

## CHAPTER 132.

[H. B. 414.]

## WORKMEN'S COMPENSATION AND MEDICAL AID.

AN ACT relating to the compensation and medical, surgical and hospital care and treatment and the welfare and safety of workmen engaged in extra-hazardous employments, and to the compensation of the dependents of such workmen in case of death, and to the liability of the employers of workmen so engaged for such compensation and cost of such care and treatment, and to the collection of industrial insurance and medical aid premiums or assessments and fixing the priority thereof, and providing for injunction for non-payment thereof, and relating to the liability of third parties for accidents occurring to such workmen, and providing for the extension of the benefits of this act to non-extra-hazardous employments, and amending Section 7675, 7679, 7681, 7682, 7696 and 7697 of Remington's Compiled Statutes.

*Be it enacted by the Legislature of the State of Washington:*

SECTION 1. That section 7675 of Remington's Amends  
§ 7675 Rem.  
Comp. Stat. Compiled Statutes be amended to read as follows:

Section 7675. In the sense of this act words employed mean as here stated, to-wit: Definitions.

Factories mean undertakings in which the business of working at commodities is carried on with power-driven machinery, either in manufacture, repair or change, and shall include the premises, yard and plant of the concern, except when otherwise expressly stated. Factories.

Workshop means any plant, yard, premises, room or place wherein power-driven machinery is employed and manual labor is exercised by way of trade for gain or otherwise in or incidental to the process of making, altering, repairing, printing or ornamenting, finishing or adapting for sale or otherwise any article or part of article, machine or thing, over which premises, room or place the employer of the person working therein has the right Workshop.

of access or control, except when otherwise expressly stated.

**Mill.** Mill means any plant, premises, room or place wherein machinery is used, any process of machinery, changing, altering or repairing any article or commodity for sale or otherwise, together with the yards and premises which are a part of the plant, including elevators, warehouses and bunkers, except when otherwise expressly stated.

**Mine.** Mine means any mine where coal, clay, ore, mineral, gypsum or rock is dug or mined underground.

**Quarry.** Quarry means an open cut from which coal is mined, or clay, ore, mineral, gypsum, sand, gravel or rock is cut or taken for manufacturing, building or construction purposes.

**Engineering work.** Engineering work means any work of construction, improvement or alteration or repair of buildings, structures, streets, highways, sewers, street railways, railroads, logging roads, interurban railroads, harbors, docks, canals, electric, steam or water power plants, telegraph and telephone plants and lines, electric light or power lines, and includes any other works for the construction, alteration or repair of which machinery driven by mechanical power is used, except when otherwise expressly stated.

**Employer.** Except when otherwise expressly stated, employer means any person, body of persons, corporate or otherwise, and the legal personal representatives of a deceased employer, all while engaged in this state in any extra-hazardous work or who contracts with another to engage in extra-hazardous work.

**Workman.** Workman means every person in this state, who is engaged in the employment of any employer coming under this act whether by way of manual labor or otherwise, in the course of his employment: *Provided, however,* That if the injury to a workman is

due to the negligence or wrong of another not in the same employ, the injured workman, or if death result from the injury, his widow, children, or dependents, as the case may be, shall elect whether to take under this act or seek a remedy against such other, such election to be in advance of any suit under this section; and if he take under this act, the cause of action against such other shall be assigned to the state for the benefit of the accident fund; if the other choice is made, the accident fund shall contribute only the deficiency, if any, between the amount of recovery against such third person actually collected, and the compensation provided or estimated by this act for such case: *Provided, however,* That no action may be brought against any employer or any workman under this act as a third person if at the time of the accident such employer or such workman was in the course of any extra-hazardous employment under this act. Any such cause of action assigned to the state may be prosecuted or compromised by the department, in its discretion. Any compromise by the workman of any such suit, which would leave a deficiency to be made good out of the accident fund, may be made only with the written approval of the department.

Any individual employer or any member or officer of any corporate employer who shall be carried upon the payroll at a salary or wage not less than the average salary or wage named in such payroll and who shall be injured, shall be entitled to the benefit of this act as and under the same circumstances, and subject to the same obligations, as a workman: *Provided,* That no such employer or the beneficiaries or dependents of such employer shall be entitled to benefits under this act unless the director of labor and industries prior to the date of the injury has received notice in writing of the fact that such employer is being carried upon the payroll

Injury due to negligence of another not in same employ.

Cause of action assigned to state.

No action can be brought against third person who is under act.

Compromise.

Employer and officer of corporation entitled to benefits.

Notice to be given director that employer is carried on payroll.

prior to the date of the injury as the result of which claims for a compensation are made.

**Dependent.** Dependent means any of the following named relatives of a workman whose death results from any injury and who leave surviving no widow, widower, or child under the age of sixteen years, viz: Invalid child over the age of eighteen years, daughter between sixteen and eighteen years of age, father, mother, grandfather, grandmother, stepfather, stepmother, grandson, granddaughter, brother, sister, half-sister, half-brother, niece, nephew, who at the time of the accident are actually and necessarily dependent in whole or in part for their support upon the earnings of the workman. Except where otherwise provided by treaty, aliens other than father or mother, not residing within the United States at the time of the accident are not included. A dependent shall at all times furnish to the director of labor and industries proof satisfactory to the director of labor and industries of the nature, amount and extent of the contribution made by such deceased workman.

**Beneficiary.** Beneficiary means a husband, wife, child or dependent of a workman in whom shall vest a right to receive payment under this act.

**Invalid.** Invalid means one who is physically or mentally incapacitated from earning.

**Child.** The word "child" as used in this act, includes a posthumous child, a step-child, a child legally adopted prior to the injury and an illegitimate child legitimated prior to the injury.

**Injury.** The word "injury" as used in this act means a sudden and tangible happening, of a traumatic nature, producing an immediate or prompt result, and occurring from without, and such physical condition as results therefrom.

**Hernia.** The word "hernia" means a real traumatic hernia resulting from the application of force which

either punctures or tears the abdominal wall, as distinguished from all others which are either congenital or of slow development and not included within the meaning of the word "hernia."

The term "educational standard" shall mean such standards as the supervisor of safety shall make for the purpose of educating and training both employer and workman in the appreciation and avoidance of danger, and in the maintenance and proper use of safe place and safety device standards.

Educational standard.

SEC. 2. That section 7679 of Remington's Compiled Statutes be amended to read as follows:

Amends § 7679 Rem. Comp. Stat.

Section 7679. Each workman who shall be injured in the course of his employment, or his family or dependents in case of death of the workman, shall receive out of the accident fund compensation in accordance with the following schedule, and, except as in this act otherwise provided, such payment shall be in lieu of any and all rights of action whatsoever against any person whomsoever.

Workman and dependents to receive compensation.

#### COMPENSATION SCHEDULE.

(a) Where death results from the injury the expenses of burial not to exceed one hundred dollars (\$100.00) in any case where the deceased was an unmarried man, or one hundred and fifty dollars (\$150.00) in any case where the deceased left a widow or an orphan child or children shall be paid to the undertaker conducting the funeral: *Provided*, That no sum shall be paid an undertaker for the burial expenses where the deceased left a widow or an orphan child or children unless the undertaker shall make and file with the department an affidavit that no part of the burial expenses have been either directly or indirectly paid by or charged to the widow or orphan child or children.

Schedule—death.

Undertaker.

Widow or  
invalid  
widower.

(1) If the workman leaves a widow or invalid widower, a monthly payment of thirty-five dollars (\$35.00) shall be made throughout the life of the surviving spouse, to cease at the end of the month in which remarriage shall occur, and the surviving spouse shall also receive per month for each child of the deceased under the age of sixteen years at the time any monthly payment is due the following payments: For the youngest or only child twelve dollars and fifty cents (\$12.50), for the next or second youngest child seven dollars and fifty cents (\$7.50), and for each additional child five dollars (\$5.00): *Provided*, That in addition to the monthly payments above provided for, a surviving widow of any such deceased workman shall be forthwith paid the sum of two hundred and fifty dollars (\$250.00).

Children.

Remarriage  
of widow.

Upon remarriage of a widow she shall receive once and for all, a lump sum of two hundred forty dollars (\$240.00), but the monthly payments for the child or children shall continue as before.

Orphan  
children.

(2) If the workman leave no wife or husband, but an orphan child or children under the age of sixteen years, a monthly payment of twenty-five dollars (\$25.00) shall be made to each such child until such child shall reach the age of sixteen years, but the total monthly payment shall not exceed seventy-five dollars (\$75.00) and any deficit shall be deducted proportionately among the beneficiaries.

Dependents.

(3) If the workman leaves no widow, widower or child under the age of sixteen years, but leaves a dependent or dependents, a monthly payment shall be made to each dependent equal to fifty per cent of the average monthly support actually received by such dependent from the workman during the twelve months next preceding the occurrence of the injury, but the total payment to all dependents in any case shall not exceed twenty dollars (\$20.00) per month. If any dependent is under the age of

sixteen years at the time of the occurrence of the injury, the payment to such dependent shall cease when such dependent shall reach the age of sixteen years. The payment to any dependent shall cease if and when, under the same circumstances, the necessity creating the dependency would have ceased if the injury had not happened.

If the workman is under the age of twenty-one years and unmarried at the time of his death, the parents or parent of the workman shall receive twenty dollars (\$20.00) per month for each month after his death until the time at which he would have arrived at the age of twenty-one years.

Parents.

(4) In the event a surviving spouse receiving monthly payments shall die, leaving a child or children under the age of sixteen years, such child or children shall receive each the sum of twenty-five dollars (\$25.00) per month until arriving at the age of sixteen years, but the total monthly payment shall not exceed seventy-five dollars (\$75.00) and any deficit shall be deducted proportionately among the beneficiaries.

Death of surviving spouse.

Payment to children.

(b) Permanent total disability means loss of both legs, or arms, of one leg and one arm, total loss of eyesight, paralysis or other condition permanently incapacitating the workman from performing any work at any gainful occupation.

Permanent total disability.

When permanent total disability results from the injury, the workman shall receive monthly during the period of such disability:

Schedule of payments.

(1) If unmarried at the time of the injury, the sum of thirty-five dollars (\$35.00).

Unmarried workman.

(2) If the workman have a wife or invalid husband, but no child under the age of sixteen years, the sum of forty dollars (\$40.00).

With wife, or invalid husband.

If the husband is not an invalid the monthly payment of forty dollars (\$40.00) shall be reduced to

Husband not invalid.

twenty dollars (\$20.00) as long as they are living together as husband and wife.

With wife or husband or children.

(3) If the workman have a wife or husband and a child or children under the age of sixteen years, or, being a widow or widower, having any such child or children, the monthly payment provided in the preceding paragraph shall be increased by twelve dollars and fifty cents (\$12.50) for the youngest or only child, seven dollars and fifty cents (\$7.50) for the next or second youngest child, and five dollars (\$5.00) for each additional child under the age of sixteen years.

Total permanent disability such as to require attendant.

(4) In case of total permanent disability, if the character of the injury is such as to render the workman so physically helpless as to require the services of a constant attendant, the monthly payment to such workman shall be increased twenty-five dollars (\$25.00) per month as long as such requirement shall continue, but such increase shall not obtain or be operative while the workman is receiving care under or pursuant to any of the provisions of sections 7712 to 7725, inclusive, of Remington's Compiled Statutes.

Death during period of permanent total disability.

(c) If the injured workman die, during the period of permanent total disability, whatever the cause of death, leaving a widow, invalid widower or child under the age of sixteen years, the surviving widow or invalid widower shall receive thirty-five dollars (\$35.00) per month until death or remarriage, to be increased per month for each child of the deceased under the age of sixteen years at the time any monthly payment is due, as follows: For the youngest or only child twelve dollars and fifty cents (\$12.50), for the next or second youngest child seven dollars and fifty cents (\$7.50), and for each additional child five dollars (\$5.00); but if such child is or shall be without father or mother, such child shall receive twenty-five dollars (\$25.00) per



month until arriving at the age of sixteen years. Upon remarriage the payments on account of the child or children shall continue as before to such child or children.

An invalid child while being supported and cared for in a state institution shall not receive compensation under this act. If an injured workman, or the surviving spouse of an injured workman, shall not have the custody of a minor child for, or on account of, whom payments are required to be made under this section, such payment or payments shall be made to the person having the lawful custody of such minor child.

Invalid  
child in state  
institution.

(d) (1) When the total disability is only temporary, the schedule of payments contained in paragraphs (1), (2) and (3) of the foregoing subdivision (b) shall apply, so long as the total disability shall continue, (2) but if the injured workman have a wife or husband and have no child or have a wife or husband, or being a widow or widower, with one or more children under the age of sixteen years, the compensation for the case during the first six months of such lesser period of time as the total temporary disability shall continue, shall be per month as follows, to-wit: Injured workman whose husband is not an invalid, twenty-two dollars and fifty cents (\$22.50); injured workman having one child, whose husband is not an invalid, thirty dollars (\$30.00); injured workman having two children whose husband is not an invalid, thirty-seven dollars and fifty cents (\$37.50); injured workman having three children, whose husband is not an invalid, forty-five dollars (\$45.00); injured workman having four or more children, whose husband is not an invalid, fifty-two dollars and fifty cents (\$52.50); injured workman with wife or invalid husband and no child, forty-two dollars and fifty cents (\$42.50); injured workman with wife or invalid husband and

When total  
disability is  
only temporary.

one child, or being a widow or widower and having one child, fifty-two dollars and fifty cents (\$52.50); injured workman with a wife or invalid husband and two children, or being a widow or widower and having two children, sixty dollars (\$60.00), and five dollars (\$5.00) for each additional child.

Should a workman suffer a temporary total disability, and should his employer, at the time of his injury, continue to pay him the wages which he was earning at the time of such injury, such injured workman shall not receive any payment provided in paragraph (d) subdivision (1) from the accident fund during the period his employer shall so pay such wages.

(3) If such temporary total disability shall endure longer than said six months' period, the schedule of compensation contained in paragraphs (1), (2) and (3) of the foregoing subdivision (b) shall at the end of said six months' period again obtain.

(4) As soon as recovery is so complete that the present earning power of the workman, at any kind of work, is restored to that existing at the time of the occurrence of the injury, the payments shall cease. If and so long as the present earning power is only partially restored, the payments shall continue in the proportion which the new earning power shall bear to the old. No compensation shall be payable out of the accident fund unless the loss of earning power shall exceed five per cent.

No payment shall be made to or for a natural child of a deceased workman, and at the same time, as the step-child of a deceased workman.

(e) There is hereby created in the office of the state treasurer a fund to be known and designated as the reserve fund out of which shall be made the payments specified in this section for all cases of death or permanent total disability including future payments to be made for the cases of that character

Wages paid by employer during temporary total disability.

Temporary total disability continues for longer than six months.

Earning power of workman restored.

No payment for natural and at same time as step child.

Reserve fund created.

which have heretofore arisen. Into the reserve fund there shall be forthwith placed all unexpended funds, in cash or invested, heretofore set aside for cases requiring a reserve. For every case resulting in death or permanent total disability hereafter arising it shall be the duty of the department to make transfer on their books from the accident fund of the proper class to the reserve fund a sum of money for that case equal to the estimated present cash value of the monthly payments provided for it, to be calculated upon the basis of an annuity covering the payments in this section provided to be made for the case. Such annuities shall be based upon tables to be prepared for that purpose by the state insurance commissioner and by him furnished to the state treasurer, calculated upon standard mortality tables with an interest assumption of four (4) per cent per annum.

Transfer  
from acci-  
dent to re-  
serve fund.

Annuities  
tables pre-  
pared by in-  
surance com-  
missioner.

The department shall notify the state treasurer from time to time of such transfers as a whole and the state treasurer shall invest the reserve in either state capitol building bonds issued to take up capitol building warrants now outstanding, or in the class of securities provided by law for the investment of the permanent school fund, and the interest or other earnings of the reserve fund shall become a part of the reserve fund itself. The department shall, on October 1st of each year, apportion the interest or other earnings of the reserve fund as certified to it by the state treasurer, to the various class reserve funds according to the average class balance for the preceding year. As soon as possible after October 1st of each year, beginning in the year 1927, the state insurance commissioner shall expert the reserve fund of each class to ascertain its standing as of October 1st, of that year, and the relation of its outstanding annuities at their then value to the cash on hand or at interest belonging to that fund. He

Reserve  
fund, invest-  
ment.

Apportion-  
ment of  
interest.

shall promptly report the result of his examination to the department and to the state treasurer in writing not later than December 31st, following. If the report shows that there was on said October 1st, in the reserve fund of any class in cash or at interest a greater sum than the then annuity value of the outstanding pension obligations of that class, the surplus shall be forthwith turned over to the accident fund of that class, but if the report shows the contrary condition of any class reserve, the deficiency shall be forthwith made good out of the accident fund of that class. The state treasurer shall keep accurate accounts of the reserve fund and the investment and earnings thereof, to the end that the total reserve funds shall at all times, as near as may be, be properly and fully invested, and to meet current demands for pension or lump sum payments may, if necessary, make temporary loans to the reserve fund out of the accident fund for that class, repaying same from the earnings of that reserve fund or from collections of its investments, or, if necessary, sales of the same.

State treasurer to keep accounts of reserve fund.

(f) Permanent partial disability means the loss of either one foot, one leg, one hand, one arm, one eye, one or more fingers, one or more toes, any dislocation where ligaments were severed where repair is not complete, or any other injury known in surgery to be permanent partial disability. For the permanent partial disabilities here specifically described, the injured workman shall receive compensation as follows:

Permanent partial disability defined.

LOSS BY AMPUTATION

Schedule of payments.

Of one leg so near the hip that an artificial limb cannot be worn.....	\$3,000 00
Of one leg at or above the knee so that an artificial limb can be worn.....	2,280 00
Of one leg below the knee.....	1,560 00
Of great toe with metatarsal bone thereof.....	480 00
Of great toe at the proximal joint.....	300 00
Of great toe at the second joint.....	105 00

Of one other toe other than the great toe with metatarsal bone thereof.....	165 00
Of second toe at proximal joint.....	75 00
Of third toe at proximal joint.....	75 00
Of fourth toe at proximal joint.....	75 00
Of fifth toe at proximal joint.....	30 00
Of metatarsal bone on toe other than great toe.....	90 00
Of one arm so near the shoulder that an artificial arm cannot be worn.....	3,000 00
Of the major arm at or above the elbow.....	2,280 00
Of forearm at upper third.....	2,100 00
Of the major hand at wrist.....	1,920 00
Of thumb with metacarpal bone thereof.....	720 00
Of thumb at proximal joint.....	480 00
Of thumb at second joint.....	180 00
Of index or first finger at proximal joint.....	390 00
Of index or first finger at second joint.....	330 00
Of index or first finger at distal joint.....	150 00
Of middle or second finger at proximal joint.....	300 00
Of middle or second finger at second joint.....	250 00
Of middle or second finger at distal joint.....	90 00
Of ring or third finger at proximal joint.....	270 00
Of ring or third finger at second joint.....	210 00
Of ring or third finger at distal joint.....	90 00
Of little or fourth finger at proximal joint.....	105 00
Of little or fourth finger at second joint.....	75 00
Of little or fourth finger at distal joint.....	30 00
Of metacarpal bone in finger except thumb.....	75 00

MISCELLANEOUS.

Loss of one eye by enucleation.....	1,440 00
Loss of sight of one eye.....	1,080 00
Complete loss of hearing in both ears.....	2,280 00
Complete loss of hearing in one ear.....	600 00
Complete broken arch in foot.....	600 00

Compensation for any other permanent partial disability shall be in the proportion which the extent of such other disability shall bear to that above specified, which most closely resembles and approximates in degree of disability such other disability; but not in any case to exceed the sum of two thousand four hundred dollars (\$2,400.00): *Provided*, That for an ankylosed joint the award shall not exceed thirty (30) per cent of the specified amount for the amputation of the member at the disabled joint: *And provided, further*, That for disability to a mem-

Other permanent partial disability.

ber not involving amputation, not more than three-fourths ( $\frac{3}{4}$ ) of the foregoing respective specified sums shall be paid. *Provided, further,* That payment for any injury to minor hand or arm or any part thereof, shall not exceed ninety-five (95) per centum of the amounts hereinbefore enumerated.

Injured workman under legal age and unmarried.

If the injured workman be under the age of twenty-one years and unmarried, the parents or parent shall also receive a lump sum payment equal to ten per cent of the amount awarded the minor workman.

Further accident after lump sum payment.

(g) Should a further accident occur to a workman who has been previously the recipient of a lump sum payment under this act, his future compensation shall be adjudged according to the other provisions of this section and with regard to the combined effect of his injuries and his past receipt of money under this act.

Injury to member or part of body already permanently partially disabled.

Should a workman receive an injury to a member or part of his body already from whatever cause permanently partially disabled, resulting in the amputation thereof or in an aggravation or increase in such permanent partial disability but not resulting in the permanent total disability of such workman, his compensation for such permanent partial disability shall be adjudged with regard to the previous disability of the injured member or part and the degree or extent of the aggravation or increase of disability thereof.

Further accident resulting in permanent total disability.

Should any further accident result in the permanent total disability of such injured workman, he shall receive the pension to which he would be entitled notwithstanding the payment of a lump sum for his prior injury.

Aggravation, diminution or termination of disability.

(h) If aggravation, diminution, or termination of disability takes place or be discovered after the rate of compensation shall have been established or compensation terminated, in any case the director

of labor and industries, through and by means of the division of industrial insurance, may, upon the application of the beneficiary, made within three years after the establishment or termination of such compensation, or upon his own motion, readjust for further application the rate of compensation in accordance with the rules in this section provided for the same, or in a proper case terminate the payment: *Provided*, Any such applicant whose compensation has heretofore been established or terminated shall have three years from the taking effect of this act within which to apply for such readjustment.

No act done or ordered to be done by the director of labor and industries, or the department of industrial insurance, prior to the signing and filing in the matter of a written order for such readjustment, shall be ground for such readjustment: *Provided, however*, That if within the time limited for taking an appeal from an order closing a claim, the department shall order the submission of further evidence or the investigation of any further fact, the time for appeal from such order closing the claim shall be extended until the applicant shall have been advised in writing of the final order of the department in the matter.

Readjustment.

(i) A husband or wife of an injured workman, living in a state of abandonment for more than one year at the time of the injury or subsequently, shall not be a beneficiary under this act. A wife who has lived separate and apart from her husband for the period of two years and who has not, during that time, received, or attempted by process of law to collect, funds for her support or maintenance, shall be deemed living in a state of abandonment.

Husband or wife living in state of abandonment.

(j) If a beneficiary shall reside or remove out of the state the department may, in its discretion, convert any monthly payments provided for such case into a lump sum payment (not in any case to

Beneficiary residing or moving out of state.

exceed the value of the annuity then remaining, to be fixed and certified by the state insurance commissioner, but in no case to exceed the sum of four thousand dollars (\$4,000.00).

No compensation for day of injury, or three days following.

(k) No workman injured after June 30th, 1923, shall receive or be entitled to receive compensation out of the accident fund for or during the day on which injury was received or the three days following the same.

Pre-existing disease.

(l) If it be determined by the department of labor and industries that an injured workman had, at the time of his injury, a pre-existing disease and that such disease delays or prevents complete recovery from such injury the said department shall ascertain, as nearly as possible, the period over which the injury would have caused disability were it not for the diseased condition and/or the extent of permanent partial disability which the injury would have caused were it not for the disease, and award compensation only therefor.

Amends § 7681 Rem. Comp. Stat.

SEC. 3. That section 7681 of Remington's Compiled Statutes be amended to read as follows:

Death or permanent total disability may be converted into lump sum payment not exceeding \$4,000.

Section 7681. In case of death or permanent total disability the monthly payment provided may be converted, in whole or in part, into a lump sum payment (not in any case to exceed four thousand dollars (\$4,000.00), equal or proportionate as the case may be to the value of the annuity then remaining, to be fixed and certified by the state insurance commissioner, in which event the monthly payment shall cease in whole or in part accordingly or proportionately. Such conversions may only be made after the happening of the injury and upon the written application of the beneficiary (in case of minor children the application may be by either parent) to the department, and shall rest in the discretion of the department. Within the rule aforesaid the amount and value of the lump sum payment may be



agreed upon between the department and the beneficiary. In the event any payment shall be due to an alien residing in a foreign country, the department may settle the same by making a lump sum payment in such amount as may be agreed to by such alien, not to exceed 50% of the value of the annuity then remaining.

Nothing herein contained shall preclude the department from making, and authority is hereby given it to make, on its own motion, lump sum payments equal or proportionate, as the case may be, to the value of the annuity then remaining, in full satisfaction of claims due to dependents.

Department authorized to make lump sum payment.

SEC. 4. That section 7682 of Remington's Compiled Statutes be amended to read as follows:

Amends § 7682 Rem. Comp. Stat.

Section 7682. (a) If any employer shall default in any payment to the accident fund or the medical aid fund, the sum due shall be collected by action at law in the name of the state as plaintiff, and such right of action shall be in addition to any other right of action or remedy. If such default be after demand, there shall also be collected a penalty equal to twenty-five per centum of the amount of the defaulted payment or payments, and the commission may require from the defaulting employer a bond to the state for the benefit of the accident and medical aid funds, with surety to their satisfaction, in the penalty of double the amount of the estimated payments which will be required from such employer into the said funds for and during the ensuing one year, together with any penalty or penalties incurred. In case of refusal or failure after written demand personally served to furnish such bond, the state in an action brought by the attorney general in its name shall be entitled to an injunction restraining such delinquent from prosecuting an extra-hazardous occupation or work until such bond shall be furnished, and until all delinquent pre-

Default of payment by employer.

Penalty.

Bond may be required.

Action by attorney general.

miums, penalties, interest and costs are paid, conditioned for the prompt and punctual making of all payments into said funds during said periods, and any sale, transfer or lease attempted to be made by such delinquent during the period of any of the defaults herein mentioned, of his works, plant or lease thereto shall be invalid until all past delinquencies are made good, and such bond furnished.

Actions for  
recovery of  
payments,

lien in bank-  
ruptcy, etc.

(b) All actions for the recovery of such payments shall be brought in the superior court and in all cases of probate, insolvency, assignment for the benefit of creditors, or bankruptcy, the claim of the state for payments due herein shall be a lien prior to all other liens, except taxes, and the mere existence of such cases or conditions shall be sufficient to create such lien without any prior or subsequent action by the state, and it shall be the duty of all administrators, receivers or assignees for the benefit of creditors to notify the department of such administration, receivership or assignment within thirty (30) days from date of their appointment and qualification. In any action or proceeding brought for the recovery of payments due upon the payroll of an employer, the certificate of the department that an audit has been made of the payroll of such employer pursuant to the direction of the department and of the amount of such payroll for the period stated in the certificate shall be *prima facie* evidence of such fact.

Prior lien.

(c) Separate and apart from and in addition to the foregoing provisions the claims of the state for payments and penalties due under this act shall be a lien prior to all other liens, except taxes, not only against the interests of any employer, but against the interests of all others, in the real estate, plant, works, equipment and buildings improved, operated or constructed by any employer, and also upon any products or articles manufactured by such employer.

The lien created by this subsection (c) shall at-<sup>Date of</sup> attach from the date of the commencement of the labor <sup>attaching.</sup> upon such property for which such premiums are due. In order to avail itself of the lien hereby created, the department shall, within four months after such employer shall have made report of his payroll and shall have defaulted in the payment of his premiums thereupon, file with the county auditor of the county within which such property shall then be situated a statement in writing describing in general terms the property upon which a lien is claimed and stating the amount of the lien claimed by the department. If any employer shall fail, delay, or refuse to make report of his payroll the lien hereby created shall continue in full force and effect although the amount thereof be undetermined and the four months' time within which the department shall file its claim of lien shall not begin to run until the actual receipt by the department of such payroll report. From and after the filing of such claim of lien, the department shall be entitled to commence suit to cause such lien to be foreclosed in the manner provided by law for the foreclosure of other liens on real or personal property.

SEC. 5. That section 7696 of Remington's Compiled Statutes be amended to read as follows:

Section 7696. Any employer engaged in any occupation other than those enumerated or declared to be under this act as provided in section 7674 of Remington's Compiled Statutes may make written application to the director of labor and industries to fix rates of contribution for such occupation for industrial insurance and for medical aid, and thereupon it shall be the duty of the director of labor and industries through the division of industrial insurance to fix such rate, which shall be based on the hazard of such occupation in relation to the hazards of the occupations for which rates are prescribed.

Amends  
§ 7696 Rem.  
Comp. Stat.

Non-hazardous occupations, may be brought under act.

Rate.

Notice of election to contribute under act.

When such rate shall be so fixed such applicant may file notice in writing with the supervisor of industrial insurance, giving ten days' notice of his or its election to contribute under this act, and shall forthwith display in a conspicuous manner about his or its works and in a sufficient number of places to reasonably inform his or its workmen of the fact, printed notices furnished by the department stating that he or it has elected to contribute to the accident fund and the medical aid fund and stating when said election will become effective. Any workman in the employ of such applicant shall be entitled at any time within five days after the posting of said notice by his employer, or within five days after he has been employed by an employer who has elected to become subject to this act as herein provided, to give a written notice to such employer and to the department of his election not to become subject to this act. At the expiration of the time fixed by the notice of such employer, the employer and such of his or its workmen as shall not have given such written notice of their election to the contrary shall be subjects to all the provisions of section 7673 to 7796 of Remington's Compiled Statutes, and entitled to all of the benefits thereof: *Provided, however,* That those who have heretofore complied with the foregoing conditions and are at the time of the passage of this amendment carried and considered by the department as within the purview of this act shall be deemed and considered as having fully complied with its terms and shall be continued by the department as entitled to all of the benefits and all of the liabilities without other or further action.

Workman may elect to become subject to act.

Previous compliance with conditions.

Amends § 7697 Rem. Comp. Stat.

Order, decision or award of department.

SEC. 6. That section 7697 of Remington's Compiled Statutes be amended to read as follows:

Section 7697. Whenever the department of labor and industries has made any order, decision or award, it shall promptly serve the claimant, em-

ployer or other person affected thereby, with a copy thereof by mail, which shall be addressed to such claimant, employer or person at his last known address as shown by the records of the department. Any claimant, employer or other person aggrieved by any such order, decision or award must, before he appeals to the courts, serve upon the director of labor and industries, by mail or personally, within sixty days from the day on which such copy of such order, decision or award was communicated to the applicant, an application for rehearing before the joint board of said department, consisting of the director of labor and industries, the supervisor of industrial insurance and the supervisor of safety. Such application shall set forth in full detail the grounds upon which the applicant considers such order, decision or award is unjust or unlawful, and shall include every issue to be considered by the joint board, and it must contain a detailed statement of facts upon which such claimant, employer or other person relies in support thereof. The claimant, employer or other person shall be deemed to have waived all objections or irregularities concerning the matter on which such rehearing is sought other than those specifically set forth in such application for rehearing or appearing in the records of the department. If the joint board, in its opinion, considers that the department has previously considered fully all matters raised by such application it may, without further hearing, deny the same and confirm the previous decision or award, or if the evidence on file with the joint board sustains the applicant's contention, it may, without further hearing, allow the relief asked in such application; otherwise, it shall order a rehearing to decide the issues raised. If a rehearing be granted it shall be heard in the county of the residence of the applicant at a place designated by the joint board, but the hear-

Notice of service.

Claimant must apply for rehearing.

Joint board, personnel.

Application, contents.

Waiver of objections.

Opinion of joint board.

Rehearing granted.

Rehearing  
de novo.

Oral testi-  
mony steno-  
graphically  
reported.

Record con-  
sidered by all  
members.

Action by  
joint board  
within 30  
days.

Power of  
joint board.  
Administer  
oaths.

Issue  
subpoenas,  
etc.

ing thereof may be adjourned from time to time and from place to place within said county, as the convenience of witnesses may require. Such rehearing shall be *de novo* and summary, but no witness' testimony shall be received unless he shall first have been sworn to testify the truth, the whole truth and nothing but the truth in the matter being heard, or unless his testimony shall have been taken by deposition according to the statutes relating to superior courts of this state. The joint board shall cause all oral testimony to be stenographically reported and thereafter transcribed, and when transcribed the same, with all depositions, shall be filed in, and remain a part of, the record on the rehearing. Such rehearing may be conducted by one or more of the members of the joint board, or by some person or persons in the regular employ of the department, duly commissioned by said board to conduct such hearing, but the record on rehearing shall be considered by all of the members of said joint board, and the decision of a majority of said joint board shall be the decision of said joint board, and upon such decision being rendered all parties to said rehearing shall be given written notice thereof by the joint board.

An application for rehearing shall be deemed to have been denied by the joint board unless it shall have been acted upon within thirty days from the date of service: *Provided, however,* That the joint board may in its discretion, extend the time within which it may act upon such application, not exceeding thirty days.

Each of the members of the joint board, and those commissioned by it as aforesaid, shall have power to administer oaths; to preserve and enforce order during such rehearing; to issue subpoenas for, and to compel the attendance and testimony of, witnesses, or the production of books, papers, docu-

ments and other evidence, or the taking of depositions before any designated individual competent to administer oaths, and it shall be their duty so to do; to examine witnesses; and to do all things conformable to law which may be necessary to enable them, or any of them, effectively to discharge the duties of his office.

If any person in proceedings before the joint board disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered so to do, any pertinent book, paper, or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take oath as a witness, or after having the oath refuses to be examined according to law, the joint board or any member thereof shall certify the facts to the superior court having jurisdiction in the place in which said joint board or member thereof is sitting; it shall thereupon, in a summary manner, hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the proceedings, or in the presence, of the court.

Disobedience  
to orders of  
joint board.

Superior  
court to hear.

Within thirty days after the final order of the joint board upon such application for rehearing has been communicated to such applicant, or within thirty days after rehearing is deemed denied as herein provided, such applicant may appeal to the superior court of the county of his residence, but upon such appeal may raise only such issues of law or fact as were properly included in his application for rehearing, or in the complete record in the department. On such appeal the hearing shall be *de*

Appeal to  
superior  
court.

*novo*, but the appellant shall not be permitted to offer, and the court shall not receive, in support of such appeal, evidence or testimony other than, or in addition to, that offered before the joint board or included in the record filed by the department: *Provided*, That the right of cross examination shall not be limited by the testimony before the joint board. The proceedings in every such appeal shall be informal and summary, but full opportunity to be heard shall be had before judgment is pronounced. Such appeal shall be perfected by filing with the clerk of the court a notice of appeal and by serving a copy thereof by mail, or personally, on the director of labor and industries. The department of labor and industries shall, within twenty days after receipt of such notice of appeal, serve and file its notice of appearance and such appeal shall thereupon be deemed at issue. No bond shall be required on such appeal or on appeals to the supreme court, except that an appeal by the employer from a decision of the department under section 7683 of Remington's Compiled Statutes shall be ineffectual unless, within five days following the service of notice thereof, a bond, with surety satisfactory to the court, shall be filed, conditioned to perform the judgment of the court. Except in the case last named an appeal shall not be a stay. The calling of a jury shall rest in the discretion of the court, except that in cases arising under sections 7683 and 7690 of Remington's Compiled Statutes, either party shall be entitled to a jury trial upon demand.

The department of labor and industries shall serve upon the appellant and file with the clerk of the court before trial, a certified copy of its complete record on the claim, which shall, upon being so filed, become a part of the record in such case.

If the court shall determine that the department has acted within its power and has correctly con-

Cross-examination.

Appeal perfected.

No bond required.

Jury may be called.

Complete record of department to be filed.



strued the law and found the facts, the decision of the department shall be confirmed; otherwise, it shall be reversed or modified. In case of a modification or reversal the superior court shall refer the same to the department of labor and industries with an order directing it to proceed in accordance with the findings of the court: *Provided*, That any award shall be in accordance with the schedule of compensation set forth in this act.

Department decision—confirmed, reversed or modified.

It shall be unlawful for any attorney engaged in any such appeal to charge or receive any fee therein in excess of a reasonable fee, to be fixed by the court in the case, and if the decision of the joint board shall be reversed or modified, such fee and the fees of medical and other witnesses and the costs shall be payable out of the administrative fund, if the accident fund is affected by the litigation. In other respects the practice in civil cases shall apply. Appeal shall lie from the judgment of the superior court as in other civil cases. The attorney general shall be the legal adviser of the joint board and shall represent it in all proceedings. In all court proceedings under or pursuant to this act the decision of the department shall be *prima facie* correct and the burden of proof shall be upon the party attacking the same.

Attorney fee.

Witness fees and costs.

Appeal to supreme court.

Attorney general legal adviser.

This act shall not affect any appeal pending or right to appeal existing, at the time this act shall take effect.

Pending appeals not affected.

Passed the House March 4, 1929.

Passed the Senate March 12, 1929.

Approved by the Governor March 20, 1929.