

MAINE STATE LEGISLATURE

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E I G H T Y - N I N T H L E G I S L A T U R E

Legislative Document

No. 305

H. P. 914 House of Representatives, February 2, 1939.

On motion of Mr. Sleeper of Rockland tabled pending reference and 500 copies ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Varney of Berwick by request.

S T A T E O F M A I N E

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
THIRTY-NINE

AN ACT Extending the Workmen's Compensation Act to Cover
Occupational Diseases.

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

R. S., c. 55, amended. Chapter 55 of the revised statutes, known as the Workmen's Compensation Act is hereby amended by the addition of the following sections:

'Sec. 57. Title of law. The following sections of this chapter shall be known and may be cited and referred to as "the occupational disease law;" the phrase "this law" as used in said sections refers thereto.'

'Sec. 58. Application of this law. Except as otherwise specifically provided herein, incapacity to work or death of an employee, arising out of and in the course of the employment, and resulting from an occupational disease as hereinafter defined, shall be treated as the happening of a personal injury by accident arising out of and in the course of the employment, within the meaning of the Workmen's Compensation Act, and all the provisions of that act shall apply to occupational diseases; provided, however, that this law shall apply only to cases in which the last exposure to an occupational disease in an occupation subject to the hazards of such disease occurred in this state and subsequent to the date when this law

takes effect; and provided further that in the case of pulmonary dust diseases there shall have been an exposure to dust hazards in an industry in this state for at least 2 years within a period of 5 years prior to the last exposure.'

'Sec. 59. Definition of "occupational disease." "Occupational disease" shall mean a disease or pathological condition normally peculiar to and gradually caused by hazards of the occupation in which the injured employee was regularly engaged at the time when he last became injuriously exposed to such hazards.'

'Sec. 60. False reports. No compensation shall be payable for an occupational disease if the employee, at the time of entering into the employment of the employer by whom the compensation would otherwise be payable, falsely represents himself in writing as not having previously been disabled, laid off, or compensated in damages or otherwise, because of such disease.'

'Sec. 61. Aggravation of occupational disease. Where an occupational disease is aggravated by any other disease or infirmity, not itself compensable, or where incapacity or death from any other cause, not itself compensable, is aggravated, prolonged, accelerated or in any wise contributed to by an occupational disease, the compensation payable shall be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease were the sole cause of the incapacity or death as such occupational disease, as a causative factor, bears to all the causes of such incapacity or death, such reduction in compensation to be effected by reducing the number of weekly or monthly payments or the amounts of such payments, as under the circumstances of the particular case may be for the best interest of the claimant or claimants.'

'Sec. 62. Date from which compensation is computed; employer liable. The date when an employee becomes incapacitated by an occupational disease from performing his work in the last occupation in which he was injuriously exposed to the hazards of such disease, shall be taken as the date of the injury equivalent to the date of accident under the Workmen's Compensation Act. Where compensation is payable for an occupational disease, the employer in whose employment the employee was last injuriously exposed to the hazards of such disease, and the insurance carrier, if any, on the risk when such employee was last so exposed under such employer, shall be liable therefor; the amount of the compensation shall be based upon the average wages of the employee when last so exposed under such employer, and the notice of injury and claim for compensation, as

hereinafter required, shall be given and made to such employer; provided, however, that the only employer and insurance carrier liable shall be the last employer in whose employment the employee was last injuriously exposed to the hazards of the disease during a period of 60 days or more, and the insurance carrier, if any, on the risk when the employee was last so exposed under such employer.'

'Sec. 63. Notice of injury; filing of claim. The provisions of sections 19 and 32 of the Workmen's Compensation Act with reference to giving of notice, making claim, and filing petitions, shall apply to cases under this law except that in cases under this law the date of incapacity as defined in section 62 of this law shall be taken as equivalent to the date of accident in said sections 19 and 32, and the notice under section 19 shall include the employee's name and address, the nature of the occupational disease, the date of incapacity, the name of the employer in whose employment the employee was last injuriously exposed for a period of 60 days to the hazards of the disease, and the date when employment with such employer ceased. Provided, however, that after the compensation payments for an occupational disease have been legally discontinued, claim for further compensation for such occupational disease not due to further exposure to an occupational hazard tending to cause such disease, shall be barred if not made within 10 years after the last previous payment.'

'Sec. 64. Partial incapacity. Compensation shall not be payable for partial incapacity due to occupational diseases except as follows: where an employee, though not totally incapacitated, is found by the industrial accident commission to be affected by an occupational disease, and it is also found by the industrial accident commission that such employee would be benefitted by changing to another employment and that such disease with such employee has progressed to such a degree as to make it hazardous for him to continue his employment, he shall be entitled to compensation for partial incapacity from the 8th day following the date of ceasing work in the hazardous employment, until he obtains, or there is available to him, employment in some occupation in which there are no hazards from such occupational disease; and thereafter to compensation equal to $\frac{2}{3}$ the difference between his average weekly wages, earnings, or salary, before such ceasing to work, and the weekly wages, earnings or salary which he is able to earn thereafter, but not more than \$18 a week; and in no case shall the period covered by such compensation be greater than 300 weeks from the 8th day following such date of removal.'

'Sec. 65. Compensation limits. Compensation for partial or total incapacity or death from occupational diseases shall be payable only in the

following manner and amounts: if such incapacity or death occurs during the first calendar month in which this law becomes effective, total compensation shall not exceed \$500; if during the 2nd calendar month, not exceeding \$550. Thereafter the total compensation payable for such incapacity or death shall increase at the rate of \$50 each calendar month. Such progressive increase in limits shall continue until the limit fixed in the Workmen's Compensation Act is reached. Compensation shall not be payable for incapacity by reason of occupational diseases unless such incapacity results within 3 years after the last injurious exposure to such disease in the employment, and shall not be payable for death, unless death follows continuous disability from such disease, commencing within the period above limited, for which compensation is payable, and results within 7 years after such last exposure.'

'Sec. 66. Dust diseases; medical benefits. In the event of incapacity from a dust disease, the employer shall provide reasonable medical treatment; but liability for such treatment shall not precede the date of incapacity, nor extend beyond 90 days from the date of incapacity; provided, however, the industrial accident commission may upon cause shown direct a continuance of such treatment for a further period of not more than 90 days.'

'Sec. 67. Waiver. Where an employee, though not actually incapacitated, is found to be affected by an occupational disease, he may, subject to the approval of the industrial accident commission, be permitted to waive in writing full compensation for any aggravation of his condition that may result from his continuing in his hazardous occupation. In the event of total incapacity or death as a result of such disease, after such a waiver, compensation shall nevertheless be payable, but in no case, whether for incapacity or death or both, for longer than 100 weeks or to exceed \$1800 in the aggregate. A waiver so permitted shall remain effective for the trade, occupation, process or employment for which executed, notwithstanding a change or changes of employer. The industrial accident commission shall make reasonable rules and regulations relative to the form, execution, filing or registration and public inspection of waivers or records thereof.'

'Sec. 68. Impartial medical advice. On request of a party or on its own motion the commission may in occupational disease cases appoint one or more competent and impartial physicians, their reasonable fees and expenses to be fixed and paid by the commission. These appointees shall examine the employee and inspect the industrial conditions under which

he has worked in order to determine the nature, extent, and probable duration of his occupational disease, the likelihood of its origin in the industry, and the date of incapacity. The provisions of section 21 of the Workmen's Compensation Act shall apply to the filing and subsequent proceedings on their report.

If claim is made for death from an occupational disease, an autopsy may be ordered by the commission under the supervision of such impartial appointees. All proceedings for or payments of compensation to any claimant refusing to permit such autopsy when ordered shall be and remain suspended upon and during the continuance of such refusal.'