

adequate and full consideration in money or money's worth.

Passed the House March 10, 1949.

Passed the Senate March 10, 1949.

Approved by the Governor March 19, 1949.

CHAPTER 219.

[H. B. 466.]

INDUSTRIAL INSURANCE.

AN ACT relating to industrial insurance; providing compensation and remedies of workmen hereafter injured in extra-hazardous employment, and of their dependents, minor children and beneficiaries in case of death; creating the Board of Industrial Insurance Appeals; defining its functions; providing for appeals and review in certain cases; amending section 5, chapter 74, Laws of 1911, as last amended by section 1, chapter 246, Laws of 1947, and section 20, chapter 74, Laws of 1911, as last amended by section 1, chapter 280, Laws of 1943, and making an appropriation.

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

Amendment. SECTION 1. Section 5, chapter 74, Laws of 1911, as last amended by section 1, chapter 246, Laws of 1947, is amended to read as follows:

Compensation to be received according to schedule. SECTION 5. Each workman who shall hereafter 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.

COMPENSATION SCHEDULE.

Compensation schedule. (a) Where death results from the injury the expenses of burial not to exceed two hundred dollars (\$200) shall be paid to the undertaker conducting the funeral: *Provided*, That no sum shall be paid an undertaker for the burial expenses where the de-

Burial expenses.

Payment to undertaker.

ceased 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.

(1) If the workman leaves a widow or invalid widower, a monthly payment of seventy-five dollars (\$75) 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 eighteen years at the time any monthly payment is due the following payments: For the youngest or only child twenty dollars (\$20), for the next or second youngest child fifteen [dollars] (\$15), and for each additional child ten dollars (\$10), but the total monthly payments shall not exceed one hundred forty dollars (\$140) and any deficit shall be deducted proportionately among the beneficiaries: *Provided*, That in addition to the monthly payments above provided for, a surviving widow, or parent or parents, if there is no surviving widow of any such deceased workman, shall be forthwith paid the sum of three hundred dollars (\$300).

Surviving spouse and children.

Parents.

Lump sum payment on death.

Upon remarriage of a widow she shall receive once and for all, a lump sum of one thousand dollars (\$1,000), but the monthly payments for the child or children shall continue as before.

Remarriage of widow.

(2) If the workman leave no wife or husband, but an orphan child or children under the age of eighteen years, a monthly payment of thirty-five dollars (\$35) shall be made to each such child until such child shall reach the age of eighteen years, but the total monthly payment shall not exceed one hundred forty dollars (\$140) and any deficit shall be deducted proportionately among the beneficiaries.

Payments to orphan children.

Other dependents.

(3) If the workman leaves no widow, widower or child under the age of eighteen 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 fifty dollars (\$50) per month. If any dependent is under the age of eighteen 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 eighteen 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.

Maximum amount.

Minor and unmarried decedent.

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-five dollars (\$25) per month for each month after his death until the time at which he would have arrived at the age of twenty-one years.

Minor children on death of surviving spouse.

(4) In the event a surviving spouse receiving monthly payments shall die, leaving a child or children under the age of eighteen years, such child or children shall receive each the sum of thirty-five dollars (\$35) per month until arriving at the age of eighteen years, but the total monthly payment shall not exceed one hundred forty dollars (\$140) and any deficit shall be deducted proportionately among the beneficiaries.

Permanent total disability defined.

(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.

When permanent total disability results from the injury, the workman shall receive monthly during the period of such disability: (1) If unmarried at the time of the injury, the sum of seventy-five dollars (\$75). Rate of payments.

(2) If the workman have a wife or invalid husband, but no child under the age of eighteen years, the sum of one hundred dollars (\$100). Wife or invalid husband.

If the husband is not an invalid the monthly payment of one hundred dollars (\$100) shall be reduced to fifty dollars (\$50) as long as they are living together as husband and wife. Husband not an invalid.

(3) If the workman have a wife or husband and a child or children under the age of eighteen years, or being a widow or widower, having any such child or children, the monthly payment in the preceding paragraph shall be increased by twenty dollars (\$20) for the youngest or only child, fifteen dollars (\$15) for the next or second youngest child, and ten dollars (\$10) for each additional child under the age of eighteen years, but the total monthly payments shall not exceed one hundred sixty-five dollars (\$165) and any deficit shall be deducted proportionately among the beneficiaries. Spouse and children.

(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 an attendant, the monthly payment to such workman shall be increased forty-five dollars (\$45) per month as long as such requirement shall continue, but such increases 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 this code. Attendants' services.

(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 eighteen years, the surviving widow Death of workman during disability.

or invalid widower shall receive seventy-five dollars (\$75) per month until death or remarriage, to be increased per month for each child of the deceased under the age of eighteen years at the time any monthly payment is due, as follows: For the youngest or only child twenty dollars (\$20), for the next or second youngest child fifteen dollars (\$15), and for each additional child ten dollars (\$10): *Provided*, That the total monthly payments shall not exceed one hundred forty dollars (\$140) and any deficit shall be deducted proportionately among the beneficiaries; but if such child is or shall be without father or mother, such child shall receive thirty-five dollars (\$35) per month until arriving at the age of eighteen years, but the total monthly payment to such children shall not exceed one hundred forty dollars (\$140), and any deficit shall be deducted proportionately among such children. Upon remarriage the payments on account of the child or children shall continue as before to such child or children.

Maximum amount.

Remarriage.

Children in care of institution or persons other than parents.

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.

Temporary total disability.

(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.

Rates of payment.

(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 eighteen years, the

compensation for the case during such period of time as the total temporary disability shall continue, shall be per month as follows, to-wit: (a) Injured workman whose husband is not an invalid, fifty dollars (\$50), and for the youngest or only child, ten dollars (\$10), and for each additional child, seven dollars and fifty cents (\$7.50), but the total monthly payments shall not exceed ninety dollars (\$90) and any deficit shall be deducted proportionately among the beneficiaries; (b) injured workman with wife or invalid husband and no child, ninety dollars (\$90); injured workman with wife or invalid husband and one child, or being a widow or widower and having one child, one hundred ten dollars (\$110); (c) injured workman with a wife or invalid husband and two children, or being a widow or widower and having two children, one hundred twenty-five dollars (\$125), and ten dollars (\$10), for each additional child, but the total monthly payments shall not exceed one hundred fifty-five dollars (\$155) and any deficit shall be deducted proportionately among the beneficiaries.

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.

Continued
payment
of wages.

(3) 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 proportions which the new earning power shall bear to the old. No compensation shall be payable

Recovery or
restoration
of earning
power.

Partial
restoration.

Loss must exceed five per cent.

out of the Accident Fund unless the loss of earning power shall exceed five per cent.

Restriction on payments to children.

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.

Reserve fund created.

(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 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 three (3) per cent per annum.

Transfers from accident fund to reserve fund.

Computation table for annuities.

Investment of reserve fund.

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 in-

Apportionment of earnings.

terest 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 (examine) 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 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.

Examination
by Insurance
Commis-
sioner.

Surplus.

Temporary
loans to meet
current
demands on
funds.

(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 de-

Permanent
partial
disability
defined.

Schedule.

scribed, the injured workman shall receive compensation as follows:

Loss by amputation.

LOSS BY AMPUTATION.

Of one leg so near the hip that an artificial limb cannot be worn	\$5,000
Of one leg at or above the knee so that an artificial limb can be worn.....	\$3,425
Of one leg below the knee.....	\$2,350
Of great toe with metatarsal bone thereof.....	\$725
Of great toe at the proximal joint.....	\$450
Of great toe at the second joint.....	\$165
Of one other toe other than the great toe with metatarsal bone thereof	\$250
Of second toe at proximal joint.....	\$115
Of third toe at proximal joint.....	\$115
Of fourth toe at proximal joint.....	\$115
Of fifth toe at proximal joint.....	\$50
Of one metatarsal bone on toe other than great toe....	\$125
Of one arm so near the shoulder that an artificial arm cannot be worn.....	\$4,500
Of the major arm at or above the elbow.....	\$3,750
Of forearm at upper third.....	\$3,250
Of the major hand at wrist.....	\$2,900
Of thumb with metacarpal bone thereof.....	\$1,100
Of thumb at proximal joint.....	\$725
Of thumb at second joint.....	\$270
Of index or first finger at proximal joint.....	\$590
Of index or first finger at second joint.....	\$500
Of index or first finger at distal joint.....	\$225
Of middle or second finger at proximal joint.....	\$450
Of middle or second finger at second joint.....	\$375
Of middle or second finger at distal joint.....	\$125
Of ring or third finger at proximal joint.....	\$410
Of ring or third finger at second joint.....	\$315
Of ring or third finger at distal joint.....	\$125
Of little or fourth finger at proximal joint.....	\$160
Of little or fourth finger at second joint.....	\$115
Of little or fourth finger at distal joint.....	\$50
Of metacarpal bone in finger except thumb.....	\$115

Miscellaneous.

MISCELLANEOUS.

Loss of one eye by enucleation.....	\$2,160
Loss of sight of one eye.....	\$1,620
Complete loss of hearing in both ears.....	\$3,420
Complete loss of hearing in one ear.....	\$950
Complete broken arch in foot.....	\$950

Compensation for any other permanent partial disability shall be in the proportion which the ex-

tent of such other disability, called unspecified 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 five thousand dollars (\$5,000): *Provided*, That the total compensation for all unspecified permanent partial disabilities resulting from the same injury shall not exceed the sum of five thousand dollars (\$5,000). For disability to a member 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: *Provided further*, That in case permanent partial disability compensation is followed by permanent total disability compensation, any portion of the permanent partial disability compensation which exceeds the amount that would have been paid the injured workman if permanent total disability compensation had been paid in the first instance, shall be deducted from the pension reserve of such injured workman and his monthly compensation payments shall be reduced accordingly.

Other permanent partial disability.

Maximum amounts.

Permanent partial disability followed by permanent total disability.

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 to the minor workman.

Injured workman under twenty-one years and unmarried.

(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.

Further accidents to injured workman.

Should a workman receive an injury to a member or part of his body already from whatever cause

Injury to part of body already disabled.

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 five 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 five (5) years from the taking effect of this act within which to apply for such readjustment.

Readjustment.

Five year limitation.

Act done prior to written order not grounds for 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.

Time of appeal extended.

(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.

Beneficiary restrictions by abandonment or separation.

(j) If a beneficiary shall reside or remove out of the state the Department may, in its discretion, with the written consent of the beneficiary, convert any monthly payments provided for such cases into a lump sum payment (not in any case to 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 five thousand dollars (\$5,000).

Lump sum settlements for non-resident beneficiaries.

(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.

Beginning of payments.

(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.

Pre-existing diseases affecting recovery.

Board of Industrial Insurance Appeals.

Members of Boards.

Chairman.

Labor's representative.

Employer's representative.

Terms of office.

Members may be reappointed.

Vacancies.

Compensation of members.

SEC. 2. There is hereby created a "Board of Industrial Insurance Appeals," hereinafter called the "Board," to consist of three (3) members to be appointed by the Governor as hereinafter provided. One shall be a representative of the public and a lawyer, appointed from a mutually agreed to list of not less than three (3) active members of the Washington State Bar Association, submitted to the Governor by the two organizations defined below, and such member when appointed shall be the chairman of said Board. The second member shall be a representative of the majority of the workmen engaged in extra-hazardous employment and shall be selected from a list of not less than three (3) names submitted to the Governor by an organization, state-wide in scope, which through its affiliates embraces a cross section and a majority of the organized labor of the state. The third member shall be a representative of employers engaged in extra-hazardous industry, and be appointed from a list of at least three (3) names submitted to the Governor by a recognized state-wide organization of employers, representing a majority of employers who have been substantial contributors to the Industrial Insurance and Accident Fund. The terms of office of the members of the Board shall be for six (6), four (4) and two (2) years respectively. Thereafter all terms shall be for a period of six (6) years. Each member of the Board shall be eligible for reappointment and shall hold office until his successor is appointed and qualified. In the event of a vacancy in the Board, the Governor is authorized to appoint a successor to fill the unexpired term of his predecessor. All appointments shall be made in conformity with the foregoing plan for the personnel and selection of the Board. Members shall devote their entire time to the duties of the Board and shall receive for their services a salary which shall be in addition to reasonable travel allowance as follows: The chairman

shall receive the same salary as that provided for Superior Court Judges in Class A counties; the two remaining members shall each receive the same salary less the sum of five hundred dollars (\$500) per annum. Headquarters for the Board shall be located in Olympia. The board shall adopt a seal which shall be judicially recognized.

Salary of chairman.

Salaries of other members.

Seal.

SEC. 3. The Board is authorized and shall have power to make rules and regulations concerning its functions and procedure, which rules and regulations shall have the force and effect of law until altered, repealed or set aside by action of the Board: *Provided, however,* That the Board by no such rule or regulation may delegate its duty of final decision on any appeal case or interpretation of any part of the testimony in any appeal case to any other person. All rules and regulations adopted by the Board shall be printed and copies thereof shall be readily available to the public. The Board is authorized and shall have power to incur such expenses as are reasonably necessary to carry out its duties hereunder. All such expenses shall be paid, one-half from the Accident Fund and one-half from the Medical Aid Fund upon vouchers approved by the Board.

Rules and regulations.

Proviso.

Rules and regulations to be printed.

Expenses incurred.

SEC. 4. Any member of the Board may be removed for inefficiency, malfeasance or misfeasance in office, upon specific written charges filed by the Governor, who shall transmit such written charges to the member accused and to the Chief Justice of the Supreme Court. The Chief Justice shall thereupon designate a special tribunal composed of three (3) judges of the Superior Court to hear and adjudicate the charges. Such tribunal shall fix the time, place and procedure for the hearing, and the hearing shall be public. The decision of such tribunal shall be final and not subject to review.

Removal of members.

Charges shall be in writing.

Special tribunal to hear charges

Hearing.

SEC. 5. From and after the effective date of this act the Joint Board of the Department of Labor and

Joint Board of Labor and Industries abolished and powers transferred.

Industries shall no longer exist and all powers of said Joint Board, and all proceedings pending before it on the date last above mentioned are hereby transferred to and vested in the Board of Industrial Insurance Appeals, which Board shall have jurisdiction as fully and completely as though such proceedings had been originally initiated before it: *Provided*, That nothing herein contained shall affect any appeal pending before any Superior Court or the Supreme Court.

Pending appeals not affected.

Amendment.

SEC. 6. Section 20, chapter 74, Laws of 1911, as last amended by section 1, chapter 280, Laws of 1943, is amended to read as follows:

Department of Labor and Industries.

Section 20. Whenever the Department of Labor and Industries has made any order, decision or award, it shall promptly serve the claimant, employer 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. The copy, in case the same is a final order, decision or award, shall bear on the same side of the same page on which is found the amount of the award, a statement, set in black faced type of at least ten point body or size, that such final order, decision or award must be appealed within sixty days, or the same shall become final. Any claimant, employer or other person aggrieved by 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, a notice of appeal to the Board of Industrial Insurance Appeals, hereinafter called the "Board." Such notice 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

Service of orders, awards and decisions.

Contents of copy served.

Notice of appeal to Board of Industrial Insurance Appeals.

Contents of notice.

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 appeal is taken other than those specifically set forth in such notice of appeal or appearing in the records of the Department. The Department shall promptly transmit the original record of the Department in such matter to the Board: *Provided, however,* The Department before or after receiving a notice of appeal, but before the time for appeal has expired, may, with the consent of the Board, modify, reverse or change any order, decision or award, and the claimant may thereupon withdraw his appeal. If the Board, in its opinion, considers that the Department had considered fully all matters raised by such appeal it may, without further hearing, deny the same and confirm the Department's decision or award, or if the evidence on file with the Board sustains the applicant's contention, it may, without further hearing, allow the relief asked in such application; otherwise, it shall order a hearing to decide the issues raised. If a hearing be granted it shall be held in the county of the residence of the applicant, or in the county where the injury occurred, at a place designated by the Board, but the hearing thereof may be adjourned from time to time and from place to place within said county, as the convenience of witnesses may require. Such hearing 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 Department shall be entitled to appear in all proceedings before the Board and

Record transmitted to Board.

Department may modify or reverse order.

Powers of Board as to decisions and awards of Department.

Hearings.

Hearings to be de novo and summary.

Witnesses.

Department may appear.

Oral testimony

introduce testimony in support of its order. The 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 appeal. Such hearings on appeal to the Board may be conducted by one or more of its members, or a duly authorized representative, and depositions may be taken by a person duly commissioned for the purpose by the Board, but the record on appeal shall be considered by all of the members of the Board, and the decision of a majority of the members shall be the decision of the Board, and upon such decision being rendered all parties to said appeal shall be given written notice thereof by the Board.

Conduction of hearings.

Depositions.

Record to be considered by all members of Board.

Notice of decision.

Board to act on appeal within 30 days.

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

Extension of time.

Powers and duties of Board in hearings.

Each of the members of the Board and all persons duly commissioned by it for the purpose of taking depositions, shall have power to administer oaths; to preserve and enforce order during such hearing; to issue subpoenas for, and to compel the attendance and testimony of, witnesses, or the production of books, papers, documents 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.

Persons committing contempt at hearings.

If any person in proceedings before the 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 pro-

duce, 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 Board or any member thereof shall certify the facts to the Superior Court having jurisdiction in the place in which said 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.

Superior Court shall punish.

Within thirty days after the final order of the Board upon such appeal has been communicated to such applicant, or within thirty days after the appeal is deemed denied as herein provided, such applicant may appeal to the Superior Court of the county of his residence, or to the Superior Court of the county wherein the injury occurred, but upon such appeal may raise only such issues of law or fact as were properly included in his notice of appeal to the Board, or in the complete record of the proceedings before the Board. On such appeal the hearing shall be de 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 Board or included in the record filed by the Board: *Provided*, That the right of cross-examination shall not be limited by the testimony before the 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

Appeal to Superior Court.

Limitation on issues to be appealed.

Appeal to be de novo.

Cross-examination.

Notice of appeal.

Department shall file notice of appearance.

No bond required.

Exception.

Trial by jury upon demand.

Trial shall be de novo.

Supplement to departmental record.

Confirmation of decision of Board.

Modification or reversal of Board's decision.

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 Board under section 7683 of Remington's Revised 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.

In all appeals to the Superior Court from any order, decision or award of the Board, either party shall be entitled to a trial by jury upon demand. The jury's verdict in every such appeal shall have the same force and effect as in actions at law. In each appeal the trial shall be de novo but no party to the appeal shall be permitted to introduce evidence in court in addition to that contained in the departmental record, or in the record of the Board.

The Board shall serve upon the appellant, and file with the Clerk of the Court before trial, a certified copy of that portion of the record supplementing the departmental record, which shall, upon being so filed, together with the record of the Department, become part of the record in such case.

If the Court shall determine that the Board has acted within its power and has correctly construed the law and found the facts, the decision of the Board 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. Upon the final determination of a review proceedings, the Board shall return all original files and records to the Department.

Awards.

Files and records returned to Department.

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 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 of the Department, 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 Department and the Board and shall represent it in all proceedings. In all Court proceedings under or pursuant to this act the decision of the Board shall be *prima facie* correct and the burden of proof shall be upon the party attacking the same.

Attorneys' fees.

Fees and costs from accident fund.

Practice in civil cases applies.

Attorney General shall be legal advisor for Department.

Burden of proof.

SEC. 7. There is hereby appropriated the sum of one hundred fifty thousand dollars (\$150,000) from the Accident Fund and the sum of one hundred fifty thousand dollars (\$150,000) from the Medical Aid Fund, or so much thereof as may be necessary, for the purposes herein stated.

Appropriation.

SEC. 8. If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole or any section, provision or any part thereof not adjudged invalid or unconstitutional.

Partial invalidity.

Passed the House March 8, 1949.

Passed the Senate March 6, 1949.

Approved by the Governor March 19, 1949.