

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

AS PASSED BY THE

Eightieth Legislature

OF THE

STATE OF MAINE

1921

Including Acts and Resolves of the Special Session held in 1920.

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PUBLIC LAWS
OF THE
STATE OF MAINE

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Sec. 3. Emergency clause. In view of the emergency cited in the preamble, this act shall take effect when approved.

Approved April 9, 1921.

Chapter 222.

An Act to Amend Chapter Two Hundred and Thirty-eight of the Public Laws of Nineteen Hundred and Nineteen, Relating to Workmen's Compensation.

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

Sec. 1. 1919, c. 238, § 1, par. VIII, sub-division (c) definition of the word dependents as used in connection with the Workmen's Compensation Act, amended. Sub-section eight of section one of chapter two hundred and thirty-eight of the public laws of nineteen hundred and nineteen is hereby amended by inserting after the word "all" in the first line of the final paragraph of said sub-section, the word 'other'; and by striking out the word "injury" in the third line and inserting in place thereof the word 'accident' and by striking out the words "in such other cases" in the third line thereof; and by striking out the word "any" in the seventh line and inserting in place thereof the word 'no,' so that said sub-section, as amended, shall read as follows:

'VIII. Inserts the word "other" after the word all in the first line of the last paragraph; changes the word "injury" to accident in the third line and provides for the manner of dividing the compensation when there is no one wholly dependent and more than one person partially dependent. "Dependents" shall mean members of the 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 injury. 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 was living apart for a justifiable cause, or because he had deserted her or upon whom she is dependent at the time of the accident.

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

(c) A child or children, including adopted and step-children under the age of eighteen 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 dependent at the time of the death of said parent, there being no surviving dependent parent. In case there is more than one child thus dependent, the compensation shall be divided equally among them.

'In all other cases questions of entire or partial dependency shall be determined in accordance with the fact, as the fact may have been at the time of the accident. If there is more than one person wholly dependent, the compensation shall be divided equally among them, and persons partly dependent, if any, shall receive no part thereof during the period in which compensation is paid to persons wholly dependent. If there is no one wholly dependent and more than one person partly dependent, the compensation shall be divided among them according to the relative extent of their dependency. If a dependent is an alien residing outside of the United States, or of the Dominion of Canada, the compensation paid to any such dependent shall be one-half that hereinafter provided in case of the death of an employee.'

Sec. 2. 1919, c. 238, § 7; relating to employee subject to provision of Workmen's Compensation Act waiving right of action at common law when no notice is given, amended. Section seven of chapter two hundred thirty-eight of the public laws of nineteen hundred and nineteen is hereby amended by striking out the word "illegally" in the nineteenth line, and inserting in place thereof the word 'legally,' so that said section as amended,, shall read as follows:

'Sec. 7. Only minors of legal working age to be deemed of legal age for the purpose of this act. An employee of an employer who shall have elected to become subject to the provisions of this act as provided in section six of this act shall be held to have waived his right of action at common law to recover damages for personal injuries; also under section nine of chapter ninety-two or under sections fifty-one to fifty-eight, both inclusive, of this chapter, if he shall not have given his employer at the time of his contract of hire notice in writing that he claimed such right, and within ten days thereafter have filed a copy thereof with the commission, or, if the contract of hire was made before the employer so elected, if the employee shall not have given the said notice and filed the same with said commission within ten days after notice by the employer, as above provided, of such election, and such waiver shall continue in force for the term of one year and thereafter without further act on his part, for successive terms of one year each, unless such employee shall at least sixty days prior to the expiration of such first or any succeeding year, file with said commission a notice in writing to the effect that he desires to claim his said right of action at common law and within ten days thereafter shall give notice thereof to his employer. A minor working at an age legally permitted under the laws of this state shall be deemed sui juris for the purpose of this act and no other person shall have any cause of action or right to compensation for an injury to such minor employee except as expressly provided in this act; but if said minor shall have a

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parent living or a guardian, such parent or guardian, as the case may be, may give the notice and file a copy of the same as herein provided by this section, and such notice shall bind the minor in the same manner that adult employees are bound under the provisions of this act. In case no such notice is given, such minor shall be held to have waived his right of action at common law, or under the statutes above referred to, to recover damages for personal injuries. Any employee, or the parent or guardian of any minor employee, who has given notice to the employer that he claimed his right of action at common law, or under the statutes above referred to, may waive such claim by a notice in writing which shall take effect five days after the delivery to the employer or his agent.'

Sec. 3. 1919, c. 238, § 9; relating to the length of incapacitation of employees before subject to compensation under the Workmen's Compensation Act, amended. Section nine of chapter two hundred and thirty-eight of the public laws of nineteen hundred and nineteen is hereby amended by striking out the word "ten" in the third, fourth and fifth lines and inserting in place thereof in said lines, the word 'seven'; and by striking out the word "eleventh" in the fifth line and inserting in place thereof the word 'eighth,' so that said section, as amended, shall read as follows:

'Sec. 9. Period of incapacitation before the employee is entitled to compensation changed from ten to seven days. No compensation except medical, surgical and hospital services, nursing and medicines, and mechanical surgical aids as provided in section ten of this act shall be paid thereunder during the first seven days after the accident. If incapacity exists at the expiration of seven days, compensation shall begin on the eighth day. If incapacity arises after seven days, compensation shall begin on the date such incapacity begins.'

Sec. 4. 1919, c. 238, § 12; relating to liability of the employer under the provisions of Workmen's Compensation Act in case of death of employee, amended. Section twelve of chapter two hundred thirty-eight of the public laws of nineteen hundred and nineteen is hereby amended by striking out the words "three-fifths" in the fourth line thereof and inserting in place thereof the word 'two-thirds' and by striking out the word "fifteen" in the fifth line, and inserting in place thereof the word 'sixteen' and by striking out the words "three thousand five hundred" in the seventh line, and inserting in place thereof, the words 'four thousand'; and by inserting after the word "death" in the ninth line the words 'or remarriage,' and by inserting after the word "death" in the fourteenth line the words 'or remarriage,' so that said section, as amended, shall read as follows:

'Sec. 12. Weekly payments increased to two-thirds of average weekly wage; limit increased to \$16; limit of total liability increased from \$3500 to \$4000; in case dependent of employee is his widow compensation shall be paid to dependent child in case of her remarriage. 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 injury, a weekly payment equal to two-thirds his average weekly wages, earnings or salary, but not more than sixteen dollars nor less than six dollars a week, for a period of three hundred weeks from the date of the injury, and in no case to exceed four thousand dollars; provided, however, that if the dependent of the employee to whom the compensation shall be payable upon his death is the widow of such employee, upon her death or remarriage the compensation thereafter payable under this act shall be paid to the child or children of the deceased employee, including adopted and step-children, under the age of eighteen 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. In case there is more than one child thus dependent, the compensation shall be divided equally among them. If the employee leaves dependents only partly dependent upon his earnings for support at the time of his injury, the employer shall pay such dependents for a period of three hundred weeks from the date of injury, a weekly compensation equal to the same proportion of the weekly payments herein provided for the benefit of persons wholly dependent as the amount contributed annually by the employee to such partial dependents bears to the annual earnings of the deceased at the time of the injury. When weekly payments have been made to an injured employee before his death, the compensation to dependents shall begin from the date of the last of such payments, but shall not continue more than three hundred weeks from the date of the injury. Provided, however, that if the deceased leaves no dependents at the time of the injury the employer shall not be liable to pay compensation under this act except as specifically provided in the following section.'

Sec. 5. 1919, c. 238, § 14; relating to compensation of employee under provisions of Workmen's Compensation Act for total disability, amended. Section fourteen of chapter two hundred thirty-eight of the public laws of nineteen hundred and nineteen is hereby amended by striking out the words "three-fifths" in the third line and inserting in place thereof the words 'two-thirds' and by striking out the word "fifteen" in the fourth line and inserting in place thereof the word 'sixteen'; and by striking out the words "forty-two hundred" in the seventh line and inserting in place thereof the words 'six thousand,' so that said section, as amended shall read as follows:

'Sec. 14. Weekly payments increased from three-fifths to two-thirds and weekly limit increased to \$16; limit of total liability increased to \$6000. 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 sixteen dollars, nor less than six dollars a week; and in no case shall the period covered by such compensation be greater than five hundred weeks from the date of incapacity, nor the amount more than six thousand dollars; and if the employee shall die before having received compensation to which he is entitled or which he is receiving as provided in this act, the same shall be payable to the dependents of the said employee for the specified period, and the said dependents shall have the same rights and powers under this act as the said employee would have had if he had lived. In the following cases it shall, for the purposes of this act, be conclusively presumed that the injury resulted in permanent total disability, to wit: The total and irrevocable loss of sight in both eyes, the loss of both feet at or above the ankle, the loss of both hands at or above the wrist, the loss of one hand and one foot, an injury to the spine resulting in permanent and complete paralysis of the legs or arms, and an injury to the skull resulting in incurable imbecility or insanity.'

Sec. 6. 1919, c. 238, § 15; relating to compensation of employee under Workmen's Compensation Act, for partial disability, amended. Section fifteen of chapter two hundred and thirty-eight of the public laws of nineteen hundred and nineteen is hereby amended by striking out the words "three-fifths" in the third line and inserting in place thereof the words 'two-thirds' and by striking out the word "fifteen" in the sixth line and inserting in place thereof the word 'sixteen,' so that said section, as amended, shall read as follows:

'Sec. 15. Weekly payments increased from three-fifths to two-thirds and weekly limit increased from \$15 to \$16. While the incapacity for work resulting from the injury is partial, the employer shall pay the injured employee a weekly compensation equal to two-thirds the difference between his weekly wages, earnings or salary, before the injury and the weekly wages, earnings or salary which he is able to earn thereafter, but not more than sixteen dollars a week; and in no case shall the period covered by such compensation be greater than three hundred weeks from the date of the injury. The rate of wages before the injury shall be determined by dividing the whole amount of wages or salary earned by the injured employee during the immediately preceding year, whether for the same employer or not, by the full number of days employed during the same period, provided the injured employee has worked substantially the whole of the immediately preceding year at similar work. If the

employee has not so worked, the weekly wages, earnings or salary of an employee working substantially the whole of such immediately preceding year at similar work shall be used in determining the amount of partial compensation due the injured employee.'

Sec. 7. 1919, c. 238, § 16; enumerating the injuries for which specific payments shall be made to employee under Workmen's Compensation Act, amended. Section sixteen of chapter two hundred and thirty-eight of the public laws of nineteen hundred and nineteen is hereby amended by striking out all of said section and inserting in its place the following section which shall be numbered section sixteen and shall read as follows:

'Sec. 16. Weekly payments increased from three-fifths to two-thirds and limit of weekly payment increased from \$15 to \$16. In cases included in the following schedule the disability in each such case shall be deemed to be total for the period specified and after such specified period, if there be a total or partial incapacity for work resulting from the injury specified, the employee shall receive compensation while such total or partial incapacity continues under the provisions of sections fourteen and fifteen respectively, but in no case shall compensation continue more than three hundred weeks after the injury. The compensation to be paid for the injuries hereinafter specified shall be as follows, to wit:

'For the loss of a thumb, two-thirds the average weekly wages during fifty weeks.

'For the loss of the first finger, commonly called the index finger, two-thirds the average weekly wages during thirty weeks.

'For the loss of the second finger, two-thirds the average weekly wages during twenty-five weeks.

'For the loss of the third finger, two-thirds the average weekly wages during eighteen weeks.

'For the loss of the fourth finger, commonly called the little finger, two-thirds the average weekly wages during fifteen weeks.

'The loss of the first phalange of the thumb or of any finger, shall be considered to be equal to the loss of one-half of said thumb or finger and the compensation shall be one-half the amount above specified. The loss of more than one phalange shall be considered as a loss of the entire thumb or finger; provided, however, that in no case shall the amount received for the loss of more than one finger exceed the amount specified in this schedule for the loss of a hand.

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'For the loss of the great toe, two-thirds the average weekly wages during twenty-five weeks.

'For the loss of one of the toes other than the great toe, two-thirds the average weekly wages during ten weeks.

'The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of said toe and the compensation shall be one-half of the amount above specified.

'The loss of more than one phalange shall be considered as the loss of an entire toe.

'For the loss of a hand, two-thirds the average weekly wages during one hundred twenty-five weeks.

'For the loss of an arm, or any part at or above the wrist, two-thirds the average weekly wages during one hundred fifty weeks.

'For the loss of a leg, or any part at or above the ankle, two-thirds the average weekly wages during one hundred fifty weeks.

'For the loss of a foot, two-thirds the average weekly wages for one hundred twenty-five weeks.

'For the loss of an eye or the reduction of the sight of an eye, with glasses, to one-tenth of the normal vision, two-thirds the average weekly wages during one hundred weeks.

The amounts specified in this section are all subject to the same limitations as to maximum and minimum amounts, that is, of not more than sixteen and not less than six dollars a week, as provided for total or partial disability.

'In all cases in this class where the usefulness of a member or any physical function thereof is permanently impaired, the compensation shall bear such relation to the amount stated in the above schedule as the incapacity shall bear to the injuries named in this schedule and the commission shall determine the extent of the incapacity.'

Sec. 8. 1919, c. 238, § 26; relating to the liability of some other person than employer, under provisions of Workmen's Compensation Act, in case of injury to employee, amended. Section twenty-six of chapter two hundred and thirty-eight of the public laws of nineteen hundred and nineteen is hereby amended by adding two paragraphs to said section so that said section, as amended, shall read as follows:

'Sec. 26. Settlement of claims and distribution of proceeds to have approval of court or in case there is no suit of chairman

of commission; beneficiary to be given opportunity to be present at approval proceedings; failure of employer to pursue interest against third party entitles beneficiary to enforce liability in own name. When any injury for which compensation is payable under this act shall have been sustained under circumstances creating in some other person than the employer a legal liability to pay damages in respect thereto, the injured employee may, at his option, either claim compensation under this act or obtain damages from or proceed at law against such other person to recover damages; and if compensation is claimed and awarded under this act, any employer having paid the compensation or having become liable therefor 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 already paid or awarded to be paid under this act, then any such excess shall be paid to the injured employee less the employer's expenses and costs of action.

'Settlement of such 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. The beneficiary shall be entitled to reasonable notice and opportunity to be present in person or by counsel at the approval proceedings.

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

Sec. 9. 1919, c. 238, § 29; relating to the Industrial Accident Commission, appointment, compensation, tenure of office, appropriation, etc., amended. Section twenty-nine of chapter two hundred and thirty-eight of the public laws of nineteen hundred and nineteen is hereby amended by adding to the fourth paragraph of said section the following sentence: 'In case the office of chairman becomes vacant through death, resignation or removal, the associate legal member shall act as chairman until the governor makes an appointment to fill such vacancy,' so that said section, as amended, shall read as follows:

'Sec. 29. In case of vacancy in office of chairman associate legal member to act until appointment is made. The industrial accident commission of the State of Maine shall consist of four members, two of whom, to be designated as the chairman and associate legal member, respectively, shall be men learned in the law and members in good standing of the bar of this state; the third, the commissioner of labor and industry,

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and the fourth, the commissioner of insurance. The chairman and associate legal member shall be appointed by the governor, the former for the term of four years and the latter for the term of two years upon the first appointment under this act, all successive appointments to be for the term of three years. The chairman and associate legal member shall hold office for the terms aforesaid, unless removed as herein provided, and until their successors are appointed and qualified. They shall be sworn and for inefficiency, wilful neglect of duty or for malfeasance in office may after notice and hearing be removed by the governor and council. In case of a vacancy occurring through the death, resignation or removal, the governor shall appoint a successor for the whole term of three years, subject to removal as aforesaid.

‘The chairman shall receive a salary of three thousand five hundred dollars per annum, beginning January first, nineteen hundred and nineteen, and the associate legal member shall receive a salary of three thousand dollars per annum. The commissioner of labor and industry shall receive the sum of one thousand dollars, in addition to his salary as commissioner of labor and industry. The commissioner of insurance shall receive the sum of five hundred dollars, in addition to his salary as commissioner of insurance. The members of the commission shall also receive their actual, necessary, cash expenses while away from their office on official business of the commission.

‘The commission shall have a clerk appointed and removable by it. The salary of the clerk of the commission shall be fixed by the governor and council upon recommendation of the commission.

‘The associate legal member shall have the same authority, powers and duties as the chairman but shall only exercise said authority, powers and duties when requested in writing to do so by the chairman. In case the office of chairman becomes vacant through death, resignation or removal, the associate legal member shall act as chairman until the governor makes an appointment to fill such vacancy.

‘The sum of twenty-eight thousand two hundred dollars shall be annually appropriated for the payment of salaries, clerical and other assistance, physicians, witness fees, traveling and other expenses.

‘The commission shall have a seal bearing the words “Industrial Accident Commission of Maine.” It shall have its office and keep its records in the state house in Augusta, but may hold sessions at any place within the state. The commission shall have general supervision over the administration of this act, and shall have powers:

'I. To make rules and regulations not inconsistent with this act or other laws of the state for the purpose of carrying out the provisions hereof.

'II. To issue subpoenas for witnesses and subpoenas duces tecum to compel the production of books and papers and photographs relating to any questions in dispute before it.

'III. The chairman or the associate legal member at any hearing under the provisions of this act may issue subpoenas for witnesses and subpoenas duces tecum to compel the production of books and papers relating to any matters involved in the hearing. Witness fees in all proceedings under this act shall be the same as for witnesses before the supreme judicial court.

'IV. The commission may, when the interests of any of the parties or when the administration of the provisions of this act demand, appoint a person in that part of the state where an accident has happened, to make a full investigation of the circumstances surrounding said accident, and report the same without delay to the office of the said commission.

'V. Depositions taken for the causes and in the manner hereinafter mentioned, may be used in all hearings before the industrial accident commission.

'The chairman of the industrial accident commission or the associate legal member may issue commissions to take depositions to any United States consul, United States vice consul, any judge of any court of record in the United States or any foreign country, or to any notary public or justice of the peace in the State of Maine, for either of the following causes:

- '1. When the deponent resides out of, or is absent from the state.
- '2. When the deponent is bound to sea, or is about to go out of the state.
- '3. When the deponent is so aged, infirm or sick as to be unable to attend at the place of hearing.

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

'The deponent shall be duly sworn and after his answers have been written out, the deposition shall be signed and sworn to by the deponent

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before the commissioner authorized to take it, and shall by him be sealed up and sent to the chairman of the industrial accident commission at Augusta.'

Sec. 10. 1919, c. 238, § 30; relating to agreement as to compensation between employer and employee under provision of Workmen's Compensation Act, amended. Section thirty of chapter two hundred and thirty-eight of the public laws of nineteen hundred and nineteen is hereby amended by striking out the words "and the clerk of the commission shall record it in a book kept for that purpose" in the sixth and seventh lines of said section, so that said section, as amended, shall read as follows:

'Sec. 30. Repeals provision requiring the clerk of commission to record a copy of the agreement. If the employer and the employee reach an agreement in regard to compensation under this act a memorandum of such agreement signed by the parties shall be filed in the office of the commission. If the commissioner finds that such agreement is in conformity with the provisions of this act, he shall approve the same. In case the commissioner shall find that any such agreement is not in conformity with the provisions of this act and shall refuse to approve the same, or if the employer and employee fail to reach an agreement in regard to compensation under this act, either employer or employee, and when death has resulted from the injury and the dependents of the deceased employee entitled to compensation are, or the apportionment thereof among them is, in dispute, any person in interest, may file in the office of the commission a petition setting forth the names and residences of the parties, the facts relating to the employment at the time of the injury, the cause, extent and character of the injury and the knowledge of the employer or notice of the occurrence of the injury, and if an agreement had been reached between the parties which had not been approved by the commissioner, the form of such agreement and such other facts as may be necessary and proper for the determination of the matter in dispute, and shall state the matter in dispute and the claims of the petitioner with references thereto.'

Sec. 11. 1919, c. 238, § 33; relating to the fixing of the time for hearings on petitions, under provisions of Workmen's Compensation Act, amended. Section thirty-three of chapter two hundred and thirty-eight of the public laws of nineteen hundred and nineteen is hereby amended by striking out all of said section after the word "party" in the fourth line and inserting in place thereof the following: 'All hearings shall be held in the town where the accident occurred but the commission may with the consent of said claimant, hold said hearing in some other

place, in which case the commission may reimburse the claimant for the actual traveling expenses incurred in attending the hearing; any sum of money paid for such expenses to be charged to the appropriation of the industrial accident commission under the heading "expenses of administration," so that said section, as amended, shall read as follows:

'Sec. 33. Hearing may be held in some other town than that in which accident occurred if claimant consents; claimant may be reimbursed for travelling expenses from commission's expenses of administration. The whole matter shall then be referred to the chairman or associate legal member of said commission who shall fix a time for hearing upon the request of either party, upon a three days' notice given to the other party. All hearings shall be held in the town where the accident occurred but the commission may with the consent of said claimant, hold said hearing in some other place, in which case the commission may reimburse the claimant for the actual traveling expenses incurred in attending the hearing; any sum of money paid for such expenses to be charged to the appropriation of the industrial accident commission under the heading "expenses of administration.'

Approved April 9, 1921.

Chapter 223.

An Act to Amend Section One Hundred and Ten of Chapter Four of the Revised Statutes, Relating to Payment of Damages Done by Dogs and Wild Animals to Domestic Animals.

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

R. S., c. 4, § 110; relating to payment of damages done by dogs and wild animals to domestic animals, amended. Section one hundred and ten of chapter four of the revised statutes is hereby amended by inserting after the word "animals" in the second line of said section, the words 'poultry not included' so that said section, as amended, shall read as follows:

'Sec. 110. No damages to be paid for poultry. Whenever any sheep, lambs, or other domestic animals, poultry not included, owned by a resident of this state are killed or injured by dogs or wild animals, such owner may make complaint thereof to the mayor of the city, or to one of the municipal officers of the town or plantation where such damage was done, within seven days after he has knowledge of the same, and thereupon the municipal officers shall investigate the complaint, and if satisfied that the said damage was committed by dogs or wild animals within the limits of their city, town or plantation, they shall estimate