

# 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

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**Legislative Document**

**No. 1160**

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S. P. 660

In Senate, April 10, 1939.

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

ROYDEN V. BROWN, Secretary.

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S T A T E   O F   M A I N E

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
THIRTY-NINE

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**AN ACT to Amend the Workmen's Compensation Act.**

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

**Sec. 1. 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. **Policemen, firemen and deputy sheriffs shall be deemed employees within the meaning of this act.** 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, dependants, and other persons to whom compensation may be payable.'

**Sec. 2. 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 members of the commission appointed under said section 28.'

**Sec. 3. 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 dependants of deceased employees.'~~

**Sec. 4. 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 way** 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 way** 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 way** 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. 5. 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:

(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 accident 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. 6. 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  $\frac{2}{3}$ rds 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 \$4,000. 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. 7. 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. 8. 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. 9. 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. 10. 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 commis-

sioner 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. 11. 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. ~~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 the services of a physician, 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 wilfully neglects or refuses to make any report required by this section shall be subject to a penalty of not more than \$100 for each such neglect or refusal, to be enforced by the commission in an action of debt in the name of the state. In the event the employer has sent the report to the insurance carrier for transmission by such insurance carrier to the commission, the insurance carrier wilfully neglecting or refusing 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.'