REVISED STATUTES

OF THE

STATE OF MAINE

1954

1961 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 1

Discard Previous Pocket Part Supplement

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1961

notice thereof. Upon the evidence and after hearing, which shall be held not less than 7 days after notice thereof, the court may modify, affirm or reverse the rule, regulation, determination or declaration in whole or in part in accordance with law and the weight of the evidence. The court shall, upon hearing, determine whether the filing of the appeal shall operate as a stay of any rule, regulation, determination or declaration pending the final determination of the appeal, and may impose such terms and conditions as may be deemed proper. (1957, c. 28. 1961, c. 317, § 63.)

Effect of amendment.—The 1961 amendment substituted "the superior court" for "a justice of the superior court in term time or vacation" in the first sentence of this section, substituted "complaint" for "petition" at the end of the second sentence, deleted "in term time or a justice thereof in vacation" following "court" in the third sentence, and deleted "or a justice thereof" following "court" in the fourth and fifth sentences.

Records Confidential.

Sec. 165. Records confidential.—All information and reports recorded by the commissioner of labor and industry or his authorized agents under this chapter shall be confidential, and no names of individuals, firms or corporations shall be used in any reports of the commissioner nor made available for public inspection. (1959, c. 223, § 4.)

Chapter 31.

Industrial Accidents.

The Workmen's Compensation Act.

Purpose of Workmen's Compensation Act.

The basic purpose of the Workmen's Compensation Act is to provide compensation for loss of earning capacity from actual or legally presumed incapacity to work arising from accidents in industry. Cook v. Colby College, 155 Me. 306, 154 A. (2d) 169.

Sec. 2. Definitions.

II. Employee. "Employee" shall include officials of the state, counties, cities, towns which have accepted the provisions of this act, water districts and all other quasi-municipal corporations of a similar character and every person in the service of another under any contract of hire, express or implied, oral or written, except:

III. Assenting employer. "Assenting employer" shall include all private employers who have become assenting employers in accordance with section 6, and it shall include all towns voting to accept the provisions of the act. This act shall be compulsory as to the state, counties, cities, water districts and all other quasi-municipal corporations of a similar nature; but the provisions of said section 6 shall not apply thereto or to assenting towns.

IV. Commission; commissioner. "Commission" shall mean the industrial accident commission created by section 29; except that as to hearings on petitions authorized by sections 9 and 40, it shall mean any 2 or more members thereof designated from time to time by the chairman, and except 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 section 29.

VI. Insurance company. "Insurance company" shall mean any casualty insurance company or association authorized to do business in this state which may issue policies conforming to subsection V, whenever in this act relating

to procedure the words "insurance company" are used they shall apply only to cases in which the employer has elected to secure the payment of compensation and other benefits by insuring such payment under an industrial accident insurance policy, instead of furnishing satisfactory proof of his ability to pay compensation and benefits direct to his employees.

VIII. Dependents.

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. A wife living apart from her husband shall produce court order or other competent evidence as to separation and actual dependency.

(1955, c. 282. 1961, c. 178, §§ 1, 2; c. 392, § 1, 2.)

I. IN GENERAL.

Effect of amendments. — The 1955 amendment inserted in the introductory paragraph of subsection II the words "officials of the state, counties, cities, towns which have accepted the provisions of this act, water districts and all other quasi-municipal corporations of a similar character and."

Chapter 178, P. L. 1961, rewrote the first sentence of subsection III and combined that sentence with the former second sentence, substituted "subsection V" for "the provisions of the preceding subsection" at the end of the first sentence of subsection VI, substituted "secure the payment of compensation and other benefits by insuring such payment under an industrial accident insurance policy" for "file such policy" in the second sentence of that subsection and deleted "hereinafter provided" near the end of that subsection. Chapter 392, P. L. 1961, deleted references to sections 13 and 28 and to proceedings under section 23 in the first sentence of subsection IV, deleted "one of whom shall at all times be a legal member" following "chairman" in that sentence, made other minor changes in subsection IV and added the second sentence of paragraph A of subsection VIII.

Only the subsections or parts of subsections affected by the amendments are set out.

Effective date.—Section 8 of c. 178, P. L. 1961, amending this section, provides that the act shall become effective on November 30, 1961.

Sec. 3. Employers lose common law defenses.

A non-assenting employer has no duty to anticipate an employee's negligence. Lyle v. Bangor & Aroostook R. R. Co., 150 Me. 327, 110 A. (2d) 584.

Employee cannot recover where his negligence is sole proximate cause of injury.— Even though the defense that the employee was negligent is not available to a non-assenting employer under the Workmen's Compensation Act, where the employee's negligence is not only contributory but is the sole proximate cause of injury such negligence is conclusive. Lyle v. Bangor & Aroostook R. R. Co., 150 Me. 327, 110 A. (2d) 584.

Applied in LeClair v. Wallingford, 152 Me. 342, 129 A. (2d) 631.

Sec. 4. Section 3 not applicable to certain actions; 5 or less employees; farming; domestic service.—The provisions of section 3 shall not apply to employers who employ 5 or less workmen or operatives regularly in the same business. Said provisions shall not apply to actions to recover damages for the injuries aforesaid, or for death resulting from such injuries, sustained by employees engaged in domestic service or in agriculture. (R. S. c. 26, § 4. 1957, c. 343.)

Effect of amendment. — The 1957 amendment deleted former provisions of this section relating to logging operations.

Editor's note.—The case of LeClair v. Wallingford, 152 Me. 342, 129 A. (2d) 631, treated below, was decided prior to the 1957 amendment.

But employer not compelled to accept act as to logging and driving.

In accord with original. See LeClair v. Wallingford, 152 Me. 342, 129 A. (2d) 631.

Any employee engaged in the operation of cutting, hauling, rafting or driving logs, including work incidental thereto, may at the option of his employer be subject to the provisions of the act. Such employee, as a matter of right, does not

come within the provisions of the act. LeClair v. Wallingford, 152 Me. 342, 129 A. (2d) 631.

And he may assent to sawmill operation without assenting to logging.

In accord with original. See LeClair v. Wallingford, 152 Me. 342, 129 A. (2d) 631.

Burden is upon employer to exclude such operation in his assent.—The statute puts a burden upon the employer by providing that if the hauling of logs is incidental to his sawmill business he must exclude such operation in his assent, otherwise it will be presumed to be covered by his assent. LeClair v. Wallingford, 152 Me. 342, 129 A. (2d) 631.

Logging excluded from employer's assent.—Where employee at the time of sustaining injury was engaged in the hauling of logs, which operation was excluded from the employer's assent, the case was not within the jurisdiction of the industrial accident commission. LeClair v. Wallingford, 152 Me. 342, 129 A. (2d) 631.

Sec. 5. Section 3 not applicable to assenting employers; such employers exempt from other actions.—Section 3 shall not apply to actions to recover damages for the injuries aforesaid, or for death resulting from such injuries, sustained by employees of an employer who has become subject to this act by securing the payment of compensation in conformity with section 6. Such assenting employers, except as provided by section 7, shall be exempt from civil actions because of such injuries either at common law or under chapter 165, sections 9, 10 and 11 or under this chapter, sections 48 to 55. (R. S. c. 26, § 5. 1961, c. 178, § 3.)

Effect of amendment.—The 1961 amendment deleted "assented to" between "has" and "become" in the first sentence, added "by securing the payment of compensation in conformity with section 6" at the end of that sentence, deleted the former second sentence, substituted "civil actions" for "suits" in the last sentence, added the reference to §§ 10 and 11 of c. 165 in that sentence and made other minor changes.

Effective date.—Section 8 of c. 178, P. L. 1961, amending this section, provides that the act shall become effective on November 30, 1961.

Sec. 6. Insurance; self-insurers; benefit system; notices.

I. Employer presumed to be assenting employer; liability of non-assenting employer. Every private employer subject to this act, who has secured the payment of compensation in conformity with section 6, shall be conclusively presumed to be an assenting employer with respect to employees other than those engaged in domestic service or in agriculture, subject to the provisions hereinafter stated.

Any private employer other than those who employ 5 or less workmen or operators regularly in the same business who has elected not to be an assenting employer by not securing the payment of compensation under section 6 shall, in a civil action brought by the employee other than one engaged in domestic service or in agriculture to recover for personal injuries or death sustained after such election by the employer, arising out of and in the course of his employment shall not be entitled to the defenses set forth in section 3.

Any employer whose assent is thus presumed may cease to be an assenting employer effective upon the first day of any month, provided said employer gives to the commission at its office in Augusta written notice in such form as the commission approves, not less than 60 days prior to the date on which said employer desires his election to cease to be an assenting employer to become effective, and provided that said employer shall post in conspicuous places in his several places of employment written or printed notices to the effect that on and after the first day of the month upon which such election shall become effective, said employer will not be subject to this act, which notices shall be posted at least 60 days prior to the date such election shall become effective and shall be kept continuously posted thereafter in sufficient places frequented by the employees of said employer to reasonably notify such employees of such election.

Any private employer who has thus elected not to be an assenting employer may thereafter at any time become an assenting employer by filing with the commission at its office in Augusta his written notice in such form as the commission approves withdrawing his election not to be an assenting employer and by securing the payment of compensation in conformity with section 6. (1949, c. 352. 1961, c. 178, § 4.)

III. Assenting employer must insure or may become self-insurer by filing securities. Every assenting employer shall secure such compensation and other benefits to his employees in one or more of the following ways:

A. By insuring and keeping insured the payment of such compensation and other benefits under an industrial accident insurance policy. The insurance company shall file with the commission notice, in such form as the commission approves, of the issuance of any industrial accident policy to an assenting employer. Such insurance shall not be cancelled within the time limited in such policy for its expiration until at least 30 days after mailing to the commission and to the employer a notice of the cancellation of such insurance. In the event that the employer has obtained an industrial accident policy from another insurance company, or has otherwise secured compensation as provided in this subsection, and such insurance or other security becomes effective prior to the expiration of said 30 days, cancellation may, at the option of the insurance company indicated in such notice, be effective as of the effective date of such other insurance or security.

B. By furnishing satisfactory proof to the commission of his solvency and financial ability to pay the compensation and benefits, and 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 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. The commission may at any time in its discretion deny to an assenting employer the right to continue in the exercise of the option granted by this subsection.

IV. Voluntary election. Any private employer of 5 or less employees may become an assenting employer with respect to his employees and any private employer may become an assenting employer with respect to his employees engaged in domestic service or in agriculture, and the act of the employer in securing the payment of compensation to such employee or class of employees in conformity with this section shall constitute as to such employer his election to become an assenting employer without any further act on his part, but only with respect to that employee or that class of employees with respect to whom the employer has secured compensation as provided in this section, provided that, as to any employer who secures compensation by making a contract of industrial accident insurance, such election shall be deemed to have been made on the effective date of the insurance policy. Such election to be an assenting employer shall be deemed to continue as long as compensation continues to be secured as provided.

VI. Notices of assent to be kept posted. 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 his employees. For willful failure to post such notices, the employer shall be liable to a forfeiture of $10 for each day of such willful neglect, to be enforced by the commission in a civil action in the name of the state.

VII. Existing employer status preserved. An employer with a currently approved industrial accident policy, or a currently accepted self-insurer, within section 6 shall be considered in compliance with this act until the expiration or cancellation date of the current assent based thereon. (R. S. c. 26, § 6. 1949, c. 352. 1961, c. 178, §§ 4-7; c. 317, § 64.)

Effect of amendments.—Chapter 178, P. L. 1961, rewrote subsections I, III and IV and added subsection VII. Chapter 317, P. L. 1961, substituted "a civil action" for "an action of debt" in the last sentence of subsection VI of this section.

As subsections II and V were not affected by the amendments, they are not set out.

Effective date.—Section 8 of c. 178, P. L. 1961, amending this section, provides that the act shall become effective on November 30, 1961.

Applied, as to subsection I, in LeClair v. Wallingford, 152 Me. 342, 129 A. (2d) 631.

Sec. 8. Employee under act, injured by accident, entitled to compensation.

III. ARISING OUT OF AND IN THE COURSE OF THE EMPLOYMENT.

A. In General.

In order for the accident to arise out of the employment, etc.

In accord with 1st paragraph in original. See Bouchard v. Sargent, Inc., 152 Me. 207, 127 A. (2d) 260.

To rise out of the employment an injury must, etc.

In accord with 1st paragraph in original. See Bouchard v. Sargent, Inc., 152 Me. 207, 127 A. (2d) 260.

Nor does injury resulting from horseplay.

Where the accident arises out of an independent frolic or a bit of horseplay entered into by the employee and unrelated to his work, it has been held not to be compensable. Bouchard v. Sargent, Inc., 152 Me. 207, 127 A. (2d) 260.

That some types of horseplay will occur under some conditions of employment must perhaps be considered inevitable. However, where one deliberately and substantially steps outside of his employment to engage in a personal prank or frolic of his own, he has for the moment abandoned his work and the resulting accident cannot be said to arise out of or in the course of his employment. Bouchard v. Sargent, Inc., 152 Me. 207, 127 A. (2d) 260.

Unless such horseplay should have been foreseen by employer.

In accord with original. See Bouchard v. Sargent, Inc., 152 Me. 207, 127 A. (2d) 260.

Facts and circumstances of each case.—The question whether an act of an employee arose out of and in the course of the employment depends ultimately upon the facts and circumstances of each case. Larou v. Table Talk Distributors, Inc., 153 Me. 504, 138 A. (2d) 475.

Deviation from usual or prescribed route.—Whether a deviation by a traveling employee from his usual or prescribed route, schedule, or mode of travel, constitutes such a departure from his scope or course of employment as to deprive him of the right to compensation for an injury sustained during or as the result of such deviation depends ordinarily upon the extent, purpose, and effect thereof. Larou v. Table Talk Distributors, Inc., 153 Me. 504, 138 A. (2d) 475.

It is not every slight deviation that deprives an employee of benefits. Larou v. Table Talk Distributors, Inc., 153 Me. 504, 138 A. (2d) 475.

Attempting to swim stream instead of using boat.—Where employee returning to work after lunch drowned while attempting to swim stream instead of using boat provided by employer for crossing stream, the fatal accident did not arise out of and in the course of employment and was not compensable. Bouchard v. Sargent, Inc., 152 Me. 207, 127 A. (2d) 260.

IV. EVIDENCE AND BURDEN OF PROOF.

Circumstantial evidence held sufficient to show injury by accident arising out of and in the course of employment resulted in employee's death. Prescott v. Old Town Furniture Co., 151 Me. 11, 116 A. (2d) 413.

Sec. 9. Employee entitled to limited medical services; selection of own physician; cost; vocational rehabilitation service.

Upon knowledge or notice of such injury the employer shall promptly furnish

to the employee the services and aids aforesaid. In case, however, the employer fails to furnish any of said services or aids, or in case of emergency or other justifiable cause, the employee may procure said services or aids and the commission may order the employer to pay for the same provided that they were necessary and adequate, and the charges therefor are reasonable. In every case where any of said services or aids are procured by the employee, it shall be his duty to see that the employer is given prompt notice thereof. The commission in its discretion may also require the employer to furnish artificial limbs, eyes, teeth, orthopedic appliances and physical aids made necessary by such injury, and to replace and renew the same when deemed necessary from wear and tear or physical change of the injured employee; but no employer shall be obligated to replace or renew any such items after 500 weeks from the date of injury. In case artificial limbs, eyes and teeth, in use by an employee at the time of the accident as substitutes for natural parts of the body, are themselves injured or destroyed, they shall be repaired or replaced by the employer.

Whenever, because of the nature of such injury or the subsequent condition of the employee following such injury, it appears that vocational rehabilitation is necessary and desirable to restore the injured employee to gainful employment, the employee shall be entitled to reasonable and proper rehabilitation service for a period not exceeding 52 weeks, which period may be extended for a further period not to exceed another 52 weeks if such extended period is found to be necessary and proper by any member of the commission. Such vocational rehabilitation service may be arranged in consultation with the division of vocational rehabilitation, department of education, as provided in section 44, subject to the following conditions and limitations:

I. Course of instruction. The employee must undertake the course of instruction within 60 days from the date when he has sufficiently recovered from his injury to permit of his so doing, or as soon thereafter as the person or agency having charge of his instruction shall provide opportunity for his rehabilitation.

II. Rehabilitation training. The employee must continue in rehabilitation training with such reasonable regularity as his health and situation will permit.

III. Determination of rights. The commission shall determine the rights and liabilities of the parties under this section in like manner and with like effect as it does other issues under the Workmen's Compensation Act. (1959, c. 289. 1961, c. 384, § 1.)

Effect of amendments. — The 1959 amendment rewrote the fourth sentence of the second paragraph of this section.

The 1961 amendment added the present third paragraph, including subsections I, II and III.

As the first and last paragraphs were not affected by the amendments, they are not set out.

Effective date.—Section 10 of c. 384, P. L. 1961, amending this section, provides that the act shall take effect on November 30, 1961.

Applied in Burpee v. Inhabitants of Houlton, 156 Me. 487, 166 A. (2d) 473.

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 ⅔ his average weekly wages, earnings or salary, but not more than $39 nor less than $15 a week; and in no case shall the period covered by such compensation be greater than 500 weeks from the date of the accident, nor the amount more than $19,500 exclusive of the cost of rehabilitation and of sustenance and travel during said rehabilitation which in no case shall be more than $2,000 in the first 52 weeks of said rehabilitation and if such a period is extended as provided in section 9, not more than $500 in the second 52 weeks of said rehabilitation. 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 1 hand and 1 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.

Whenever a program of vocational rehabilitation has been inaugurated, either by approved agreement or commission decree, the employer shall pay the injured employee, in addition to compensation, if he is totally or partially incapacitated, a sum not to exceed $20 per week for sustenance and travel as may be determined by the commission during the period of such rehabilitation within the limitations as prescribed in this section and section 9. (R. S. c. 26, § 11. 1949, c. 380, § 2. 1953, c. 357, § 1. 1955, c. 387, § 1. 1957, c. 404, § 1. 1959, c. 338, § 1. 1961, c. 384, §§ 2, 3.)

Effect of amendments. — The 1955 amendment, effective November 30, 1955, changed the first sentence by substituting "$30" for "$27" in line four, and by inserting "$12,000" in place of "$10,500" at the end of the sentence.

The 1957 amendment, effective November 30, 1957, substituted "$35" for "$30" and "$14,000" for "$12,000" in the first sentence.

The 1959 amendment substituted "$39" for "$35" and "$19,500" for "$14,000" in the first sentence.

The 1961 amendment added all of the first sentence following "$19,500" and added the second paragraph.

Effective dates. — P. L. 1959, c. 338, amending this section, provided in section 4 thereof as follows: "The provisions of this act shall take effect on November 30, 1959."

Section 10 of c. 384, P. L. 1961, amending this section, provides that the act shall take effect on November 30, 1961.

Sec. 12. Compensation for partial incapacity. — While the incapacity for work resulting from the injury is partial, the employer shall pay the injured employee a weekly compensation equal to ⅔ the difference, due to said injury, between his average weekly wages, earnings or salary before the accident and the weekly wages, earnings or salary which he is able to earn thereafter, but not more than $39 a week; and in no case shall the period covered by such compensation be greater than 300 weeks from the date of the accident except for vocational rehabilitation services provided under sections 9 and 11. (R. S. c. 26, § 12. 1949, c. 380, § 3. 1953, c. 357, § 2. 1955, c. 387, § 2. 1957, c. 404, § 2. 1959, c. 338, § 2. 1961, c. 384, § 4.)

Effect of amendments. — The 1955 amendment, effective November 30, 1955, substituted "$30" for "$27" in line six.

The 1957 amendment, effective November 30, 1957, substituted "$35" for "$30" in line six.

The 1959 amendment substituted "$39" for "$35" in line six.

The 1961 amendment added "except for vocational rehabilitation services provided under sections 9 and 11" at the end of this section.

Effective dates. — P. L. 1959, c. 338, amending this section, provided in section 4 thereof as follows: "The provisions of this act shall take effect on November 30, 1959."

Section 10 of c. 384, P. L. 1961, amending this section, provides that the act shall take effect on November 30, 1961.

It is partial "incapacity for work," etc.

In accord with original. See Pelchat v. Portland Box Co., 155 Me. 226, 153 A. (2d) 615.

Which is not limited to employment, etc.

In accord with 2nd paragraph in original. See Pelchat v. Portland Box Co., 155 Me. 226, 153 A. (2d) 615.

Sec. 13. Compensation for specified injuries; permanent impairment.—In cases of injuries included in the following schedule the incapacity 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, the employee shall receive compensation while such total or partial incapacity continues under the provisions of sections 11 and 12 respectively. The specific periods during which compensation for presumed total incapacity is to be paid because of the injuries hereinafter specified shall be as follows:

For the loss of a thumb, 50 weeks.
For the loss of the first finger, commonly called the index finger, 32 weeks.
For the loss of the 2nd finger, commonly called the middle finger, 28 weeks.
For the loss of the 3rd finger, commonly called the ring finger, 20 weeks.
For the loss of the 4th finger, commonly called the little finger, 17 weeks.

The loss of the distal (second) phalanx of the thumb or the distal (third) phalanx of any finger shall be considered to be equal to the loss of ½ of said thumb or finger, and the compensation therefor shall be ½ the amount above specified. The loss of more than one phalanx shall be considered as the loss of the entire thumb or finger. In no case shall the amount received for the loss of a thumb and more than one finger of the same hand exceed the amount specified in this schedule for the loss of a hand.

For the loss of the great toe, 25 weeks.
For the loss of one of the toes other than the great toe, 10 weeks.

For the loss of the distal (second) phalanx of the great toe or of the distal (third) phalanx of any other toe shall be considered to be equal to the loss of ½ of said great toe or any other toe, and the compensation therefor shall be ½ the amount above specified. The loss of more than one phalanx shall be considered as the loss of the entire toe.

For the loss of a hand, 150 weeks.
For the loss of an arm, or any part thereof above the wrist, 175 weeks.
For the loss of a foot, 150 weeks.
For the loss of a leg, or any part thereof above the ankle, 175 weeks.
For the loss of an eye, or the reduction of the sight of an eye, with glasses, to 1/10 of the normal vision, or for diplopia, 100 weeks.
For the total and permanent loss of hearing in one ear, 50 weeks.
For the total and permanent loss of hearing in both ears, 100 weeks.

In all other cases of injury to the above-mentioned members, eyes or hearing where the usefulness of any physical function thereof is permanently impaired, the specific compensable periods for presumed total incapacity on account thereof shall bear such relation to the periods above specified as the percentage of permanent impairment due to the injury to such members, eyes or hearing shall bear to the total loss thereof. The commission upon petition therefor by either party shall determine such percentage. A petition for determination of the percentage of permanent hearing impairment due to an injury shall be filed with the commission within 2 years from the date of the accident. (R. S. c. 26, § 13. 1949, c. 405. 1953, c. 362, § 1. 1957, c. 201, §§ 1, 2; c. 252; c. 393, § 1. 1959, c. 264.)

Effect of amendments.—The first 1957 amendment rewrote the first sentence of the seventh paragraph and deleted the words "provided, however, that" from the last sentence of such paragraph, and rewrote the first sentence of the tenth paragraph. The second 1957 amendment inserted the words "or for diplopia" in the fifteenth paragraph. The third 1957 amendment increased the weekly periods for specific injuries enumerated in this section and incorporated the changes made by the earlier 1957 amendments. Section 2 of the third amendatory act provided that such act should become effective on November 30, 1957.

The 1959 amendment divided the former provisions of the last paragraph into two sentences, included "hearing" in the first sentence and added the last sentence.

The theory of the scheduled injuries is that the claimant has sustained a distinct loss of earning power in the near or not remote future. Cook v. Colby College, 155 Me. 306, 154 A. (2d) 169.

It is loss of use, not loss or removal in itself, that brings about loss of earning capacity. Cook v. Colby College, 155 Me. 306, 154 A. (2d) 169.

Section designed to meet blindness from industrial accident.—The real injury with respect to the eye, which this section is designed to meet, is blindness from industrial accident, not removal or enucleation of the eye as such. Cook v. Colby College, 155 Me. 306, 154 A. (2d) 169.

Meaning of "loss of an eye." — The words "loss of an eye" in this section

mean the removal or enucleation of an eye, useful in industry, with at least 1/10 of normal vision with glasses. Cook v. Colby College, 155 Me. 306, 154 A. (2d) 169.

"Eye" must be eye useful in industry.— In the words "with glasses, to 1/10 of the normal vision," the legislature adopted a reasonable standard of industrial blindness, and intended thereby that "eye" under the schedule must be an eye useful in industry. Cook v. Colby College, 155 Me. 306, 154 A. (2d) 169.

Hence, an eye in the condition of industrial blindness is not an "eye" within the schedule of this section. Cook v. Colby College, 155 Me. 306, 154 A. (2d) 169.

"Loss" means severance.

In accord with 2nd paragraph in original. See Cook v. Colby College, 155 Me. 306, 154 A. (2d) 169.

Sec. 14. Permanent total incapacity due partly to prior injury; second injury fund.

In every case of the death of an employee under this act where there is no person entitled to compensation, the employer shall pay to the industrial accident commission the sum of $500, to be deposited with the treasurer of state for the benefit of said fund, and the commission shall direct the distribution thereof. (R. S. c. 26, § 14. 1961, c. 384, § 5.)

Effect of amendment.—The 1961 amendment substituted "$500" for "$300" in the last paragraph.

As the first paragraph was not affected by the amendment, it is not set out.

Effective date.—Section 10 of c. 384, P. L. 1961, amending this section, provides that the act shall take effect on November 30, 1961.

Sec. 15. 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 ⅔ his average weekly wages, earnings or salary, but not more than $39 nor less than $15 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 $11,700. 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 stepchildren, 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 1 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.

(1955, c. 387, § 3. 1957, c. 404, § 3. 1959, c. 338, § 3.)

Effect of amendments. — The 1955 amendment, effective November 30, 1955, substituted "$30" for "$27" in line five of the first sentence and "$9,000" for "$8,000" at the end of the first sentence.

The 1957 amendment, effective November 30, 1957, substituted "$35" for "$30" and "$10,500" for "$9,000" in said first sentence.

The 1959 amendment substituted "$39" for "$35" and "$11,700" for "$10,500" in the first sentence.

As the second paragraph was not changed by the amendments, it is not set out.

Effective date. — P. L. 1959, c. 338, amending this section, provided in section 4 thereof as follows: "The provisions of this act shall take effect on November 30, 1959."

Sec. 16. Burial expenses.—If the employee dies as a result of the injury, the employer shall pay, in addition to any compensation and medical benefits pro-

vided for in this act, the reasonable expenses of burial, not to exceed $450. (R. S. c. 26, § 16. 1953, c. 395, § 1. 1959, c. 263.)

Effect of amendment.—The 1959 amendment substituted "$450" for "$350" in this section.

Sec. 20. Notice of accident within 30 days.

Applied in Arndt v. Trustees of Gould Academy, 151 Me. 424, 120 A. (2d) 218.

Sec. 21. Notice unnecessary if employer has knowledge; extension of period for notice.

Who is agent within meaning of this section.

Where injured employee was in charge of women's division of department of physical education, notice of injury to the director of physical education who had charge of the men's division but had no control over employee's department, was not notice of injury to the trustees of an academy. Arndt v. Trustees of Gould Academy, 151 Me. 424, 120 A. (2d) 218.

Sec. 22. Employee may be examined by employer's physician or impartial examiner; to accept proper medical treatment or vocational rehabilitation.

If any employee refuses or neglects to submit himself to any reasonable examination provided for in this act, or in any way obstructs any such examination, or if he declines proper medical, surgical treatment or vocational rehabilitation offered by the employer, upon petition of said employer such employee's rights to compensation shall be suspended, and his compensation during such period of suspension shall be forfeited. (R. S. 26, § 22. 1961, c. 384, § 6.)

Effect of amendment.—The 1961 amendment added the reference to vocational rehabilitation in the last paragraph.

As the rest of this section was not affected by the amendment, it is not set out.

Effective date.—Section 10 of c. 384, P. L. 1961, amending this section, provides that the act shall take effect on November 30, 1961.

Sec. 24. Waiver of rights to compensation not valid; claims not assignable.

Cited in Burpee v. Inhabitants of Houlton, 156 Me. 487, 166 A. (2d) 473.

Sec. 25. Employee injured by third party has election; employer paying compensation subrogated to employee's rights.—When any injury or death for which compensation or medical benefits are 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 the subrogation suit is pending or to which it is returnable; or, if not in suit, of a single commissioner. When the court in which such subrogation suit is pending or to which it is returnable is in vacation, the judge of the court, or, if the suit is pending in or returnable to the superior court, any justice of the superior court, shall have the power to approve the settlement of such suit and

the distribution of the proceeds therefrom. The beneficiary shall be entitled to reasonable notice and the opportunity to be present in person or by counsel at the approval proceedings.

(1961, c. 392, § 3.)

Effect of amendment.—The 1961 amendment inserted "or death" near the beginning of the section and deleted "the provisions of" preceding "this act" in the first sentence.

As the second paragraph was not affected by the amendment, it is not set out.

Sec. 29. Industrial accident commission; appointment; tenure; duties; salary; clerk; seal.

The chairman shall receive a salary of $10,000 per year, and the other commissioners a salary of $9,000 each per year. The commissioner of labor and industry, in addition to his salary as such, shall receive for his services as a member of the commission $1,000 per year. The members of the commission shall also receive their actual, necessary, cash expenses while away from their office on official business of the commission.

(1955, c. 473, § 9. 1957, c. 418, § 10. 1959, c. 361, § 9.)

Effect of amendments. — The 1955 amendment increased the annual salary of the chairman from $7,000 to $8,000 and of the other commissioners from $6,500 to $7,500.

The 1957 amendment, effective July 1, 1957, increased the annual salary of the chairman from $8,000 to $9,000 and of the other commissioners from $7,000 to $8,450, and carried appropriations for the fiscal years ending in 1958 and 1959.

The 1959 amendment increased the annual salary of the chairman from $9,000 to $10,000 and of the other commissioners from $8,450 to $9,000, and carried appropriations for the fiscal years ending June 30, 1960 and 1961.

As only the third paragraph was changed by the amendments, the rest of the section is not set out.

Effective date. — P. L. 1959, c. 361, amending this section, provided in section 14 thereof as follows: "The provisions of this act shall become effective for the week ending August 22, 1959."

Sec. 30. Authority of commission; forms and procedure.

And liberal construction.

In accord with original. See Larou v. Table Talk Distributors, Inc., 153 Me. 504, 138 A. (2d) 475.

Quoted in Cook v. Colby College, 155 Me. 306, 154 A. (2d) 169.

Sec. 31. Investigators; subpoenas; depositions.

II. Subpoenas. Any commissioner may administer oaths and any commissioner, justice of the peace, notary public or clerk of any superior court may issue subpoenas for witnesses and subpoenas duces tecum to compel the production of books, papers and photographs relating to any questions in dispute before the commission or to any matters involved in a hearing. Witness fees in all proceedings under this act shall be the same as for witnesses before the superior court. When a witness, subpoenaed and obliged to attend before the commission or any member thereof, fails to do so without reasonable excuse, the superior court or any justice thereof may, on application of the attorney general made at the written request of a member of the commission, compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

(1961, c. 392, § 4.)

Effect of amendment.—The 1961 amendment inserted "any commissioner, justice of the peace, notary public or clerk of any superior court may" near the beginning of subsection II, added the last sentence of that subsection and made other minor changes in the subsection.

As the rest of the section was not affected by the amendment, only subsection II is set out.

Sec. 32. Approval of agreement as to compensation or vocational rehabilitation; petition for award.

If following an injury the employer and the employee reach an agreement in regard to vocational rehabilitation under this act, a memorandum of such agreement signed by the parties shall be filed in the office of the commission. If any member of the commission finds that such agreement as to vocational rehabilitation is in conformity with the act, he shall approve the same. In case he shall find that such agreement is not in conformity therewith and shall refuse to approve the same, or if the employer and the employee fail to reach an agreement in regard to vocational rehabilitation, either employee or employer may file in the office of the commission a petition for award of vocational rehabilitation, setting forth the names and residences of the parties, the facts relating to the employment at the time of the accident, the time, place and cause of the accident, the character and extent of the injury, and need of vocational rehabilitation, and the claims of the petitioner with reference thereto; together with such other facts as may be necessary and proper for the determination of the rights of the petitioner relative to said claims. (R. S. c. 26, § 32. 1961, c. 384, § 7.)

Effect of amendment.—The 1961 amendment added the second paragraph to this section.

As the first paragraph was not affected by the amendment, it is not set out.

Effective date.—Section 10 of c. 384, P. L. 1961, amending this section, provides that the act shall take effect on November 30, 1961.

Section permissive. — Provision in this section for a determination of rights is permissive and not mandatory. Burpee v. Inhabitants of Houlton, 156 Me. 487, 166 A. (2d) 473.

Cited in Gooldrup v. Scott Paper Co., 154 Me. 1, 140 A. (2d) 765.

Sec. 33. Time limitations for filing petitions.—An employee's claim for compensation under the provisions of this act shall be barred unless an agreement or a petition as provided in section 32 shall be filed within one year after the date of the accident. Any time during which the employee is unable by reason of physical or mental incapacity to file said petition shall not be included in the period aforesaid. If the employee fails to file said petition within said year because of mistake of fact as to the cause and nature of the injury, he may file said petition within a reasonable time not to exceed 2 years from the date of the accident. In case of the death of the employee, there shall be allowed for filing said petition one year after such death. No petition of any kind may be filed more than 10 years following an accident. (R. S. c. 26, § 33. 1957, c. 325.)

Effect of amendment. — The 1957 amendment made a former proviso of the first sentence into a separate sentence, inserted the present third sentence, and made other minor changes.

Compliance with section not obviated by payment of medical bills.—The payment of medical bills beyond the first 30-day period by the employer is evidence of a concession of liability, but is not an adequate basis for such an inference of waiver or estoppel as would obviate the employee's compliance with the statutory time limitation for filing claims. Burpee v. Inhabitants of Houlton, 156 Me. 487, 166 A. (2d) 473.

Pleadings raising issue of seasonable notice and filing.—The respondents, who filed an answer of general denial, and a special plea of failure of seasonable notice and filing placed both the date of accident and any legal excuse for delay in filing squarely in issue and it was thereafter encumbent upon the petitioner to prove seasonable notice and filing by the fair preponderance of the evidence. Guay v. Waterville, 152 Me. 146, 125 A. (2d) 665.

Sec. 35. Filing of answers.—Within 15 days after notice of the filing of such petition all the other parties interested in opposition shall file an answer thereto and furnish a copy thereof for the petitioner; which answer shall state specifically the contentions of the opponents with reference to the claim as disclosed by the petition. The commission or any commissioner may grant further time for filing answer, and allow amendments to said petition or answer at any

stage of the proceedings. If any party opposing such petition does not file an answer within the time limited, the hearing shall proceed upon the petition. (R. S. c. 26, § 35. 1961, c. 392, § 5.)

Effect of amendment.—The 1961 amendment substituted "15 days" for "10 days" near the beginning of the section.

Cited in Burpee v. Inhabitants of Houlton, 156 Me. 487, 166 A. (2d) 473.

And allegations of petition taken as admitted.

Material facts are admitted when not disputed in the answer. Rowe v. Keyes Fibre Co., 152 Me. 317, 129 A. (2d) 210.

A defense to a petition which is not pleaded is waived.

An employer is limited in his defense by his answer. For example, a time limitation for filing a petition and res adjudicata must be pleaded. Rowe v. Keyes Fibre Co., 152 Me. 317, 129 A. (2d) 210.

General denial of liability is sufficient to permit the determination of disability and compensation for the entire period from accident to hearing. Rowe v. Keyes Fibre Co., 152 Me. 317, 129 A. (2d) 210.

Sec. 36. Time and place of hearing.—The whole matter shall then be referred to a single commissioner, who shall fix a time for hearing upon at least a 5 days' notice given to all the parties. All hearings shall be held at such towns and cities geographically distributed throughout the state as the commission shall designate. In case the place of hearing so designated is more than 10 miles distant from the place where the accident occurred, the employer shall provide transportation or reimburse the employee for reasonable mileage in traveling within the state to and from said hearing. The amount so allowed for such travel shall be determined by the commissioner or commission and awarded separately in the decree. (R. S. c. 26, § 36. 1961, c. 392, § 6.)

Effect of amendment.—The 1961 amendment deleted the former second sentence and added the present second, third and fourth sentences to this section.

Sec. 37. Hearing; decision.—If from the petition and answer there appear to be facts in dispute, the commissioner shall then hear such witnesses as may be presented, or by agreement the claims of both parties as to such facts may be presented by affidavits. If the facts are not in dispute, the parties may file with the commission an agreed statement of facts for a ruling upon the law applicable thereto. From the evidence or statements thus furnished the commissioner shall in a summary manner decide the merits of the controversy. His decision, findings of fact and rulings of law, and any other matters pertinent to the questions so raised shall be filed in the office of the commission, and a copy thereof attested by the clerk of the commission mailed forthwith to all parties interested. His decision, in the absence of fraud, upon all questions of fact shall be final but whenever in a decree the commission expressly rules that any party has or has not sustained the burden of proof cast upon him, the said finding shall not be considered a finding of fact but shall be deemed to be a conclusion of law and shall be reviewable as such. (R. S. c. 26, § 37. 1961, c. 316.)

Effect of amendment.—The 1961 amendment added all of the last sentence following "final".

But in arriving at his conclusions, etc.

In accord with original. See Prescott v. Old Town Furniture Co., 151 Me. 11, 116 A. (2d) 413.

Commissioner's finding final absent fraud.

In accord with original. See Gooldrup v. Scott Paper Co., 154 Me. 1, 140 A. (2d) 765; Larou v. Table Talk Distributors, Inc., 153 Me. 504, 138 A. (2d) 475.

Whether for or against the petitioner.

See Guay v. Waterville, 152 Me. 146, 125 A. (2d) 665; Prescott v. Old Town Furniture Co., 151 Me. 11, 116 A. (2d) 413.

And a finding of fact by the commission must stand, etc.

In accord with 1st paragraph in original. See Guay v. Waterville, 152 Me. 146, 125 A. (2d) 665; Prescott v. Old Town Furniture Co., 151 Me. 11, 116 A. (2d) 413; Arndt v. Trustees of Gould Academy, 151 Me. 424, 120 A. (2d) 218.

The findings of the industrial accident commission that the necessary elements of accident are not present, namely "unusual. unexpected and sudden event," are final if

supported by competent and credible evidence. McPherson v. Presque Isle, 150 Me. 129, 107 A. (2d) 422.

Compensation not awarded on speculation, surmise, etc.

In accord with 1st paragraph in original. See Prescott v. Old Town Furniture Co., 151 Me. 11, 116 A. (2d) 413.

And finding not supported by evidence should be set aside.

In accord with 3rd paragraph in original. See Guay v. Waterville, 152 Me. 146, 125 A. (2d) 665.

As should finding based on incompetent evidence.

In accord with 1st paragraph in original. See Prescott v. Old Town Furniture Co., 151 Me. 11, 116 A. (2d) 413.

In accord with 2nd paragraph in original. See Prescott v. Old Town Furniture Co., 151 Me. 11, 116 A. (2d) 413.

In workmen's compensation cases, it is not to be presumed that prejudice results from the receipt of inadmissible testimony, if there is sufficient competent evidence in the case on which the commissioner's findings may rest. Prescott v. Old Town Furniture Co., 151 Me. 11, 116 A. (2d) 413.

Weight and credibility of evidence determined by commissioner.

In accord with 2nd paragraph in original. See Guay v. Waterville, 152 Me. 146, 125 A. (2d) 665.

Sec. 38. Petition for review of incapacity.—While compensation is being paid or vocational rehabilitation is being provided under any agreement, award or decree, the incapacity of the injured employee due to the injury, the need or progress of the vocational rehabilitation may from time to time be reviewed by a single commissioner upon the petition of either party upon the grounds that such incapacity has subsequently increased, diminished or ended or that the need of the continuation of vocational rehabilitation has ended. Pending a hearing and final decision upon such petition for review, and except in such cases as the employer and employee may reach a new agreement under section 32, the payment of compensation shall not be decreased or suspended unless and until a certificate of the employer or his insurance carrier is filed with the commission stating that the employee has left the state or that his present whereabouts are unknown, or that he has resumed work, or that he has refused to submit to a medical examination, or unless a certificate of a physician or surgeon is filed with the commission stating that in his opinion from a current examination the employee is able to resume work. Upon such review the commissioner may increase, diminish or discontinue such compensation or vocational rehabilitation in accordance with the facts, as the justice of the case may require. If after compensation or vocational rehabilitation has been discontinued, by decree or approved settlement receipt as provided by section 44, additional compensation or further vocational rehabilitation is claimed by an employee for further period of incapacity, he may file with the commission a petition for further compensation or vocational rehabilitation setting forth his claim therefor, hearing upon which shall be held by a single commissioner. The provisions of sections 34 to 37 as to procedure shall apply to the petitions authorized by this section and by section 22; and said provisions shall apply to the petitions authorized by sections 9, 13, 28 and 40, except that such petitions shall be heard by the commission. (R. S. c. 26, § 38. 1961, c. 290; c. 384, § 8.)

Effect of amendments.—Chapter 290, P. L. 1961, inserted the present second sentence in this section. Chapter 384, P. L. 1961, added the provisions as to vocational rehabilitation and made other minor changes.

Effective date.—Section 10 of c. 384, P. L. 1961, rewriting this section, provides that the act shall take effect on November 30, 1961.

Review available only in case of agreement or decree.

This section provides for petitions for review of incapacity. It is operative "while compensation is being paid under any agreement, award or decree." Only then may the incapacity "from time to time be reviewed." Rowe v. Keyes Fibre Co., 152 Me. 317, 129 A. (2d) 210.

Cited in Gooldrup v. Scott Paper Co., 154 Me. 1, 140 A. (2d) 765.

Sec. 41. Decision or approved agreement as basis for court decree; appeal.—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 an action in which equitable relief is sought, 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.

Upon any appeal therefrom the proceedings shall be the same as in appeals in actions in which equitable relief is sought and the law court may, after consideration, reverse or modify any decree so made by a justice based upon an erroneous ruling or finding of law. There shall be no appeal, however, from a decree based upon any order or decision of the commission or of any commissioner unless said order or decision has been certified and presented to the court within 20 days after notice of the filing thereof by the commission or by any commissioner; and unless appeal has been taken from such pro forma decree within 10 days after such certified order or decision has been so presented. In cases where after appeal aforesaid by an employer the original order or decision rendered by the commission or by any commissioner is affirmed, there shall be added to any amounts payable under said order or decision, the payment of which is delayed by such appeal, interest to the date of payment. In all cases of appeal the law court may order a reasonable allowance to be paid to the employee by the employer for expenses incurred in the proceedings of the appeal including the record, not however to include expenses incurred in other proceedings in the case. (R. S. c. 26, § 41. 1961, c. 317, §§ 65, 66.)

Effect of amendment.—The 1961 amendment substituted "an action in which equitable relief is sought" for "a suit in equity" in the last sentence of the first paragraph of this section and substituted "actions in which equitable relief is sought" for "equity procedure" in the first sentence of the second paragraph.

Decree reviewable on appeal or on exceptions.

In accord with original. See Rowe v. Keyes Fibre Co., 152 Me. 317, 129 A. (2d) 210.

Finding not open to question where no report of evidence included in record.—A finding of "permanent impairment on November 3" cannot be questioned where no report of any evidence is included in the record before the law court. Leclerc v. Gilbert, 152 Me. 399, 131 A. (2d) 202.

Applied in Pelchat v. Portland Box Co., 155 Me. 226, 153 A. (2d) 615.

Sec. 42. Enforcement of court decree; how modified.—Any pro forma decree rendered under section 41 shall be enforceable by the superior court by any suitable process including execution against the goods, chattels and real estate, and including proceedings for contempt for willful failure or neglect to obey the orders or decrees of the court, or in any other manner that decrees for equitable relief may be enforced. Upon the presentation to it, however, of a certified copy of any subsequent order or decision of the commission or of any commissioner increasing, diminishing, terminating or commuting to a lump sum any payments of compensation on account of said injury, or of any agreement for modification of such compensation approved by the commissioner of labor and industry, the court shall revoke or modify any such pro forma decree based upon such prior order or decision of the commission or of any commissioner, or upon any agree-

ment so approved, to conform to such subsequent order or decision or such approved agreement. (R. S. c. 26, § 42. 1961, c. 317, § 67.)

Effect of amendment.—The 1961 amendment substituted "section 41" for "the provisions of the preceding section" and "for equitable relief" for "in equity" in the first sentence of this section.

Sec. 44. Employers to file reports of accidents, physical handicaps and settlement receipts.—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. If at the end of a period of 6 months following the date of injury or the date of amputation of any member, or the date of loss of one or both eyes or the loss of hearing in one or both ears, the employee is still incapacitated, every such employer shall make a report thereof to the commission, on such form as the commission shall prescribe, giving full information as to the date and nature of the original injury and a description of the physical handicap resulting from such injury. Upon receipt of such notice from the employer, or upon any knowledge or notice received prior to such notice, the commission shall forthwith refer such case to the division of vocational rehabilitation of the department of education and may thereafter cooperate and work with that division in the matter of rehabilitation of the injured employee. Any employer who willfully 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 a civil action 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 willfully neglecting or refusing to transmit the report shall be liable for the said penalty.

(1961, c. 317, § 68; c. 384, § 9.)

Effect of amendments.—Chapter 317, P. L. 1961, substituted "a civil action" for "an action of debt" in the present fourth sentence of the first paragraph. Chapter 384, P. L. 1961, inserted the present second and third sentences in the first paragraph.

As the rest of the section was not affected by the amendments, only the first paragraph is set out.

Effective date.—Section 10 of c. 384, P. L. 1961, amending this section, provides that the act shall take effect on November 30, 1961.

Sec. 45. Insurance companies to furnish information.—Every insurance company insuring employers under the provisions of this act shall fill out any blanks and answer all questions submitted to it that may relate to policies, premiums, amount of compensation paid and such other information as the commission or the insurance commissioner may deem important, either for the proper administration of this act or for statistical purposes. Any insurance company which shall refuse to fill out such blanks or answer such questions shall be liable to a forfeiture of $10 for each day of such refusal, to be enforced by the commission in a civil action in the name of the state. All moneys recovered under the provisions of this or the preceding section, or under the provisions of section 6, shall be paid into the state treasury and credited to the appropriation for the administration of this act. (R. S. c. 26, § 45. 1961, c. 317, § 69.)

Effect of amendment.—The 1961 amendment substituted "a civil action" for "an action of debt" in the second sentence of this section.

The Occupational Disease Law.

Sec. 69. Occupational diseases.

Column 1 Description of disease	Column 2 Description of process
13. Dermatitis (venenata).	13. Any process involving the use of or direct contact with acids, alkalies, acids or oil, or with brick, cement, lime, concrete or mortar, or leather capable of causing dermatitis (venenata), but exclusive of soaps and cleaning materials.
13-A. Dermatitis or pyodermia.	13-A. Any process resulting in inflammation of the true skin or sensitive layer beneath the epidermis from the processing of poultry.
16. Pulmonary and cardiac diseases, excluding common colds.	16. Caused to an active member of an organized fire or police department while participating at fires, or by strenuous physical exertion in active duty, or by the inhalation of any deleterious emanation while on such active duty, and developing within 6 months of such participation or activity.
17. Disability due to radioactive properties of substances or exposure to ionizing radiation.	17. Any process involving the use of or direct contact with radiation or radioactive substances or the use of or direct exposure to Roentgen rays (X-rays) or ionizing radiation.

(1945, c. 338. 1951, c. 261, § 1. 1953, c. 361, § 1. 1955, cc. 295, 391. 1959, c. 262; c. 265, § 1; c. 287, § 1. 1961, c. 156, § 1.)

Effect of amendments. — The first 1955 amendment changed paragraph numbered "13" by inserting in the description of process the words "or leather." The second 1955 amendment, effective November 30, 1955, added paragraph 16.

This section was amended three times by 1959 legislature. The first 1959 amendment added paragraph 13-A. The second 1959 amendment, effective November 30, 1959, added the words "or police" after the word "fire" and before the word "department" in the right-hand column of paragraph 16. The third 1959 amendment added paragraph 17. The 1961 amendment inserted "or by strenuous physical exertion in active duty, or by the inhalation of any deleterious emanation while on such active duty" in the right-hand column of paragraph 16 and added "or activity" at the end of that paragraph.

As the rest of the section was not changed by the amendments, only paragraphs 13, 13-A, 16 and 17 are set out.

Effective dates.—Section 2, c. 265, P. L. 1959, provided that the act shall become effective November 30, 1959.

Section 2 of c. 156, P. L. 1961, amending this section, provides that the act shall take effect on November 30, 1961.

Sec. 70-A. Special provisions relating to disability due to radioactive properties.—Notwithstanding any of the provisions of this chapter, the employee need not be exposed to radioactive substances for a period of 60 days or more, as otherwise stated under section 62, and the time for filing claims shall not begin to run in cases of incapacity under section 69, item 17, until the person claiming benefits knew, or by exercise of reasonable diligence should have known of the casual relationship between his employment and his incapacity, or after incapacity, whichever is later. (1959, c. 287, § 2.)