper costs

2 of the services or aids aforesaid, or as to the apportion-
3 ment thereof among the parties, any interested person may
4 file a petition with the commission setting forth the facts.
5 The commission shall have exclusive jurisdiction to deter-
6 mine such costs and such apportionment, subject to appeal
7 as hereinafter provided, unless the employer or employee
8 procuring such services or aids and the person or persons
9 supplying the same shall by written contract agree otherwise.

Sect. 10. Compensation for incapacity to work on account
2 of an injury aforesaid shall begin on the eighth day of in-
3 capacity, the day of the accident to be counted as the first
4 day thereof.

Sect. 11. 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
6 no 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 irrevoc-
12 able loss of sight in both eyes, the loss of both hands at
13 or above the wrist, the loss of both feet at or above the
14 ankle, the loss of one hand and one foot, an injury to the
15 spine resulting in permanent and complete paralysis of the

16 arms or legs, and in injury to the skull resulting in incur-
17 able imbecility or insanity.

Sect. 12. 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. 13. 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 received com-
6 pensation while such total or partial incapacity continues
7 under the provisions of sections eleven and twelve respec-
8 tively. The specific periods during which compensation for
9 presumed total incapacity is to be paid because of the in-
10 juries 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
2 little 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 therefor shall
4 be one-half the amount above specified. The loss of more
5 than one phalanx shall be considered as the loss of the
6 entire thumb or finger. Provided, however, that in no case
7 shall the amount received for the loss of a thumb and more
8 than one finger of the same hand exceed the amount speci-
9 fied 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 therefor shall be one-half the amount above speci-
4 fied. The loss of more than one phalanx shall be consid-
5 ered as the 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 thereof above the
2 wrist, one hundred fifty weeks.

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

For the loss of a leg, or any part thereof 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 or eyes where the usefulness or any physical function
3 thereof is permanently impaired, the specific compensable
4 periods for presumed total incapacity on account thereof
5 shall bear such relation to the periods above specified as
6 the percentage of permanent impairment due to the injury
7 to such members or eyes shall bear to the total loss there-
8 of; and the commission upon petition therefor by either
9 party shall determine such percentage.

Sect. 14. If death results from the injury, the employer
2 shall thereupon pay the dependents of the employee, wholly
3 dependent upon his earnings for support at the time of his
4 accident, a weekly payment equal to two-thirds his average
5 weekly wages, earnings or salary, but not more than eigh-
6 teen dollars nor less than six dollars a week, for a period
7 of three hundred weeks from the eighth day following the
8 accident, and in no case to exceed four thousand dollars.
9 Provided, however, that if the dependent of the employee
10 to whom compensation shall be payable upon his death is
11 the widow of such employee, upon her death or remarriage
12 compensation to her shall cease; and the compensation to
13 which she would have been entitled thereafter but for such
14 death or remarriage shall be paid to the child or children
15 of the deceased employee, including adopted and step-

16 children, under the age of eighteen years, or over said age
17 but physically or mentally incapacitated from earning, who
18 are dependent upon the widow at the time of her death or
19 remarriage. In case there is more than one child thus de-
20 pendent, the compensation shall be divided equally among
21 them. If the employee leaves dependents only partly de-
22 pendent upon his earnings for support at the time of his
23 accident, the employer shall pay such dependents for the
24 said period of three hundred weeks, a weekly compensation
25 equal to the same proportion of the weekly payments here-
26 in provided for the benefit of persons wholly dependent as
27 the total amount contributed by the employee to such par-
28 tial dependents for their support during the year prior to
29 his accident bears to the earnings of the employee during
30 said period.

Sect. 15. 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 three hundred dollars.
6 Provided, however, if dependents claim compensation with-
7 in six months after the death of the said employee, and
8 such compensation is allowed to them, the reasonable ex-
9 penses paid by the employer for burial as aforesaid shall
10 be deducted from the compensation so allowed.

Sect. 16. If the employee shall die before having received
2 the entire amount of compensation to which he is entitled

3 under the provisions of this act, the compensation payable
4 to him before his death shall be paid to his dependents, if
5 any; otherwise to his executor or administrator. No com-
6 pensation is payable for presumed total incapacity for any
7 period following the death of an employee.

Sect. 17. 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, how-
7 ever, if the employer knew that the employee was intoxi-
8 cated or that he was in the habit of becoming intoxicated
9 while on duty.

Sect. 18. No savings or insurance of the injured em-
2 ployee independent of this act shall be taken into consider-
3 ation in determining the compensation to be paid hereunder,
4 nor shall benefits derived from any source other than the
5 employer be considered in fixing the compensation due.

Sect. 19. No proceedings for compensation under this
2 act, except as hereinafter provided, shall be maintained un-
3 less a notice of the accident shall have been given within
4 thirty days after the date thereof. Such notice shall in-
5 clude the time, place, and cause of the accident, and the
6 nature of the injury, together with the name and address
7 of the person injured. It shall be given by the person in-
8 jured; or by a person in his behalf; or, in the event of his

9 death, by his legal representatives, or by a dependent, or
10 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 the
8 employee at the time of the accident.

Sect. 20. A notice given under the provisions of the pre-
2 ceding section shall not be held invalid or insufficient by
3 reason of any inaccuracy in stating any of the facts there-
4 in required for proper notice, unless it is shown that it was
5 the intention to mislead and that the employer was in fact
6 misled thereby. Want of such notice shall not be a bar to
7 proceedings under this act if it be shown that the employer
8 or his agent had knowledge of the accident. Any time
9 during which the employee is unable by reason of physical
10 or mental incapacity to give said notice, or fails to do so
11 on account of mistake of fact, shall not be included in the
12 thirty-day period above specified. In case of the death of
13 the employee within said period, there shall be allowed for
14 giving said notice three months after such death.

Sect. 21. Every employee shall after an injury, at all
2 reasonable times during the continuance of his disability if
3 so requested by his employer, submit himself to an exam-

4 ination 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 employer shall have the right to
7 have a physician or surgeon selected and paid by himself
8 present at such examination, of which right the employer
9 shall give 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, after being furnished with such
6 information in regard to the matter as may be deemed
7 essential for the purpose, shall thereupon and as often as
8 the commission or the said commissioner may direct, ex-
9 amine such injured employee in order to determine the
10 nature, extent, and probable duration of the injury, or the
11 percentage of permanent impairment. He shall file in the
12 office of the commission a report of every such examina-
13 tion, and a copy thereof shall be sent to each of the inter-
14 ested parties, who upon request therefor shall be given the
15 opportunity at a hearing, before decree is rendered, to ques-
16 tion said impartial examiner as to any matter included in
17 such report.

If any employee refuses or neglects to submit himself to
2 any reasonable examination provided for in this act, or in
3 any way obstructs any such examination, or if he declines
4 proper medical or surgical treatment offered by the em-

5 ployer, upon petition of said employer such employee's
6 rights to compensation shall be suspended, and his com-
7 pensation during such period of suspension shall be for-
8 feited.

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
6 under 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 or
4 wasted by the injured employee or his dependents, the com-
5 mission may designate in writing some disinterested person
6 to act as trustee for the said injured employee or said de-
7 pendants; and the said trustee shall file an account at least
8 once a year with the commission showing the amounts of
9 receipts and expenditures in behalf of said injured employee
10 or said dependents.

Sect. 23. No agreement by an employee, unless approved
2 by the commission or by the commissioner of labor and

3 industry, 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 or
2 medical benefits is payable under this act shall have been
3 sustained under circumstances creating in some person other
4 than the employer a legal liability to pay damages in re-
5 spect thereto, the injured employee may, at his option, either
6 claim such compensation and benefits or obtain damages
7 from or proceed at law against such other person to recover
8 damages. Any employer having paid such compensation
9 or benefits or having become liable therefor under any de-
10 cree or approved agreement shall be subrogated to the rights
11 of the injured employee to recover against that person;
12 provided, if the employer shall recover from such other
13 person damages in excess of the compensation and benefits
14 so paid or for which he has thus become liable, then any
15 such excess shall be paid to the injured employee less the
16 employer's expenses and costs of action or collection. Set-
17 tlement of such claims and the distribution of the proceeds
18 therefrom must have the approval of the court wherein liti-
19 gation is pending; or if not in suit, of the chairman of the
20 commission. The beneficiary shall be entitled to reasonable
21 notice and opportunity to be present in person or by coun-
22 sel 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 thirty 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 pre-
5 ferred 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 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 another state, the
4 commission 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 of such injury or death that may become due in
6 the future, to a lump sum. Such petition may be granted
7 where it is shown to the satisfaction of the commission that
8 the payment of a lump sum in lieu of future weekly pay-

9 ments, or as an agreed compromise settlement of a dis-
10 puted claim, will be for the best interests of the person or
11 persons receiving or claiming such compensation, or that
12 the continuance of weekly payments will, as compared with
13 a lump sum payment, entail undue expense or hardship
14 upon the employer liable therefor, or that the person en-
15 titled to compensation has removed or is about to remove
16 from the United States. Where such commutation is or-
17 dered, the commission shall fix the lump sum to be paid
18 at an amount which will equal the total sum of the prob-
19 able future payments capitalized at their present value upon
20 the basis of interest calculated at five per cent per annum
21 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 said 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 or death under the pro-
10 visions of 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, shall
7 be appointed for the term of five years, and the other com-
8 missioners for the term of four years each; provided, how-
9 ever, that the present chairman and associate legal member
10 of the commission shall continue to serve for and during
11 the terms for which they have been appointed unless re-
12 moved as hereinafter provided, and provided further, that
13 upon the taking effect of this act, the title of the present
14 "associate legal member" shall be changed to that of "com-
15 missioner." The commissioner of labor and industry and
16 the commissioner of insurance shall be members 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
5 respective 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
9 vacancy occurring through death, resignation or removal,
10 the governor shall appoint a successor for the whole term
11 of the member whose place he takes, subject to removal
12 as aforesaid. In case the office of chairman becomes va-
13 cant, the senior commissioner shall act as chairman until
14 the governor makes an appointment to fill such vacancy.

The chairman shall receive a salary of forty-five hundred

2 dollars per annum, and the other commissioners a salary
3 of four thousand dollars each per annum. The commis-
4 sioner of labor and industry, in addition to his salary as
5 such, shall receive for his services as a member of the com-
6 mission two thousand dollars per annum. The commis-
7 sioner of insurance, for his services as a member of the
8 commission, shall receive the additional sum of fifteen hun-
9 dred dollars per annum. The members of the commission
10 shall also receive their actual, necessary, cash expenses while
11 away 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
3 its 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
3 provisions of this act demand, appoint a person to make a
4 full investigation of the circumstances surrounding any in-
5 dustrial accident or any matter connected therewith, and
6 report the same without delay to the office of the commis-
7 sion.

II. Any commissioner may administer oaths, and issue
2 subpoenas for witnesses and subpoenas duces tecum to
3 compel the production of books, papers and photographs
4 relating to any questions in dispute before the commission
5 or to any matters involved in a hearing. Witness fees in
6 all 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
3 party shall have ten days after written notice of such filing
4 to 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 author-
4 ized to take it, and shall by him be sealed up and sent to
5 the 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 to
9 approve the same, or if the employer and the employee fail

10 to reach an agreement in regard to compensation, either
11 employee or employer (and when death has resulted from
12 the injury and the dependents of the deceased employee
13 entitled 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 of the accident, the
19 knowledge of the employer or notice of the occurrence
20 thereof, the character and extent of the injury, and the
21 claims of the petitioner with reference thereto; together with
22 such other facts as may be necessary and proper for the
23 determination of the rights of the petitioner relative to said
24 claims.

Sect. 32. An employee's claim for compensation under
2 this act shall be barred unless made to an employer within
3 six months after the date of incapacity, and unless an
4 agreement or a petition as provided in the preceding section
5 shall be filed within one year after the date of the accident;
6 provided, however, that any time during which the employee
7 is unable by reason of physical or mental incapacity to make
8 said claim or file said petition shall not be included in the
9 periods aforesaid. In case of the death of the employee
10 within said six months, there shall be allowed for making
11 said claim six months after such death. In case of the
12 death of the employee, within said year, there shall be al-

13 lowed for filing said petition one year after such death. No
14 petition of any kind, except for review of incapacity, may
15 be filed more than seven years following an accident.

Sect. 33. Within four days after the filing of the petition
2 for award aforesaid, a copy thereof attested by the clerk
3 of the commission shall be mailed to the other parties named
4 in the petition, or notice be given in such other manner as
5 the commission may determine.

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

Sect. 35. The whole matter shall then be referred to a
2 single commissioner, who shall fix a time for hearing upon
3 at least a five days' notice given to all the parties. All hear-
4 ings shall be held in the town where the accident occurred
5 unless it is deemed advisable that any hearing be held in
6 some other place, in which case the commission may in its
7 discretion reimburse the claimant for his actual traveling
8 expenses incurred in attending the hearing; any sum of

9 money paid for such expenses to be charged to the appro-
10 priation 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 laws 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
14 parties interested. His decision, in the absence of fraud,
15 upon all questions 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 due to the injury may from time to time be re-
4 viewed by a single commissioner upon the petition of either
5 party upon the grounds that such incapacity has subse-
6 quently increased, diminished or ended. Upon such review
7 the commissioner may increase, diminish or discontinue such
8 compensation in accordance with the facts, as the justice of
9 the case may require. If after compensation has been dis-
10 continued, by decree or approved settlement receipt as pro-

11 vided by section forty-three hereof, additional compensation
12 is claimed by an employee for further period of incapacity,
13 he may file with the commission a petition for further com-
14 pensation setting forth his claim therefor; hearing upon
15 which shall be held by a single commissioner. The pro-
16 visions of the four preceding sections as to procedure shall
17 apply to the petitions authorized by this section and by sec-
18 tion twenty-one; and said provisions shall also apply to the
19 petitions authorized by sections nine, thirteen, twenty-seven
20 and thirty-nine, except that such petitions shall be heard by
21 the commission as therein provided.

Sect. 38. If after any petition (except for lump sum
2 settlement under section twenty-seven hereof) has been filed
3 the parties themselves reach an agreement as to payment of
4 compensation, the memorandum of which is approved by
5 the commissioner of labor and industry, or as to payment of
6 medical benefits under section nine, the pending petition
7 shall thereupon be dismissed by the commission. The week-
8 ly rate of compensation payable for actual incapacity under
9 any decree or approved agreement may be modified at any
10 time by an approved agreement between the parties as to
11 any subsequent period of incapacity.

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 it finds that such agreement was entered into through
5 mistake of fact by said petitioner or through fraud; and

6 provided further that, except in the case of fraud upon his
7 part, an employee shall not be barred by any time limit from
8 filing a proper petition to have the matters covered by such
9 agreement determined in accordance with the provisions of
10 this act as though the agreement aforesaid had not been
11 approved.

Sect. 40. Any party in interest may present copies, certi-
2 fied by the clerk of the commission, of any order or decision
3 of the commission or of any commissioner, or of any memo-
4 randum of agreement approved by the commissioner of labor
5 and industry, together with all papers in connection there-
6 with, to the clerk of courts for the county in which the
7 accident occurred; whereupon any justice of the supreme
8 judicial court shall render a pro forma decree in accordance
9 therewith and cause all interested parties to be notified. Such
10 decree shall have the same effect and all proceedings in
11 relation thereto shall thereafter be the same as though rend-
12 ered in a suit in equity duly heard and determined by said
13 court, except that there shall be no appeal therefrom upon
14 questions of fact found by said commission or by any com-
15 missioner, or where the decree is based upon a memoran-
16 dum of agreement approved by the commissioner of labor
17 and industry.

Upon any appeal therefrom the proceedings shall be the
2 same as in appeals in equity procedure, and the law court
3 may, after consideration, reverse or modify any decree so
4 made by a justice based upon an erroneous ruling or finding

5 of law. There shall be no appeal however from a decree
6 based upon any order or decision of the commission or of
7 any commissioner unless said order or decision has been
8 certified and presented to the court within twenty days after
9 notice of the filing thereof by the commission or by any
10 commissioner; and unless appeal has been taken from such
11 pro forma decree within ten days after such certified order
12 or decision has been so presented. In cases where after
13 appeal aforesaid by an employer the original order or deci-
14 sion rendered by the commission or by any commissioner is
15 affirmed, there shall be added to any amounts payable under
16 said order or decision, the payment of which is delayed by
17 such appeal, interest to the date of payment. In all cases
18 of appeal the law court may order a reasonable allowance
19 to be paid to the employee by the employer for expenses
20 incurred in the proceedings of the appeal including the
21 record, not however to include expenses incurred in other
22 proceedings in the case.

Sect. 41. Any pro forma decree rendered under the pro-
2 visions of the preceding section 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 any
7 other manner that decrees in equity may be enforced. Upon
8 the presentation to it however of a certified copy of any
9 subsequent order or decision of the commission or of any

10 commissioner increasing, diminishing, terminating, or con-
11 muting to a lump sum any payments of compensation on
12 account of said injury, or of any agreement for modifica-
13 tion of such compensation approved by the commissioner
14 of labor and industry, the court shall revoke or modify any
15 such pro forma decree based upon such prior order or
16 decision of the commission or of any commissioner, or upon
17 any agreement so approved, to conform to such subsequent
18 order or decision, or such approved agreement.

Sect. 42. 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 com-
4 pensation by reason of said death under the provisions of
5 this act.

Sect. 43. All assenting employers shall make prompt re-
2 port to the commission of all accidents to their employees
3 arising out of and in the course of employment, with the
4 average weekly wages or earnings of such employee, to-
5 gether with such other particulars as the commission may
6 require; and shall also report whenever the injured em-
7 ployee shall resume his employment, and the amount of his
8 wages or earnings at such time.

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 ceipts 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. 44. 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 of
10 such refusal, to be enforced by the commission in an action
11 of debt in the name of the state. All moneys recovered
12 under this or the preceding section, or under section six
13 hereof, shall be paid into the state treasury and credited to
14 the appropriation for the administration of this act.

Sect. 45. 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 in-
4 formation 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. 46. 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 misde-
5 meanor and liable to a fine of not exceeding fifty dollars,
6 and shall forfeit all right which he may have to compensa-
7 tion under this act.

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.'