

tic or foreign commerce, and for such purposes to employ and pay for legal counsel and to contract and pay for other professional services.

Passed the Senate March 9, 1947.

Passed the House March 8, 1947.

Approved by the Governor March 22, 1947.

CHAPTER 281.

[S. B. 240.]

WORKMEN'S COMPENSATION.

AN ACT relating to extra-hazardous employments and to the compensation and remedies of workmen injured therein, and of their dependents and beneficiaries in case of death; creating the Board of Industrial Appeals; defining its functions; amending section 2, chapter 74, Laws of 1911, as last amended by section 1, chapter 210, Laws of 1943 (section 7674, Rem. Supp. 1943), and amending section 20, chapter 74, Laws of 1911, as last amended by section 1, chapter 90, Laws of 1931 (sec. 7697, Rem. Rev. Stat.; sec. 704-1, PPC), and making an appropriation.

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

SECTION 1. Section 2, chapter 74, Laws of 1911, as last amended by section 1, chapter 210, Laws of 1943 (section 7674, Rem. Supp. 1943), is amended to read as follows:

Section 2. There is a hazard in all employment, but certain employments have come to be, and to be recognized as being inherently constantly dangerous. This act is intended to apply to all such inherently hazardous works and occupations, and it is the purpose to embrace all of them, which are within the legislative jurisdiction of the state, in the following enumeration, and they are intended to be embraced within the term "extra-hazardous" wherever used in this act, to-wit:

Factories, mills and workshops where machinery is used; printing, electrotyping, photo-engraving and

Declaration
of intent.

"Extra-
hazardous"
employment.

stereotyping plants where machinery is used; foundries, blast furnaces, mines, wells, gasworks, waterworks, reduction works, breweries, elevators, wharves, docks, dredges, smelters, powder works; laundries operated by power; quarries, engineering works; logging, lumbering and shipbuilding operations; logging, street and interurban railroads; buildings being constructed, repaired, moved or demolished; telegraph, telephone, electric light or power plants or lines, steam heating or power plants, steamboats, tugs, ferries and railroads; installing and servicing radios and electrical refrigerators; general warehouse and storage; teaming, truck driving and motor delivery, including drivers and helpers, in connection with any occupation except agriculture; stage, taxicab and for hire car driving; restaurants, taverns, clubs and establishments except private boarding houses, serving food or drink to the public or to members for consumption on the premises; employees supplying service to the public in hotels, clubs furnishing sleeping accommodations, apartment hotels; bunk houses, kitchens and eating houses in connection with extra-hazardous occupations or conducted primarily for employees in extra-hazardous occupations; transfer, drayage and hauling; warehousing and transfer; fruit warehouse and packing houses. If there be or arise any extra-hazardous occupation or work other than those hereinabove enumerated, it shall come under this act, and its rate of contribution to the accident fund hereinafter established shall be, until fixed by legislation, determined by the Department hereinafter created, upon the basis of the relation which the risk involved bears to the risk classified in section 7676 of Remington's Revised Statutes: *Provided, however,* The following operations shall not be deemed extra-hazardous within the meaning, or be included in the enumeration of this section to-wit: Using power-driven coffee grinders in wholesale or

Other
occupation
or work.

Operations
not extra-
hazardous.

retail grocery stores; using power-driven washing machines in establishments selling washing machines at retail; using computing machines in offices; using power-driven taffy pullers in retail candy stores; using power-driven milk shakers in establishments operating soda fountains; using power-driven hair cutters in barber shops; using power-driven machinery in beauty parlors; using power-driven machinery in optical stores.

The Director of Labor and Industries, through and by means of the Division of Industrial Insurance, shall have power, after hearing had upon its own motion or upon the application of any party interested, to declare any occupation or work to be extra-hazardous and to be under this act. The Director of Labor and Industries shall fix the time and place of such hearing and shall cause notice thereof to be published once at least ten (10) days before the hearing in at least one (1) daily newspaper of general circulation, published and circulated in each city of the first class of this state. No defect or inaccuracy, in such notice or in the publication thereof, shall invalidate any order issued by the Director of Labor and Industries, after hearing had. Any person affected shall have the right to appear and be heard at any such hearing. Any order, finding or decision of the Director of Labor and Industries made and entered under the foregoing provisions of this act shall be subject to review within the time and in the manner specified in section 7697 of Remington's Revised Statutes and not otherwise.

SEC. 2. There is hereby created a Board of Industrial Insurance Appeals, hereinafter called the "Board", to consist of three members, to be appointed by the Governor as hereinafter provided. One shall be a representative of the public and a lawyer, appointed from a list of not less than three active members of the Washington State Bar Association.

Director of Labor and Industries may declare occupation or work extra-hazardous.

Notice and hearing.

Publication.

Review.

Vetoed.

Vetoed.

ciation, submitted upon request of the Governor by a majority vote of the members of the Supreme Court, 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 names submitted to the Governor by an organization, state wide in scope, which through its affiliates embraces a cross section 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 names submitted to the Governor by a recognized state-wide organization of employers, a majority of whom 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, four and two years respectively. Thereafter all terms shall be for a period of six 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 not to exceed seven thousand five hundred dollars (\$7,500) per annum and reasonable travel allowance. Headquarters for the Board shall be located in Olympia. The Board shall adopt a seal which shall be judicially recognized.

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.

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 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.

Vetoed.

SEC. 5. From and after the effective date of this act the joint board of the Department of Labor and Industries shall no longer exist and all proceedings pending before said joint board on the date last above mentioned are hereby transferred to the Board of Industrial Insurance Appeals, which 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 of the Supreme Court.

SEC. 6. Section 20, chapter 74, Laws of 1911, as amended by section 8, chapter 310, Laws of 1927, as

amended by section 6, chapter 132, Laws of 1929, as amended by section 1, chapter 90, Laws of 1931 (section 7697, Rem. Rev. Stat.; section 704-1, PPC), is amended to read as follows:

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. 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, 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 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. 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,

Vetoed.

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 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 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, 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.

Vetoed

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.

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.

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 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 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.

Vetocd.

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 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.

Vetoed.

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 as in other civil cases. 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.

Vetoed.

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, 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.

Appropriation.

SEC. 7. There is hereby appropriated the sum of one hundred twenty-five thousand dollars (\$125,000) from the accident fund and the sum of one hundred twenty-five thousand dollars (\$125,000) from the Medical Aid Fund, or so much thereof as may be necessary, for the purposes herein stated.

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 part thereof not adjudged invalid or unconstitutional.

Saving
clause.

Passed the Senate March 9, 1947.

Passed the House March 9, 1947.

Approved by the Governor March 22, 1947, with the exception of Sections 2, 3, 4, 5, and 6, which are vetoed.

CHAPTER 282.

[H. B. 405.]

CODE COMMITTEE—REVISION OF STATUTES.

AN ACT relating to the compilation, revision, and codification of the statutory laws of the state; amending section 5, chapter 149, Laws of 1941, as last amended by section 1, chapter 233, Laws of 1945 (sec. 152-40, Rem. Rev. Stat.; sec. 430-9, PPC) and adding a new section to said chapter 149, Laws of 1941, as amended, and to be designated section 5-a.

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

SECTION 1. Section 5, chapter 149, Laws of 1941, as last amended by section 1, chapter 233, Laws of 1945 (sec. 152-40, Rem. Rev. Stat.; sec. 430-9, PPC) is amended to read as follows:

Section 5. The Committee shall be a continuing Code Committee with full power of codification of the laws above referred to, and shall have the power and duty to assign code numbers to such general laws as shall hereafter be passed at any legislative session; and the said Committee shall certify to the Secretary of State the numbers given to the sections which the Committee has determined shall be incorporated in such code.

Continuing
committee.

Powers and
duties.

Certification
to Secretary
of State.

SEC. 2. Chapter 149, Laws of 1941, as last amended by chapter 233, Laws of 1945, is amended