

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. 830

S. P. 381

In Senate, February 14, 1939.

Referred to Committee on Judiciary. Sent down for concurrence and 1000 copies ordered printed.

ROYDEN V. BROWN, Secretary.

Presented by Senator Hill of Cumberland.

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

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
THIRTY-NINE

AN ACT to Amend the Workmen's Compensation Act.

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

Sec. 1. R. S., c. 55, § 2, ¶ I, amended. Paragraph I of section 2 of chapter 55 of the revised statutes is hereby amended to read as follows:

¶ I. Employer. "Employer" shall include corporations, partnerships, natural persons, the state, counties, **cities, towns**, 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.'

Sec. 2. R. S., c. 55, § 2, ¶ II, amended. Paragraph II of section 2 of chapter 55 of the revised statutes is hereby amended to read as follows:

¶ II. Employee. "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. **In the case of public employers it shall also include all officers or officials subject to the direction and control of superior officers or officials.** 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 course of such employment; and all contracts of hiring in this state, unless otherwise specified, shall be presumed to include such agreement. Any reference to an employee who has been injured shall, when the employee is dead, also include his legal representatives, dependents, and other persons to whom compensation may be payable.'

Sec. 3. R. S., c. 55, § 2, ¶ III, amended. Paragraph III of section 2 of chapter 55 of the revised statutes is hereby repealed, and in place thereof is substituted the following:

¶III. Employer under the act. "Employer under the act" shall include all employers as above defined to whom sections 3 or 4 hereof are applicable.'

Sec. 4. R. S., c. 55, § 2, ¶ IV, amended. Paragraph IV of section 2 of chapter 55 of the revised statutes is hereby amended to read as follows:

¶IV. Commission; commissioner. "Commission" shall mean the industrial accident commission created by section 28 hereof; except that as to hearings on petitions authorized by sections 9, 13, 27 and 39, **and also as to proceedings under section 22,** it shall mean any 2 or more members thereof designated from time to time by the chairman, one of whom shall at all times be a legal member; **and except further, that in any such case by agreement of the parties the authority of the commission may be exercised by a single commissioner.** "Commissioner" shall mean any member of the commission appointed under said section 28.'

Sec. 5. R. S., c. 55, § 2, ¶ VII, amended. Paragraph VII of section 2 of chapter 55 of the revised statutes is hereby amended to read as follows:

¶VII. Representatives. "Representatives" shall include executors and administrators. ~~and the dependents of deceased employees.'~~

Sec. 6. R. S., c. 55, § 2, ¶ VIII, amended. The 1st sub-paragraph of paragraph VIII of section 2 of chapter 55 of the revised statutes is hereby amended to read as follows:

' "Dependents" shall mean members of an employee's family or next of kin who are wholly or partly dependent upon the earnings of the employee

for support at the time of the accident. The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employee:

(a) A wife upon a husband with whom she lives, or from whom she is living apart for a justifiable cause or because he has deserted her, or upon whom she is ~~actually~~ dependent **in any degree** at the time of the accident.

(b) A husband upon a wife with whom he lives, or upon whom he is ~~actually~~ dependent **in any degree** at the time of the accident.

(c) A child or children, including adopted and step-children, under the age of 18 years, or over said age but physically or mentally incapacitated from earning, upon the parent with whom he is or they are living, or upon whom he is or they are ~~actually~~ dependent **in any degree** at the time of the accident to said parent, there being no surviving dependent parent. **“Child” shall also include any posthumous child whose mother is not living and dependent.** In case there is more than one child thus dependent, the compensation shall be divided equally among them.’

Sec. 7. R. S., c. 55, § 2, ¶ IX, amended. Sub-paragraphs (a), (b) and (d) of paragraph IX of section 2 of chapter 55 of the revised statutes, as amended by chapter 160 of the public laws of 1931, are hereby further amended to read as follows:

‘IX. Average weekly wages. (a) “Average weekly wages, earnings or salary” of an injured employee shall be taken as the amount which he was receiving at the time of the accident for the hours and days constituting a regular full working week in the employment or occupation in which he was engaged when injured, provided such employment or occupation had continued on the part of the employer for at least ~~two hundred and fifty~~ **200** full working days during the year immediately preceding said accident; **except that in the case of piece workers and other employees whose wages during said year have generally varied from week to week, such wages shall be averaged in accordance with the method provided under sub-paragraph (b) following.**

(b) In case such employment or occupation had not so continued for said ~~two hundred and fifty~~ **200** full working days, the “average weekly wages, earnings or salary” shall be determined by dividing the entire amount of wages or salary earned therein by the injured employee during said immediately preceding year, by the total number of weeks, any part of which the employee worked, during the same period; **provided, however, that the week in which employment began, if it began during the year immediately preceding the accident, and the week in which the acci-**

dent occurred, together with the amounts earned in said weeks, shall not be considered in computations under this sub-paragraph if their inclusion would reduce said "average weekly wages, earnings or salary."

(d) Where the employee is employed regularly during the ordinary working hours in any week concurrently by 2 or more employers, for one of whom he works at one time and for another he works at another time, his "average weekly wages" shall be computed as if the wages, earnings or salary received by him from all such employers, were wages, earnings or salary earned in the employment of the employer for whom he was working at the time of the accident.'

Sec. 8. R. S., c. 55, § 3, amended. Section 3 of chapter 55 of the revised statutes is hereby repealed, and in place thereof is substituted the following:

'Sec. 3. All employers with certain exceptions under act. This act shall be compulsory as to all public employers, and also as to all private employers who employ regularly four or more workmen or operatives exclusive of employees engaged in domestic service or in agriculture. Such private employers shall comply with the provisions of section 6 hereof, but public employers shall be exempt from the requirements of said section.'

Sec. 9. R. S., c. 55, § 4, amended. Section 4 of chapter 55 of the revised statutes, as amended by chapter 225 of the public laws of 1931, is hereby repealed, and in place thereof is substituted the following:

'Sec. 4. Exempted employers may assent to act. Private employers who employ less than 4 workmen or operatives regularly, or employees engaged in domestic service or in agriculture, may bring such employees under this act by assenting thereto. Such assent upon the part of an employer shall be signified by filing with the commission a copy of an industrial accident insurance policy or by becoming a self-insurer as provided by said section 6, and to remain in force only during compliance with said section.'

Sec. 10. R. S., c. 55, § 5, amended. Section 5 of chapter 55 of the revised statutes is hereby repealed, and in place thereof is substituted the following:

'Sec. 5. Employers under act exempt from other suits. Public employers, and private employers who have complied with the provisions of section 6 aforesaid, shall not be liable, except as hereinafter provided by section 7, in any action to recover damages for personal injuries sustained by an employee by accident arising out of and in the course of his employment,

or for death resulting from such injuries; but they shall be exempt from suits because of such injuries either at common law or under section 9 of chapter 101, or under sections 48 to 56, both inclusive, of this chapter.

In case, however, of such injuries to an employee of a private employer included under section 3 hereof who has not complied with the provisions of said section 6, the employee may claim compensation from the employer as provided in this act or he may bring suit at his election; and if he brings suit, it shall not be a defense to the employer (a) that the employee was negligent; (b) that the injury was caused by the negligence of a fellow employee; (c) that the employee has assumed the risk of the injury.'

Sec. 11. R. S., c. 55, § 6, ¶ I, amended. Paragraph I of section 6 of chapter 55 of the revised statutes is hereby repealed, and in place thereof is substituted the following:

I. Filing of copy of insurance policy by employer under act. Any private employer under the act by virtue of section 3 hereof, or who under section 4 elects to come thereunder, shall except as otherwise specified file with the commission at its office in Augusta a copy of an industrial accident insurance policy in form approved by the insurance commissioner; such policy if found correct in all respects to be stamped with his approval. Any policy during its life shall operate as a compliance with the provisions of this section only so long as a copy thereof is on file with the commission.'

Sec. 12. R. S., c. 55, § 6, ¶ III, amended. Paragraph III of section 6 of chapter 55 of the revised statutes is hereby amended to read as follows:

III. Employer may become self-insurer by filing securities. Any private employer desiring to become ~~an assenting~~ employer as a 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 also deposit cash, satisfactory securities or a surety bond, in such sum as the commission may determine; such bond to run to the treasurer of state and his successor in office, and to be conditional upon the faithful performance of all the provisions of this act relating to the payment of compensation and benefits to any injured employee. In case of cash being deposited it shall be placed at interest by the treasurer of state, and the accumulation of interest on said cash or securities so deposited shall be paid to the employer depositing the same. Provided, however, that the commission may at any time in its discretion deny to ~~an assenting~~ any employer the right to continue in the exercise of the option granted by this paragraph.'

Sec. 13. R. S., c. 55, § 6, ¶ IV, amended. Paragraph IV of section 6 of chapter 55 of the revised statutes is hereby amended to read as follows:

‘IV. Certificate to employer under act. Upon ~~the filing of such assent~~ and complying with the provisions of paragraph I or III of this section, the commission shall issue to such employer a certificate stating that said employer has conformed to the provisions of this act, and setting forth the date on which the ~~policy filed under paragraph I~~ **insurance policy or surety bond** expires. The certificate thus issued shall remain in full force until the date of expiration of such policy or ~~renewal thereof; or until the employer shall notify the commission that he withdraws his assent or has canceled such policy; surety bond; or until the commission receives notice that such policy or surety bond is canceled;~~ **or until the commission receives notice that such policy or surety bond is canceled;** or until a certificate issued to a self-insuring employer under paragraph III is withdrawn by the commission, or such employer files an industrial accident insurance policy in place of the securities so deposited by him.’

Sec. 14. R. S., c. 55, § 7, amended. Section 7 of chapter 55 of the revised statutes is hereby repealed, and in place thereof is substituted the following:

‘Sec. 7. Waivers of compensation rights in certain cases. Any employee may in writing, on a form prescribed by the commission, request that he be permitted to waive his right to compensation for any personal injury by accident, or for any period of incapacity resulting therefrom, that may be attributable to some specified physical condition, and retain his common law and statutory rights in respect thereto. If, after hearing or upon personal investigation by a single commissioner and the commissioner of labor they are satisfied that such waiver is equitable, they may approve same, and copies of such approval shall be sent forthwith to the parties interested. Such waiver to remain in force until withdrawn by employee, or until such commission approval is canceled.

Any officer of a corporation who is also engaged as an employee may by written notice to the commission and to the employer waive all the compensation benefits conferred by this act in case of personal injury by accident, and retain his common law and statutory rights in respect thereto. Such waiver to remain in force until withdrawn.’

Sec. 15. R. S., c. 55, § 8, amended. Section 8 of chapter 55 of the revised statutes is hereby repealed, and in place thereof is substituted the following:

‘Sec. 8. Employee under act, injured by accident, entitled to compensation. If an employee, except as otherwise specified, of an employer under

the act receives a personal injury by accident arising out of and in the course of his employment, he shall be paid compensation and furnished medical and other services by said employer as hereinafter provided.'

Sec. 16. R. S., c. 55, § 11, amended. Section 11 of chapter 55 of the revised statutes is hereby amended to read as follows:

'Sec. 11. Compensation for total incapacity. While the incapacity for work resulting from the injury is total, the employer shall pay the injured employee a weekly compensation equal to two-thirds his average weekly wages, earnings, or salary, but not more than \$18 nor less than \$6 a week; and in no case shall the period covered by such compensation be greater than 500 weeks from the 8th day following the accident, ~~nor the amount more than six thousand dollars.~~ **except that in case an employee is totally incapacitated permanently, such compensation shall continue to be paid him during the remainder of his life.** In the following cases it shall, for the purposes of this act, be conclusively presumed that the injury resulted in permanent total incapacity: the total and irrevocable loss of sight in both eyes, the loss of both hands at or above the wrist, the loss of both feet at or above the ankle, the loss of one hand and one foot, an injury to the spine resulting in permanent and complete paralysis of the arms or legs, and an injury to the skull resulting in incurable imbecility or insanity.'

Sec. 17. R. S., c. 55, § 14, amended. Section 14 of chapter 55 of the revised statutes, as amended by chapter 160 of the public laws of 1931, is hereby further amended to read as follows:

'Sec. 14. Compensation for death of employee; how apportioned. If death results from the injury, the employer shall pay the dependents of the employee, wholly dependent upon his earnings for support at the time of his accident, a weekly payment equal to two-thirds his average weekly wages, earnings or salary, but not more than \$18 nor less than \$6 a week, from the date of death for a period ending 300 weeks from the date of the accident, and in no case to exceed \$4000. Provided, however, that if the dependent of the employee to whom compensation shall be payable upon his death is the widow of such employee, upon her death or remarriage compensation to her shall cease; and the compensation to which she would have been entitled thereafter but for such death or remarriage shall be paid to the child or children, **if any**, of the deceased employee, including adopted and step-children, under the age of 18 years, or over said age but physically or mentally incapacitated from earning, who are dependent upon the widow at the time of her death or remarriage. **If the**

dependent is the widower, upon his death the remainder of the compensation which would otherwise have been payable to him shall be payable to the children above specified, if any, who at the time thereof are dependent upon him. In case there is more than one child thus dependent, the compensation shall be divided equally among them. Provided further, that except in the case of dependents who are physically or mentally incapacitated from earning, compensation payable to any dependent child under the age of 18 years shall cease upon such child's reaching the age of 18 years or upon marriage.

If the employee leaves dependents only partly dependent upon his earnings for support at the time of his accident, the employer shall pay such dependents for the said period of 300 weeks, a weekly compensation equal to the same proportion of the weekly payments herein provided for the benefit of persons wholly dependent as the total amount contributed by the employee to such partial dependents for their support during the year prior to his accident bears to the earnings of the employee during said period.'

Sec. 18. R. S., c. 55, § 15, amended. Section 15 of chapter 55 of the revised statutes is hereby amended to read as follows:

'**Sec. 15. Burial expenses payable.** If the employee dies as a result of the injury ~~leaving no dependents at the time of the accident~~, the employer shall pay, in addition to any compensation and medical benefits provided for in this act, the reasonable expenses of burial, ~~which shall not to exceed three hundred dollars~~ **\$250**. ~~Provided, however, if dependents claim compensation within six months after the death of the said employee, and such compensation is allowed to them, the reasonable expenses paid by the employer for burial as aforesaid shall be deducted from the compensation so allowed.~~

Sec. 19. R. S., c. 55, § 23, amended. Section 23 of chapter 55 of the revised statutes is hereby amended to read as follows:

'**Sec. 23. Compensation claims not assignable or attachable.** ~~No agreement by an employee, unless approved by the commission or by the commissioner of labor and industry, to waive his rights to compensation under this act shall be valid. No claims for compensation under this act shall be assignable, or subject to attachment, or liable in any way for debt.~~

Sec. 20. R. S., c. 55, § 24, amended. The 1st paragraph of section 24 of chapter 55 of the revised statutes is hereby amended to read as follows:

'When any injury for which compensation or medical benefits is payable

under this act shall have been sustained under circumstances creating in some person other than the employer a legal liability to pay damages in respect thereto, the injured employee may, at his option, either claim such compensation and benefits or obtain damages from or proceed at law against such other person to recover damages. Any employer having paid such compensation or benefits or having become liable therefor under any decree or approved agreement shall be subrogated to the rights of the injured employee to recover against that person; provided, if the employer shall recover from such other person damages in excess of the compensation and benefits so paid or for which he has thus become liable, then any such excess shall be paid to the injured employee less the employer's expenses and costs of action or collection. Settlement of such **subrogation** claims and the distribution of the proceeds therefrom must have the approval of the court wherein litigation is pending; or if not in suit, of ~~the chairman of the commission~~ **a single commissioner**. The beneficiary shall be entitled to reasonable notice and opportunity to be present in person or by counsel at the approval proceedings.'

Sec. 21. R. S., c. 55, § 32, amended. Section 32 of chapter 55 of the revised statutes, as amended by chapter 160 of the public laws of 1931, is hereby further amended to read as follows:

'Sec. 32. Time limitations for filing petitions. An employee's claim for compensation under this act shall be barred unless made ~~to an employer within six months after the date of incapacity, and unless an agreement or a petition as provided in the preceding section shall be filed within one year after the date of the accident; provided, however, that any time during which the employee is unable by reason of physical or mental incapacity to make said claim or file said petition shall not be included in the periods~~ **period** aforesaid. ~~In case of the death of the employee within said six months, there shall be allowed for making said claim six months after such death.~~ In case of the death of the employee, ~~within said year,~~ there shall be allowed for filing said petition one year after such death. No petition of any kind, **however,** may be filed more than 10 years following an accident.'

Sec. 22. R. S., c. 55, § 40, amended. The 1st paragraph of section 40 of chapter 55 of the revised statutes is hereby amended to read as follows:

'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; or if the accident occurred without the state, to the clerk of courts for the county of **Kennebec**; whereupon any justice of the superior court shall render a pro forma decree in accordance therewith and cause all interested parties to be notified. Such decree shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though rendered in 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.'

Sec. 23. R. S., c. 55, § 43, amended. Section 43 of chapter 55 of the revised statutes is hereby amended to read as follows:

'Sec. 43. Employers to file reports of accidents and settlement receipts; penalty for neglect. ~~All assenting employers shall make prompt report to the commission of all accidents to their employees arising out of and in the course of employment,~~ **Whenever any employee has reported to an employer under the act any injury by accident arising out of and in the course of his employment which has caused the employee to lose a day's work or has required medical attention, or whenever the employer has knowledge of any such injury by accident, every such employer shall within 7 days after said notice or knowledge make report thereof to the commission,** with the average weekly wages or earnings of such employee, together with such other particulars as the commission may require; and shall also report whenever the injured employee shall resume his employment, and the amount of his wages or earnings at such time. **Any employer who refuses or neglects to make any report required by this section shall be liable for a penalty of not more than \$25 for each refusal or neglect, to be enforced by the commission in an action of debt in the name of the state. In the event the employer has transmitted the report to the insurance carrier for transmission by such insurance carrier to the commission, the insurance carrier wilfully neglecting or failing to transmit the report shall be liable for the said penalty.**

Whenever any settlement is made with an injured employee, either by the employer or insurance company, for compensation covering any specified period under an approved agreement or a decree, or covering any period of incapacity, total or partial, that has ended, a duplicate copy of the settlement receipt or agreement signed by said employee showing the total amount of money paid to him for such period or periods shall be filed with the commission, but shall not be binding without its approval. ~~Any employer or insurance company that shall wilfully neglect or refuse to~~

make such reports, pay any compensation due under any decree or approved agreement, or file any receipts or agreements as to settlements within ten days after being requested by the commission so to do, shall be liable to a forfeiture of ten dollars for each day of such wilful neglect or refusal, to be enforced by the commission in an action of debt in the name of the state.'