

1 IN THE SENATE

BY SENATORS BELTZ AND OWEN

2

SENATE BILL NO. 22

3

IN THE LEGISLATURE OF THE TERRITORY OF ALASKA

4

TWENTY-THIRD SESSION

5

A BILL

6

For an Act entitled; "An Act to supplement Title 43, Ch. 3, ACLA,

7

1949, the Alaska Workmen's Compensation Act:

8

amending provisions of that Act pertaining

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to coverage, injury, death benefits, dis-

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ability benefits, disfigurement, care of

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injured workmen, second injury fund, re-

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habilitation, Board rules and procedure,

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appeals, attorney's fees, ~~time for filing~~

14

claims, penalties, defining terms, changing

15

name from Industrial Board to Workmen's

16

Compensation Board; repealing sections

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43-3-3, 43-3-4, 43-3-6, 43-3-7, 43-3-9

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43-3-10, 43-3-11, 43-3-12, 43-3-13, 43-3-14,

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43-3-15, 43-3-16, 43-3-17, 43-3-22, 43-3-23,

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43-3-24, 43-3-25, 43-3-26, 43-3-29, 43-3-30,

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43-3-31, 43-3-35, 43-3-37, 43-3-38, 43-3-39,

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ACLA, 1949; and repealing Sections 43-3-1,

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43-3-2 and 43-3-8, ACLA, 1949, as amended

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by Ch. 60, SLA, 1953; and repealing Sec.

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43-3-36, ACLA, 1949, as repealed and re-

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enacted by Ch. 133, SLA, 1951, and as re-

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pealed and reenacted by Ch. 24, SLA, 1953."

28

BE IT ENACTED BY THE LEGISLATURE OF THE TERRITORY OF ALASKA:

29

Section 1. SHORT TITLE. This Act may be cited as "Alaska

1 Workmen's Compensation Act."

2 Sec. 2. DEFINITIONS.. When used in this Act ---

3 (1) The term "person" means individual, partnership,
4 corporation, or association.

5 (2) The term "injury" means accidental injury or death
6 arising out of and in the course of employment, and such occupa-
7 tional disease or infection as arises naturally out of such em-
8 ployment or as naturally or unavoidably results from such acci-
9 dental injury, and includes an injury caused by the willful act
10 of a third person directed against an employee because of his
11 employment.

12 (3) The term "carrier" means any person or fund
13 authorized under Section 43-3-21, ACLA, 1949, to insure under
14 this Act and includes self-insurers.

15 (4) The term "Board" means the Alaska Workmen's Con-
16 pensation Board.

17 (5) "Disability" means incapacity because of injury
18 to earn the wages which the employee was receiving at the time
19 of injury in the same or any other employment.

20 (6) "Death" as a basis for a right to compensation
21 means only death resulting from an injury.

22 (7) "Compensation" means the money allowance payable
23 to an employee or to his dependents as provided for in this Act,
24 and includes funeral benefits provided therein.

25 (8) "Wages" means the money rate at which the service
26 rendered is recompensed under the contract of hiring in force at
27 the time of the injury, including the reasonable value of board,
28 rent, housing, lodging, or similar advantage received from the
29 employer, and gratuities received in the course of employment

1 from others than the employer.

2 (9) "Child" shall include a posthumous child, a child
3 legally adopted prior to the injury of the employee, a child in
4 relation to whom the deceased employee stood in loco parentis for
5 at least one year prior to the time of injury, and a stepchild or
6 acknowledged illegitimate child dependent upon the deceased, but
7 does not include married children unless wholly dependent on him.
8 "Grandchild" means a child as above defined of a child as above
9 defined. "Brother" and "sister" include stepbrothers and step-
10 sisters, half brothers and half sisters, and brothers and sisters
11 by adoption, but does not include married brothers nor married
12 sisters unless wholly dependent on the employee. "Child", "grand
13 child," "brother," and "sister" include only persons who are
14 under eighteen years of age, and also persons who, though eight-
15 een years of age or over, are wholly dependent upon the deceased
16 employee and incapable of self-support by reason of mental or
17 physical disability.

18 (10) The term "parent" includes step-parents and
19 parents by adoption, parents-in-law, and any person who for more
20 than three years prior to the death of the deceased employee
21 stood in the place of a parent to him, if dependent on the in-
22 jured employee.

23 (11) The term "widow" includes only the decedent's
24 wife living with or dependent for support upon him at the time
25 of his death; or living apart for justifiable cause or by reason
26 of his desertion at such a time.

27 (12) The term "widower" includes only the decedent's
28 husband who at the time of her death lived with her and was
29 dependent for support upon her.

1 (13) The term "adoption" or "adopted" means legal
2 adoption prior to the time of the injury.

3 (14) The singular includes the plural and the masculine
4 includes the feminine and neuter.

5 (15) Wherever the term "employer" is used in this Act,
6 reference is had to the Territory or any of its political sub-
7 divisions and to any person or persons, partnership, joint stock
8 company, association or corporation employing one or more persons
9 in connection with any business or industry coming within the
10 scope hereof and carried on in this Territory, and whenever the
11 term "employee" is used herein, reference is had to an employee
12 employed by an employer as above defined.

13 (16) "Married" shall include one who is divorced but
14 is required by the decree of divorce to contribute to the support
15 of his former wife.

16 Sec. 3. COVERAGE. (a) Every employer shall be liable for
17 and shall secure the payment to his employees of the compensation
18 payable under Sections 6, 7, and 8. In the case of an employer
19 who is a subcontractor, the contractor shall be liable for and
20 shall secure the payment of such compensation to employees of the
21 subcontractor unless the subcontractor has secured such payment.

22 (b) Compensation shall be payable irrespective of
23 fault as a cause for the injury.

24 Sec. 4. EXCLUSIVENESS OF LIABILITY. The liability of an
25 employer prescribed in Section 3 shall be exclusive and in place
26 of all other liability of such employer to the employee, his
27 legal representative, husband or wife, parents, dependents, next
28 of kin, and anyone otherwise entitled to recover damages from
29 such employer at law or in admiralty on account of such injury or

1 death, except that if an employer fails to secure payment of com-
2 pensation as required by this Act, an injured employee, or his
3 legal representative in case death results from the injury, may
4 elect to claim compensation under this Act, or to maintain an
5 action at law or in admiralty for damages on account of such in-
6 jury or death. In such action the defendant may not plead as a
7 defense that the injury was caused by the negligence of a fellow
8 servant, nor that the employee assumed the risk of his employment,
9 nor that the injury was due to the contributory negligence of the
10 employee.

11 Sec. 5. TIME FOR COMMENCEMENT OF COMPENSATION: MAXIMUM AND
12 MINIMUM COMPENSATION. (a) No compensation shall be allowed for
13 the first three days of the disability, except the benefits pro-
14 vided for in Section 6; Provided, however, that in case the injury
15 results in disability of more than seven days, the compensation
16 shall be allowed from the date of the disability.

17 (b) Compensation for temporary disability or
18 permanent partial disability shall not exceed \$100 per week
19 and shall not be less than \$12 per week; Provided, however,
20 that, if the employee's average weekly wages, as computed
21 under Section 9, are less than \$12 per week, he shall receive
22 as compensation for temporary disability his average weekly
23 wages.

24 (c) In computing compensation for permanent total
25 disability the average weekly wages shall be considered to
26 have been not more than \$80; Provided, however, if the average
27 weekly wages as computed under Section 9 are less than \$12
28 per week he shall receive as compensation for permanent total
29 disability his average weekly wages.

1 Sec. 6. MEDICAL SERVICES AND SUPPLIES. (a) The employer
2 shall furnish such medical, surgical, and other attendance or
3 treatment, nurse and hospital service, medicine, crutches, and
4 apparatus, for such period as the nature of the injury or the pro-
5 cess of recovery may require. If the employer fails to provide
6 the same, after request by the injured employee, such injured
7 employee may do so at the expense of the employer. The employee
8 shall not be entitled to recover any amount expended by him for
9 such treatment or services unless he shall have requested the
10 employer to furnish the same and the employer shall have refused
11 or neglected to do so, or unless the nature of the injury required
12 such treatment and services and the employer or his superintendent
13 or foreman having knowledge of such injury shall have neglected
14 to provide the same; nor shall any claim for medical or surgical
15 treatment be valid and enforceable, as against such employer,
16 unless within twenty days following the first treatment the physi-
17 cian giving such treatment furnish to the employer and the Board
18 a report of such injury and treatment, on a form prescribed by
19 the Board. The Board may, however, excuse the failure to furnish
20 such report within twenty days when it finds it to be in the
21 interest of justice to do so, and it may, upon application by a
22 party in interest, make an award for the reasonable value of such
23 medical or surgical treatment so obtained by the employee. If at
24 any time during such period the employee unreasonably refuses to
25 submit to medical or surgical treatment, the Board may, by order,
26 suspend the payment of further compensation during such time as
27 such refusal continues, and no compensation shall be paid at any
28 time during the period of such suspension, unless the circumstance
29 justified the refusal.

1 (b) Whenever in the opinion of the Board a physi-
2 cian has not impartially estimated the degree of permanent
3 disability or the extent of temporary disability of any
4 injured employee, the Board shall have the power to cause
5 such employee to be examined by a physician selected by the
6 Board and to obtain from such physician a report containing
7 his estimate of such disabilities. If the report of such
8 physician shows that the estimate of the physician has not
9 been impartial from the standpoint of such employee, the
10 Board shall have the power in its discretion to charge the
11 cost of such examination to the employer, if he is a self-
12 insurer, or to the insurance company which is carrying the
13 risk.

14 (c) All fees and other charges for such treatment
15 or service shall be limited to such charges as prevail in the
16 same community for similar treatment of injured persons of
17 like standard of living, and shall be subject to regulation
18 by the Board.

19 (d) The liability of an employer for medical
20 treatment as herein provided, shall not be affected by the
21 fact that his employee was injured through the fault or
22 negligence of a third party, not in the same employ, unless
23 and until notice of election to sue has been given as re-
24 quired by Section 30 (a) or suit has been brought against
25 such third party without the giving of such notice. The
26 employer shall, however, have a cause of action against
27 such third party to recover any amounts paid by him for such
28 medical treatment in like manner as provided in Section 30
29 (b) of this Act.

1 (e) If it be made to appear in any suit, action
2 or proceeding brought against the employer that the injuries
3 sustained by the employee were aggravated on account of the
4 incompetence or neglect of the physician or surgeon selected
5 by the employer, it shall be prima facie evidence that the
6 employer failed to use due care in the selection of such
7 physician or surgeon, and in such case the employer and
8 physician or surgeon shall be jointly and separately liable
9 for all damages resulting from such incompetence or neglect.

10 (f) Nothing contained in this section shall be
11 construed to limit the right of the employee, to provide in
12 any case, at his own expense, a consulting physician, surgeon,
13 chiropractor or osteopath or any attending physician, surgeon,
14 chiropractor or osteopath whom he may desire.

15 Sec. 7. COMPENSATION FOR DISABILITY. Compensation for
16 disability shall be paid to the employee as follows:

17 (a) Permanent total disability: In case of total
18 disability adjudged to be permanent 65 per centum of the
19 average weekly wages shall be paid to the employee during the
20 continuance of such total disability. Loss of both hands, or
21 both arms, or both feet, or both legs, or both eyes, or of
22 any two thereof shall, in the absence of conclusive proof to
23 the contrary, constitute permanent total disability. In all
24 other cases permanent total disability shall be determined in
25 accordance with the facts.

26 (b) Temporary total disability: In case of dis-
27 ability total in character but temporary in quality 65 per
28 centum of the average weekly wages shall be paid to the
29 employee during the continuance thereof.

1 (c) Permanent partial disability: In case of dis-
2 ability partial in character but permanent in quality the
3 compensation shall be 65 per centum of the average weekly
4 wages, which shall be in addition to compensation for
5 temporary total disability or temporary partial disability
6 paid in accordance with subdivision (b) or subdivision (c)
7 of this section respectively and shall be paid to the
8 employee, as follows:

9 1. Arm lost, two hundred and eighty weeks'
10 compensation, not to exceed \$9,800.00.

11 2. Leg lost, two hundred and forty-eight
12 weeks' compensation, not to exceed \$8,700.00.

13 3. Hand lost, two hundred and twelve weeks'
14 compensation, not to exceed \$7,500.00.

15 4. Foot lost, one hundred and seventy-three
16 weeks' compensation, not to exceed \$6,100.00.

17 5. Eye lost, one hundred and forty weeks'
18 compensation, not to exceed \$4,900.00.

19 6. Thumb lost, fifty-one weeks' compensation,
20 not to exceed \$1,800.00.

21 7. First finger lost, twenty-eight weeks'
22 compensation, not to exceed \$1,000.00.

23 8. Great toe lost, twenty-six weeks' compen-
24 sation, not to exceed \$900.00.

25 9. Second or third finger lost, eighteen
26 weeks' compensation, not to exceed \$600.00.

27 10. Toe other than great toe lost, eight weeks'
28 compensation, not to exceed \$300.00.

29 11. Fourth finger lost, seven weeks' compensa-

1 tion, not to exceed \$300.00.

2 12. Loss of hearing: Compensation for loss
3 of hearing of one ear fifty-two weeks, not exceeding
4 \$1,800.00. Compensation for loss of hearing of both
5 ears, two hundred weeks, not exceeding \$7,000.00.

6 13. Phalanges: Compensation for loss of
7 more than one phalange of a digit shall be the same as
8 for loss of the entire digit. Compensation for loss of
9 the first phalange shall be one-half of the compensation
10 for loss of the entire digit.

11 14. Amputations: Amputation between the
12 elbow and the wrist shall be considered equivalent to
13 the loss of an arm, and amputation between the knee and
14 ankle shall be considered equivalent to the loss of a
15 leg.

16 15. Binocular vision or per centum of vision:
17 Compensation for loss of binocular vision or for 80 per
18 centum or more of the vision of an eye shall be the same
19 as for loss of the eye.

20 16. Two or more digits: Compensation for
21 loss of two or more digits, or one or more phalanges of
22 two or more digits, of a hand or foot may be proportion-
23 ed to the loss of use of the hand or foot occasioned
24 thereby, but shall not exceed the compensation for loss
25 of a hand or foot.

26 17. Total loss of use: Compensation for
27 permanent total loss of use of a member shall be the
28 same as for loss of the member.

29 18. Partial loss or partial loss of use:

1 Compensation for permanent partial loss or loss of use
2 of a member may be for proportionate loss or loss of
3 use of the member.

4 19. Disfigurement: The Board shall award
5 proper and equitable compensation for serious facial
6 or head disfigurement, not to exceed \$3,500.

7 20. Other cases: In all other cases in this
8 class of disability the compensation shall be 65 per
9 centum of the difference between his average weekly
10 wages and his wage-earning capacity thereafter in the
11 same employment or otherwise, payable during the con-
12 tinuance of such partial disability, but subject to re-
13 consideration of the degree of such impairment by the
14 Board on its own motion or upon application of any
15 party in interest.

16 21. In any case in which there shall be a
17 loss of, or loss of use of more than one member or
18 parts of more than one member set forth in paragraphs
19 1. to 18. of this subdivision, not amounting to per-
20 manent total disability, the award of compensation
21 shall be for the loss of, or loss of use of, each such
22 member or part thereof, which awards shall run
23 consecutively, except that where the injury affects
24 only two or more digits of the same hand or foot,
25 paragraph 16. of this subdivision shall apply.

26 (d) Any compensation to which any claimant would
27 be entitled under subdivision (c) excepting subdivision
28 (c-20) shall, notwithstanding death arising from causes
29 other than the injury, be payable to and for the benefit of

1 the persons following:

2 1. If there be a surviving wife or dependent
3 husband and no child of the deceased under the age of
4 eighteen years, to such wife or dependent husband.

5 2. If there be a surviving wife or dependent
6 husband and surviving child or children of the deceased
7 under the age of eighteen years, one half shall be
8 payable to the surviving wife or dependent husband and
9 the other half to the surviving child or children.

10 3. The Board may in its discretion require
11 the appointment of a guardian for the purpose of re-
12 ceiving the compensation of the minor child. In the
13 absence of such a requirement the appointment for such
14 a purpose shall not be necessary.

15 4. If there be a surviving child or children
16 of the deceased under the age of eighteen years, but no
17 surviving wife or dependent husband, then to such child
18 or children.

19 5. An award for disability may be made after
20 the death of the injured employee.

21 (e) Temporary partial disability: In case of
22 temporary partial disability resulting in decrease of earn-
23 ing capacity the compensation shall be 65 per centum of the
24 difference between the injured employee's average weekly
25 wages before the injury and his wage-earning capacity after
26 the injury in the same or another employment, to be paid
27 during the continuance of such disability, but shall not be
28 paid for a period exceeding five years.

29 (f) Injury increasing disability: 1. If an

1 employee receive an injury which of itself would only cause
2 permanent partial disability but which, combined with a
3 previous disability, does in fact cause permanent total dis-
4 ability, the employer shall provide compensation only for
5 the disability caused by the subsequent injury; Provided,
6 however, that in addition to compensation for such permanent
7 partial disability, and after the cessation of the payments
8 for the prescribed period of weeks, the employee shall be
9 paid the remainder of the compensation that would be due for
10 permanent total disability. Such additional compensation
11 shall be paid out of the Second Injury Fund established in
12 Section 32.

13 2. In all other cases in which, following a
14 previous disability, an employee receives an injury
15 which is not covered by 1. of this subdivision, the
16 employer shall provide compensation only for the dis-
17 ability caused by the subsequent injury. In determin-
18 ing compensation for the subsequent injury or for death
19 resulting therefrom, the average weekly wages shall be
20 such sums as will reasonably represent the earning
21 capacity of the employee at the time of the subsequent
22 injury.

23 (g) The wage-earning capacity of an injured
24 employee in cases of partial disability under subdivision
25 (c) 20. of this Section or under subdivision (e) of this
26 Section shall be determined by his actual earnings if such
27 actual earnings fairly and reasonably represent his wage-
28 earning capacity; Provided, however, that if the employee
29 has no actual earnings or his actual earnings do not fairly

1 and reasonably represent his wage-earning capacity, the
2 Board may, in the interest of justice, fix such wage-earning
3 capacity as shall be reasonable, having due regard to the
4 nature of his injury, the degree of physical impairment,
5 his usual employment, and any other factors or circumstances
6 in the case which may affect his capacity to earn wages in
7 his disabled condition, including the effect of disability
8 as it may naturally extend into the future.

9 (h) In cases under subdivision (c) 20. and sub-
10 division (c) of this Section, whenever the Board determines
11 that it is for the best interests of an injured employee
12 entitled to compensation, it may approve agreed settlements
13 of the interested parties, discharging the liability of the
14 employer for such compensation, notwithstanding the provi-
15 sions of Section 14 (b) and Section 15 of this Act; Provided,
16 that the sum so agreed upon shall be payable in installments
17 as provided in Section 13 (b), which installments shall be
18 subject to commutation under Section 13 (j); and Provided
19 further, that if the employee should die from causes other
20 than the injury after the Board has approved an agreed
21 settlement as provided for herein, the sum so approved shall
22 be payable, in the manner prescribed in this subdivision,
23 to and for the benefit of the persons enumerated in sub-
24 division (d) of this Section.

25 Sec. 8. COMPENSATION FOR DEATH. If the injury causes death,
26 the compensation shall be known as a death benefit and shall be
27 payable in the amount and to or for the benefit of the persons
28 following:

29 (a) Reasonable funeral expenses not exceeding \$400.

1 (b) If there be a surviving wife or dependent
2 husband and no child of the deceased to such surviving wife
3 or dependent husband 35 per centum of the average wages of
4 the deceased, during widowhood, or dependent widowerhood,
5 with two years' compensation in one sum upon remarriage; and
6 if there be a surviving child or children of the deceased,
7 the additional amount of 15 per centum of such wages for
8 each child; in the case of the death or remarriage of such
9 surviving wife or dependent husband, if there be no sur-
10 viving child of the deceased employee, such child shall have
11 his compensation increased to 35 per centum of such wages,
12 and if there be more than one surviving child of the deceas-
13 ed employee, to such children, in equal parts, 35 per centum
14 of such wages increased by 15 per centum of such wages for
15 each child in excess of one; Provided, that the total amount
16 payable shall in no case exceed 65 per centum of such wages.
17 The Board may, in its discretion, require the appointment of
18 a guardian for the purpose of receiving the compensation of
19 a minor child. In the absence of such a requirement the
20 appointment of a guardian for such purposes shall not be
21 necessary.

22 (c) If there be one surviving child of the de-
23 ceased, but no surviving wife or dependent husband, then for
24 the support of such child 35 per centum of the wages of the
25 deceased; and if there be more than one surviving child of
26 the deceased, but no widow or dependent husband, then for
27 the support of such children, in equal parts 35 per centum
28 of such wages increased by 15 per centum of such wages for
29 each child in excess of one; Provided, that the total amount

1 payable shall in no case exceed 65 per centum of such wages.

2 (a) If there be no surviving wife or dependent
3 husband or child or if the amount payable to a surviving
4 wife or dependent husband and to children shall be less in
5 the aggregate than 65 per centum of the average wages of the
6 deceased; then for the support of grandchildren or brothers
7 and sisters, if dependent upon the deceased at the time of
8 the injury, 15 per centum of such wages for the support of
9 each such person and for the support of each parent, or
10 grandparent, of the deceased if dependent upon him at the
11 time of the injury, 25 per centum of such wages during such
12 dependency. But in no case shall the aggregate amount pay-
13 able under this subdivision exceed the difference between
14 65 per centum of such wages and the amount payable as here-
15 inbefore provided to surviving wife or dependent husband
16 and for the support of surviving child or children.

17 (c) In computing death benefits the average weekly
18 wages of the deceased shall be considered to have been not
19 more than \$80 nor less than \$22.50 but the total weekly
20 compensation shall not exceed the weekly wages of the
21 deceased.

22 (f) All questions of dependency shall be determin-
23 ed as of the time of the injury.

24 (g) Aliens: Compensation under this Act to aliens
25 not residents (or about to become nonresidents) of the United
26 States or Canada shall be the same in amount as provided for
27 residents, except that dependents in any foreign country
28 shall be limited to surviving wife and child or children, or
29 if there be no surviving wife or child or children, to sur-

1 viving father or mother whom the employee has supported,
2 either wholly or in part, for the period of one year prior
3 to the date of the injury, and except that the Board may
4 at its option, or upon the application of the insurance
5 carrier shall, commute all future installments of compensa-
6 tion to be paid to such aliens by paying or causing to be
7 paid to them one-half of the commuted amount of such future
8 installments of compensation as determined by the Board,
9 Sec. 9. DETERMINATION OF PAY. Except as otherwise provided
10 in this Act, the average weekly wage of the injured employee at
11 the time of the injury shall be taken as the basis upon which to
12 compute compensation and shall be determined as follows:

13 (a) If the injured employee shall have worked in
14 the employment in which he was working at the time of the
15 injury, whether for the same or another employer, during
16 substantially the whole of the year immediately preceding
17 his injury, his average annual earnings shall consist of
18 three hundred times the average daily wage or salary for a
19 six-day worker and two hundred and sixty times the average
20 daily wage or salary for a five-day worker, which he shall
21 have earned in such employment during the days when so
22 employed.

23 (b) If the injured employee shall not have worked
24 in such employment during substantially the whole of such
25 year, his average annual earnings if a six-day worker, shall
26 consist of three hundred times the average daily wage or
27 salary, and, if a five-day worker, two hundred and sixty
28 times the average daily wage or salary, which an employee
29 of the same class working substantially the whole of such

1 immediately preceding year in the same or in similar employ-
2 ment in the same or a neighboring place shall have earned in
3 such employment during the days when so employed.

4 (c) If either of the foregoing methods of arriv-
5 ing at the average annual earnings of the injured employee
6 cannot reasonably and fairly be applied, such average annual
7 earnings shall be such sum as, having regard to the previous
8 earnings of the injured employee in the employment in which
9 he was working at the time of the injury, and of other
10 employees of the same or most similar class working in the
11 same or most similar employment in the same or neighboring
12 locality, or other employment of such employee, including
13 the reasonable value of the services of the employee if
14 engaged in self-employment, shall reasonably represent the
15 annual earning capacity of the injured employee.

16 (d) The average weekly wages of an employee
17 shall be one fifty-second part of his average annual earnings

18 (e) If it be established that the injured employee
19 was a minor when injured, and that under normal conditions
20 his wages should be expected to increase during the period
21 of disability the fact may be considered in arriving at his
22 average weekly wages.

23 Sec. 10. GUARDIAN FOR MINOR OR INCOMPETENT. The Board may
24 require the appointment by a court of competent jurisdiction,
25 for any person who is mentally incompetent or a minor, of a
26 guardian or other representative to receive compensation payable
27 to such person under this Act and to exercise the powers granted
28 to or to perform the duties required of such person under this
29 Act.

1 Sec. 11. NOTICE OF INJURY OR DEATH. (a) Notice of an in-
2 jury or death in respect of which compensation is payable under
3 this Act shall be given within thirty days after the date of such
4 injury or death (1) to the Board and (2) to the employer.

5 (b) Such notice shall be in writing, shall con-
6 tain the name and address of the employee and a statement of
7 the time, place, nature, and cause of the injury or death,
8 and shall be signed by the employee or by some person on
9 his behalf, or in case of death, by any person claiming to
10 be entitled to compensation for such death or by a person
11 on his behalf.

12 (c) Notice shall be given to the Board by deliver-
13 ing it or sending it by mail addressed to the Board's office,
14 and to the employer by delivering it to him or by sending it
15 by mail addressed to him at his last known place of business.
16 If the employer is a partnership, such notice may be given to
17 any partner, or if a corporation, such notice may be given
18 to any agent or officer thereof upon whom legal process may
19 be served or who is in charge of the business in the place
20 where the injury occurred.

21 (d) Failure to give such notice shall not bar any
22 claim under this Act (1) if the employer (or his agent in
23 charge of the business in the place where the injury occur-
24 ed) or the carrier had knowledge of the injury or death and
25 the Board determines that the employer or carrier has not
26 been prejudiced by failure to give such notice, or (2) if
27 the Board excuses such failure on the ground that for some
28 satisfactory reason such notice could not be given; nor
29 unless objection to such failure is raised before the Board

1 at the first hearing of a claim for compensation in respect
2 of such injury or death.

3 Sec. 12. TIME FOR FILING OF CLAIMS. (a) The right to com-
4 pensation for disability under this Act shall be barred unless a
5 claim therefor is filed within two years after the injury, and
6 the right to compensation for death shall be barred unless a
7 claim therefor is filed within one year after the death, except
8 that if payment of compensation has been made without an award on
9 account of such injury or death a claim may be filed within two
10 years after the date of the last payment.

11 (b) Notwithstanding the provisions of subdivision
12 (a) failure to file a claim within the period proscribed in
13 such subdivision shall not be a bar to such right unless
14 objection to such failure is made at the first hearing of
15 such claims in which all parties in interest are given
16 reasonable notice and opportunity to be heard.

17 (c) If a person who is entitled to compensation
18 under this Act is mentally incompetent or a minor, the
19 provisions of subdivision (a) shall not be applicable so
20 long as such person has no guardian or other authorized
21 representative, but shall be applicable in the case of a
22 person who is mentally incompetent or a minor from the date
23 of appointment of such guardian or other representative, or
24 in the case of a minor, if no guardian is appointed before
25 he becomes of age, from the date he becomes of age.

26 (d) Where recovery is denied to any person, in
27 a suit brought at law or in admiralty to recover damages in
28 respect of injury or death, on the ground that such person
29 was an employee and that the defendant was an employer

1 within the meaning of this Act and that such employer has
2 secured compensation to such employee under this Act, the
3 limitation of time prescribed in subdivision (a) shall begin
4 to run only from the date of termination of such suit.

5 Sec. 13. PAYMENT OF COMPENSATION. (a) Compensation under
6 this Act shall be paid periodically, promptly, and directly to
7 the person entitled thereto, without an award, except where
8 liability to pay compensation is controverted by the employer,

9 (b) The first installment of compensation shall
10 become due on the fourteenth day after the employer has
11 knowledge of the injury or death, on which date all compen-
12 sation then due shall be paid. Thereafter compensation
13 shall be paid in installments, semi-monthly, except where
14 the Board determines that payment in installments should be
15 made monthly or at some other period.

16 (c) Upon making the first payment, and upon
17 suspension of payment for any cause, the employer shall
18 immediately notify the Board, in accordance with a form
19 prescribed by the Board, that payment of compensation has
20 begun or has been suspended, as the case may be.

21 (d) If the employer controverts the right to
22 compensation he shall file with the Board on or before the
23 fourteenth day after he has knowledge of the alleged injury
24 or death, a notice, in accordance with a form prescribed by
25 the Board, stating that the right to compensation is con-
26 troverted, the name of the claimant, the name of the employer,
27 the date of the alleged injury or death, and the grounds
28 upon which the right to compensation is controverted.

29 (e) If any installment of compensation payable

1 without an award is not paid within fourteen days after it
2 becomes due, as provided in subdivision (b) of this section,
3 there shall be added to such unpaid installment an amount
4 equal to 10 per centum thereof, which shall be paid at the
5 same time as, but in addition to, such installment, unless
6 notice is filed under subdivision (d) of this section, or
7 unless such nonpayment is excused by the Board after a
8 showing by the employer that owing to conditions over which
9 he had no control such installment could not be paid within
10 the period prescribed for the payment.

11 (f) If any compensation, payable under the terms
12 of an award, is not paid within ten days after it becomes
13 due, there shall be added to such unpaid compensation an
14 amount equal to 20 per centum thereof, which shall be paid
15 at the same time as, but in addition to, such compensation,
16 unless review of the compensation order making such award
17 is had as provided in Section 20 and an interlocutory in-
18 junction staying payments is allowed by the court as provid-
19 ed therein.

20 (g) Within sixteen days after final payment of
21 compensation has been made, the employer shall send to the
22 Board a notice, in accordance with a form prescribed by the
23 Board stating that such final payment has been made, the
24 total amount of compensation paid, the name of the employee
25 and of any other person to whom compensation has been paid,
26 the date of the injury or death, and the date to which com-
27 pensation has been paid. If the employer fails to so notify
28 the Board within such time the Board shall assess against
29 such employer a civil penalty in the amount of \$100.

1 (h) The Board (1) may upon its own initiative at
2 any time in a case in which payments are being made without
3 an award, and (2) shall in any case where right to compensa-
4 tion is controverted, or where payments of compensation have
5 been stopped or suspended, upon receipt of notice from any
6 person entitled to compensation, or from the employer, that
7 the right to compensation is controverted, or that payments
8 of compensation have been stopped or suspended, make such
9 investigations, cause such medical examinations to be made,
10 or hold such hearings, and take such further action as it
11 considers will properly protect the rights of all parties.

12 (i) Whenever the Board deems it advisable it may
13 require any employer to make a deposit with the Treasurer of
14 the Territory to secure the prompt and convenient payment of
15 such compensation, and payments therefrom upon any awards
16 shall be made upon order of the Board.

17 (j) Whenever the Board determines that it is in
18 the interest of justice, the liability of the employer for
19 compensation, or any part thereof as determined by the Board,
20 may be discharged by the payment of a lump sum equal to the
21 present value of future compensation payments commuted, com-
22 puted at 4 per centum true discount compounded annually.
23 The probability of the death of the injured employee or other
24 person entitled to compensation before the expiration of the
25 period during which he is entitled to compensation shall be
26 determined in accordance with the American Experience Table
27 of Mortality, and the probability of the remarriage of the
28 surviving wife shall be determined in accordance with the
29 remarriage tables of the Dutch Royal Insurance Institution.

1 The probability of the happening of any other contingency
2 affecting the amount or duration of the compensation shall
3 be disregarded.

4 (k) If the employer has made advance payments
5 of compensation, he shall be entitled to be reimbursed out
6 of any unpaid installment or installments of compensation
7 due.

8 (l) An injured employee or in case of death his
9 dependents or personal representative, shall give receipts
10 for payment of compensation to the employer paying the same
11 and such employer shall produce the same for inspection by
12 the Board, whenever required.

13 (m) The total compensation payable under this
14 Act for injuries shall in no event exceed the sum of
15 \$20,000.00; Provided, that this subdivision shall not apply
16 to cases of permanent total disability or death; and Provided,
17 further, that in cases of disability compensable under para-
18 graph 20 of subdivision (c) of Section 7 the total compensa-
19 tion for such disability, and for any temporary total
20 disability or temporary partial disability sustained in addi-
21 tion thereto, shall not exceed in the aggregate the sum of
22 \$17,500.

23 Sec. 14. INVALID AGREEMENTS. (a) No agreement by an
24 employee to pay any portion of premium paid by his employer to a
25 carrier or to contribute to a benefit fund or department maintained
26 by such employer for the purpose of providing compensation or
27 medical services and supplies as required by this Act shall be
28 valid, and any employer who makes a deduction for such purpose
29 from the pay of any employee entitled to the benefits of this Act

1 shall be guilty of a misdemeanor and upon conviction thereof shall
2 be punished by a fine of not more than \$1,000.00.

3 (b) No agreement by an employee to waive his right
4 to compensation under this Act shall be valid.

5 Sec. 15. ASSIGNMENT AND EXEMPTION FROM CLAIMS OF CREDITORS.
6 No assignment, release, or commutation of compensation or benefits
7 due or payable under this Act, except as provided by this Act,
8 shall be valid, and such compensation and benefits shall be exempt
9 from all claims of creditors and from levy, execution, and attach-
10 ment or other remedy for recovery or collection of a debt, which
11 exemption may not be waived.

12 Sec. 16. COMPENSATION A LIEN AGAINST ASSETS. Every employee
13 and every beneficiary entitled to compensation under the provi-
14 sions of this Act shall have a lien for the full amount of such
15 compensation, including costs and disbursements of suit and
16 attorneys' fees therein allowed or fixed, upon all of the property
17 in connection with the construction, preservation, maintenance or
18 operation of which the work of such injured or deceased employee
19 was being performed at the time of the injury or death of such
20 employee. For example: In the case of an employee injured or
21 killed while engaged in mining or in any work connected with
22 mining, the lien shall extend to the entire mine and all property
23 used in connection therewith; and in the case of an employee in-
24 jured or killed while engaged in fishing or in the packing, can-
25 ning, or salting of fish, or other branch of the fish industry,
26 the lien shall extend to the entire packing, fishing, salting or
27 canning plant or establishment and all property used in connection
28 therewith; and the same shall be the case with all other business-
29 es, industries, works, occupations and employments. The lien

1 herein provided for shall be prior and paramount and superior to
2 any other lien of the property affected thereby, except liens for
3 wages or materials as is now or may hereafter be provided by law,
4 and shall be of equal rank with all such liens for wages or
5 materials. The lien hereby provided for shall extend to and cover
6 all right, title, interest and claim of the employer of, in, and
7 to the property affected by such lien. Any person claiming a lien
8 under this Act shall, within one year after the date of the injury
9 from which the claim of compensation arises, file for record in
10 the office of the recorder of the precinct in which the property
11 affected by such lien is situated a notice of lien signed and
12 verified by the claimant or someone on his or her behalf, and
13 stating substance, the name of the person injured or killed out
14 of which injury or death the claim of compensation arises, the
15 name of the employer of such injured or deceased person at the
16 time of such injury or death, a description of the property
17 affected or covered by the lien so claimed and the name of the
18 owner or reputed owner of such property.

19 The lien for compensation herein provided may be enforced by
20 a suit in equity as in the case of the enforcement of other liens
21 upon real or personal property, at any time within ten months
22 after the cause of action shall arise. Nothing in this Section
23 contained shall be deemed to prevent an attachment of property as
24 security for the payment of any compensation as in this Act
25 provided.

26 Sec. 17. COLLECTION OF DEFAULTED PAYMENTS. In case of de-
27 fault by the employer in the payment of compensation due under
28 any award of compensation for a period of thirty days after the
29 compensation is due and payable, the person to whom such compense-

1 tion is payable may, within one year after such default, make
2 application to the Board making the compensation order or a sup-
3 plementary order declaring the amount of the default. After
4 investigation, notice, and hearing, as provided in Section 18,
5 the Board shall make a supplementary order, declaring the amount
6 of the default, which shall be filed in the same manner as the
7 compensation order. In case the payment in default is an install-
8 ment of the award, the Board may, in its discretion, declare the
9 whole of the award as the amount in default. The applicant may
10 file a certified copy of such supplementary order with the clerk
11 of the District Court of Alaska. Such supplementary order of the
12 Board shall be final, and the court shall upon the filing of the
13 copy enter judgment for the amount declared in default by the
14 supplementary order if such supplementary order is in accordance
15 with law. Review of the judgment so entered may be had as in
16 civil suits for damages at common law. Final proceedings to
17 execute the judgment may be had by writ of execution in the form
18 used by the court in suits at common law in actions of assumpsit.
19 The court shall modify such judgment to conform to any later com-
20 pensation order upon presentation of a certified copy thereof to
21 the court.

22 Sec. 18. PROCEDURE IN RESPECT OF CLAIMS. (a) Subject to
23 the provisions of Section 12 a claim for compensation may be filed
24 with the Board in accordance with its regulations at any time after
25 the first seven days of disability following any injury, or at any
26 time after death, and the Board shall have full power and auth-
27 ority to hear and determine all questions in respect of such
28 claim.

29 (b) Within ten days after such claim is filed the

1 Board, in accordance with its regulations, shall notify the
2 employer and any other person (other than the claimant),
3 when the Board considers an interested party, that a claim
4 has been filed. Such notice may be served personally upon
5 the employer or other person, or sent to such employer or
6 person by registered mail.

7 (c) The Board shall make or cause to be made such
8 investigations as it considers necessary in respect of the
9 claim, and upon application of any interested party shall
10 order a hearing thereon. If a hearing on such claim is
11 ordered the Board shall give the claimant and other interest-
12 ed parties at least ten days' notice of such hearing, served
13 personally upon the claimant and other interested parties or
14 sent to such claimant and other interested parties by
15 registered mail, and shall within twenty days after such
16 hearing is had, by order, reject the claim or make an award
17 in respect of the claim. If no hearing is ordered within
18 twenty days after notice is given as provided in subdivision
19 (b), the Board shall, by order reject the claim or make an
20 award in respect of the claim.

21 (d) At such hearing the claimant and the employer
22 may each present evidence in respect of such claim and may
23 be represented by any person authorized in writing for such
24 purpose.

25 (e) The order rejecting the claim or making the
26 award (referred to in this Act as a compensation order)
27 shall be filed in the office of the Board, and a copy there-
28 of shall be sent by registered mail to the claimant and to
29 the employer at the last known address of each.

1 (f) An award of compensation for disability may
2 be made after the death of an injured employee.

3 (g) An injured employee claiming or entitled to
4 compensation shall submit to such physical examination by a
5 duly qualified physician as the Board may require. The place
6 or places shall be reasonably convenient for the employee.
7 Such physician or physicians as the employee, employer, or
8 carrier may select and pay for may participate in an examina-
9 tion if the employee, employer, or carrier so requests.
10 Proceedings shall be suspended and no compensation be payable
11 for any period during which the employee may refuse to submit
12 to examination.

13 Sec. 19. PRESUMPTIONS. In any proceeding for the enforce-
14 ment of a claim for compensation under this Act it shall be pre-
15 sumed, in the absence of substantial evidence to the contrary:

16 (a) That the claim comes within the provisions of
17 this Act.

18 (b) That sufficient notice of such claim has been
19 given.

20 (c) That the injury was not occasioned solely by
21 the intoxication of the injured employee.

22 (d) That the injury was not occasioned by the
23 willful intention of the injured employee to injure or kill
24 himself or another.

25 Sec. 20. REVIEW OF COMPENSATION ORDER. (a) A compensation
26 order shall become effective when filed in the office of the
27 Board as provided in Section 18, and, unless proceedings for the
28 suspension or setting aside of such order are instituted as pro-
29 vided in subdivision (c) of this Section, shall become final at

1 the expiration of the thirtieth day thereafter.

2 (b) If an application for review is made to the
3 Board within ten days from the date of an award, made by
4 less than all the members, the full Board, if the first
5 hearing was not held before the full Board, shall review
6 the evidence, or, if deemed advisable, hear the parties at
7 issue and their representatives and witnesses as soon as
8 practicable, and shall make an award and file the same with
9 the findings of fact on which it is based, and shall send a
10 copy thereof to each of the parties forthwith.

11 (c) If not in accordance with law, a compensation
12 order may be suspended or set aside, in whole or in part,
13 through injunction proceedings, mandatory or otherwise,
14 brought by any party in interest against the Board, institut-
15 ed in the District Court. The payment of the amounts requir-
16 ed by an award shall not be stayed pending final decision in
17 any such proceeding unless upon application for an inter-
18 locutory injunction the court, on hearing, after not less
19 than three days' notice to the parties in interest and the
20 Board, allows the stay of such payments, in whole or in
21 part, where irreparable damage would otherwise ensue to the
22 employer. The order of the court allowing any such stay
23 shall contain a specific finding, based upon evidence sub-
24 mitted to the court and identified by reference thereto,
25 that such irreparable damage would result to the employer,
26 and specifying the nature of the damage.

27 (d) If any employer or his officers or agents
28 fails to comply with a compensation order making an award,
29 that has become final, any beneficiary of such award or the

1 Board making the order, may apply for the enforcement of
2 the order of the District Court. If the court determines
3 that the order was made and served in accordance with law,
4 and that such employer or his officers or agents have
5 failed to comply therewith, the court shall enforce
6 obedience to the order by writ of injunction or by other
7 proper process, mandatory or otherwise, to enjoin upon such
8 person and his officers and agents compliance with the
9 order.

10 (e) Proceedings for suspending, setting aside,
11 or enforcing a compensation order, whether rejecting a
12 claim or making an award, shall not be instituted otherwise
13 than as provided in this Section and Section 17.

14 Sec. 21. MODIFICATION OF AWARDS. Upon its own initiative,
15 or upon the application of any party in interest, on the ground
16 of a change in conditions or because of a mistake in a determina-
17 tion of fact by the Board, it may, at any time prior to one year
18 after the date of the last payment of compensation, whether or
19 not a compensation order has been issued, or at any time prior
20 to one year after the rejection of a claim, review a compensation
21 case in accordance with the procedure prescribed in respect of
22 claims in Section 18, and in accordance with such Section issue
23 a new compensation order which may terminate, continue, reinstate,
24 increase, or decrease such compensation, or award compensation.
25 Such new order shall not affect any compensation previously paid,
26 except that an award increasing the compensation rate may be made
27 effective from the date of the injury, and if any part of the
28 compensation due or to become due is unpaid, an award decreasing
29 the compensation rate may be made effective from the date of the

1 injury, and any payment made prior thereto in excess of such de-
2 creased rate shall be deducted from any unpaid compensation, in
3 such manner and by such method as may be determined by the Board
4 Sec. 22. PROCEDURE BEFORE THE BOARD. (a) In making an
5 investigation or inquiry or conducting a hearing the Board shall
6 not be bound by common law or statutory rules of evidence or by
7 technical or formal rules of procedure, except as provided by
8 this Act; but may make such investigation or inquiry or conduct
9 such hearing in such manner as to best ascertain the rights of
10 the parties. Declarations of a deceased employee concerning the
11 injury in respect of which the investigation or inquiry is being
12 made or the hearing conducted shall be received in evidence and
13 shall, if corroborated by other evidence, be sufficient to
14 establish the injury.

15 (b) Hearings before the Board shall be open to
16 the public and shall be stenographically reported, if re-
17 quested.

18 Sec. 23. WITNESSES. No person shall be required to attend
19 as a witness in any proceeding before the Board at a place more
20 than one hundred miles from his place of residence, unless his
21 lawful mileage and fee for one day's attendance shall be first
22 paid or tendered to him; but the testimony of any witness may be
23 taken by deposition or interrogatories according to the rules
24 of practice of the District Court.

25 Sec. 24. WITNESS FEES. Witness summoned in a proceeding
26 before the Board or whose depositions are taken shall receive
27 the same fees and mileage as witnesses in the District Court.

28 Sec. 25. ALASKA WORKMEN'S COMPENSATION BOARD. "A Board
29 is hereby created which shall be known as the "Alaska Workmen's

1 Compensation Board," to be composed of the following three members:
2 The Territorial Insurance Commissioner, the Attorney General and
3 the Territorial Commissioner of Labor. The Commissioner of Labor
4 shall be Chairman of the Board, and shall be the executive Officer
5 of the Board, and shall be empowered to perform all acts necessary
6 to carry into effect all provisions of this Act.

7 (b) Any member of the Board may appoint a deputy
8 to act for him and such deputy shall thereby exercise the
9 authority of the member for the purposes of this Act.

10 (c) Two members shall constitute a quorum and the
11 action taken by any two members or their deputies shall be
12 considered the action of the full Board.

13 (d) The Board may make rules not inconsistent with
14 this Act for carrying out the provisions hereof. Process
15 and procedure under this Act shall be as summary and simple
16 as reasonably may be. The Board or any member thereof shall
17 have the power for the purposes of this Act to subpoena
18 witness, administer or cause to be administered oaths, and
19 to examine or cause to have examined such parts of the books
20 and records of the parties to a proceeding as relate to
21 questions in dispute. The District Court, on application of
22 the Board or any member thereof, shall enforce, by proper
23 proceedings, the attendance and testimony of witnesses and
24 the production and examination of books, papers and records.

25 Sec. 26. FEES FOR SERVICES. (a) No claim for legal services
26 or for any other services rendered in respect of a claim or award
27 for compensation, to or on account of any person, shall be valid
28 unless approved by the Board, or if proceedings for review of the
29 order of the Board in respect of such claim or award are had before

1 any court, unless approved by such court. Any claim so approved
2 shall, in the manner and to the extent fixed by the Board or such
3 court, be a lien upon such compensation.

4 (b) Any person (1) who receives any fee, other
5 consideration, or any gratuity on account of services so
6 rendered, unless such consideration or gratuity is approved
7 by the Board or such court, or (2) who makes it a business
8 to solicit employment for a lawyer or for himself in respect
9 of any claim or award for compensation, shall be guilty of
10 a misdemeanor, and upon conviction thereof, shall, for each
11 offense, be punished by a fine of not more than \$1,000 or by
12 imprisonment not to exceed one year, or by both such fine
13 and imprisonment.

14 (c) If an employer shall fail to file timely
15 notice of controversy or shall fail to pay compensation
16 within 15 days after such become due or shall otherwise re-
17 sist the payment of compensation, and if claimant shall have
18 employed an attorney in the successful prosecution of his
19 claim, the Board shall make an award to reimburse the
20 claimant for his costs of such proceedings, including a
21 reasonable attorney's fee, which award shall be in addition
22 to compensation ordered.

23 (d) If any proceedings are had for review of any
24 compensation order before any court, the court may allow or
25 increase an attorney's fees, which fees shall be in addition
26 to compensation ordered and shall be paid as the court may
27 direct.

28 Sec. 27. RECORD OF INJURY OR DEATH. Every employer shall
29 keep a record in respect of any injury to an employee. Such re-

1 cert shall contain such information of disease, other disability,
2 or death in respect of such injury as the Board may require, and
3 shall be available to inspection by the Board or by any Terri-
4 torial authority at such times and under such conditions as the
5 Board may by regulation prescribe.

6 Sec. 28. REPORTS. (a) Within ten days from the date of
7 any injury or death or from the date that the employer has know-
8 ledge of a disease or infection in respect of such injury, the
9 employer shall send to the Board a report setting forth (1) the
10 name, address, and business of the employer; (2) the name,
11 address, and occupation of the employee; (3) the cause and nature
12 of the injury or death; (4) the year, month, day, and hour when
13 and the particular locality where the injury or death occurred;
14 and (5) such other information as the Board may require.

15 (b) Additional reports in respect of such injury
16 and of the condition of such employee shall be sent by the
17 employer to the Board at such times and in such manner as
18 the Board may prescribe.

19 (c) Any report provided for in subdivision (a)
20 or (b) shall not be evidence of any fact stated in such
21 report in any proceedings in respect of any such injury or
22 death on account of which the report is made.

23 (d) The mailing of any such report and copy in a
24 stamped envelope, within the time prescribed in subdivisions
25 (a) or (b), to the Board, shall be a compliance with this
26 section.

27 (e) Any employer who fails or refuses to send
28 any report required of him by this section shall be subject
29 to a civil penalty not to exceed \$500 for each such failure

1 or refusal.

2 (f) Where the employer or the carrier has been
3 given notice, or the employer (or his agent in charge of
4 the business in the place where the injury occurred) or the
5 carrier has knowledge, of any injury or death of an employee
6 and fails, neglects, or refuses to file a report thereof as
7 required by the provisions of subdivision (a) of this
8 Section, the limitations in subdivision (a) of Section 12
9 of this Act shall not begin to run against the claim of the
10 injured employee or his dependents entitled to compensation,
11 or in favor of either the employer or the carrier, until
12 such report shall have been furnished as required by the
13 provisions of subdivision (a) of this Section.

14 Sec. 29. PENALTY FOR MISREPRESENTATION. Any person who
15 willfully makes any false or misleading statement or representa-
16 tion for the purpose of obtaining any benefit or payment under
17 this Act shall be guilty of a misdemeanor and on conviction there-
18 of shall be punished by a fine of not to exceed \$1,000 or by
19 imprisonment of not to exceed one year, or by both such fine and
20 imprisonment.

21 Sec. 30. COMPENSATION FOR INJURIES WHERE THIRD PERSONS ARE
22 LIABLE. (a) If on account of a disability or death for which
23 compensation is payable under this Act the person entitled to
24 such compensation determines that some person other than the
25 employer is liable in damages, he may elect, by giving notice to
26 the Board in such manner as the Board may provide, to receive
27 such compensation or to recover damages against such third person.

28 (b) Acceptance of such compensation under an
29 award in a compensation order filed by the Board shall

1 operate as an assignment to the employer of all right of
2 the person entitled to compensation to recover damages
3 against such third person.

4 (c) The payment of such compensation into the
5 fund established in Section 32 shall operate as an assign-
6 ment to the employer of all right of the legal representative
7 of the deceased (hereinafter referred to as "representative")
8 to recover damages against such third person, whether or not
9 the representative has notified the Board of his election.

10 (d) Such employer on account of such assignment
11 may either institute proceedings for the recovery of such
12 damages or may compromise with such third person either with-
13 out or after instituting such proceeding.

14 (e) Any amount recovered by such employer on
15 account of such assignment, whether or not as the result of
16 a compromise, shall be distributed as follows:

17 1. The employer shall retain an amount
18 equal to:

19 (A) the expenses incurred by him in
20 respect to such proceedings or compromise (includ-
21 ing a reasonable attorney's fee as determined by
22 the Board);

23 (B) the cost of all benefits actually
24 furnished by him to the employee under Section 6;

25 (C) all amounts paid as compensation;

26 (D) the present value of all amounts
27 thereafter payable as compensation, such present
28 value to be computed in accordance with a schedule
29 prepared by the Board, and the present value of

1 the cost of all benefits thereafter to be furn-
2 ished under Section 6, to be estimated by the
3 Board, and the amounts so computed and estimated
4 to be retained by the employer as a trust fund
5 to pay such compensation and the cost of such
6 benefits as they become due, and to pay any sum
7 finally remaining in excess thereof to the person
8 entitled to compensation or to the representative;
9 and

10 2. The employer shall pay any excess to the
11 person entitled to compensation or to the representative.

12 (f) If the person entitled to compensation or the
13 representative elects to recover damages against such third
14 person and notifies the Board of his election and institutes
15 proceedings within the period prescribed in Section 12, the
16 employer shall be required to pay as compensation under this
17 Act a sum equal to the excess of the amount which the Board
18 determines is payable on account of such injury or death
19 over the amount recovered against such third person.

20 (g) If a compromise with such third person is
21 made by the person entitled to compensation or such
22 representative of an amount less than the compensation to
23 which such person or representative would be entitled to
24 under this Act, the employer shall be liable for compensa-
25 tion as determined in subdivision (e) only if such compromise
26 is made with his written approval.

27 (h) The Board may, if the person entitled to
28 compensation under this Act is a minor, make any election
29 required under subdivision (a) of this Section, or may

1 authorize the parent or guardian of the minor to make such
2 election.

3 (1) Where the employer is insured and the insur-
4 ance carrier has assumed the payment of the compensation,
5 the insurance carrier shall be subrogated to all the rights
6 of the employer under this Section.

7 Sec. 31. PENALTY FOR FAILURE TO SECURE PAYMENT OF COMPENSA-
8 TION. (a) Any employer required to secure the payment of com-
9 pensation under this Act who fails to secure such compensation
10 shall be guilty of a misdemeanor and, upon conviction thereof,
11 shall be punished by a fine of not more than \$1,000, or by im-
12 prisonment for not more than one year, or by both such fine and
13 imprisonment; and in any case where such employer is a corpora-
14 tion, the president, secretary, and treasurer thereof shall be
15 also severally liable to such fine or imprisonment as herein pro-
16 vided for the failure of such corporation to secure the payment
17 of compensation; and such president, secretary, and treasurer
18 shall be severally personally liable, jointly with such corpora-
19 tion, for any compensation or other benefit which may accrue under
20 the said Act in respect to any injury which may occur to any
21 employee of such corporation while it shall so fail to secure the
22 payment of compensation as required by Section 43-3-18 ACLA 1949.

23 (b) Any employer who knowingly transfers, sells,
24 encumbers, assigns, or in any manner disposes of, conceals,
25 secretes, or destroys any property belonging to such employer,
26 after one of his employees has been injured within the pur-
27 view of this Act, and with intent to avoid the payment of
28 compensation under this Act to such employee or his
29 dependents, shall be guilty of a misdemeanor and, upon con-

1 violation thereof, shall be punished by a fine of not more
2 than \$1,000, or by imprisonment for not more than one year,
3 or by both such fine and imprisonment; and in any case where
4 such employer is a corporation, the president, secretary,
5 and treasurer thereof shall be also severally liable to such
6 penalty of imprisonment as well as jointly liable with such
7 corporation for such fine.

8 (c) This Section shall not affect any other
9 liability of the employer under this Act.

10 Sec. 32. SECOND INJURY FUND. (a) There is hereby created
11 a Second Injury Fund, to be administered by the Commissioner of
12 Labor in accordance with the orders and awards of the Board.

13 (b) Whenever an employee shall suffer a compen-
14 sable injury which results in permanent partial disability
15 the employer, or his insurance carrier, shall, in addition
16 to the compensation provided for pay into the second injury
17 fund a lump sum, equal to two per centum (2%) of the total
18 compensation to which the employee is entitled for the said
19 permanent partial disability, the said sum to be paid into
20 such second injury fund as soon as the total amount of the
21 permanent partial disability payable for the particular in-
22 jury is determined by the Board.

23 (c) The sums required to be paid into the
24 second injury fund shall be paid for the sole benefit of
25 those entitled to participate therein under the provisions
26 of this Act, the same to be paid by the Commissioner of Labor
27 in accordance with the orders and awards of the Board.

28 (d) In case a deposit or payment has been made
29 into such second injury fund, and it is later shown that

1 there are other beneficiaries or that the beneficiaries
2 designated are entitled to further or greater benefits, or,
3 if deposit or payment has been made by mistake or inadvertence
4 or under such circumstances that justice requires a
5 refund thereof, the Board is hereby authorized to refund
6 such deposit or payment.

7 (e) The Board is authorized to direct and provide
8 the vocational retraining and rehabilitation of permanently
9 disabled persons, whose condition is the result of an injury
10 compensable under this Act, by making cooperative arrangements
11 with insurance carriers, private organizations and
12 institutions or Territorial, State or Federal agencies. The
13 expense of such retraining or rehabilitation shall be paid
14 out of that portion of the second injury fund as shall exceed
15 the sum of Ten Thousand (\$10,000.00) Dollars. Such
16 persons shall be entitled to receive compensation from the
17 second injury fund for maintenance, in such sum as the Board
18 deems necessary, during the period of retraining and rehabilitation,
19 not exceeding \$50 per month; Provided, however,
20 that the total expenditure for maintenance, training, rehabilitation
21 and necessary transportation shall not exceed
22 \$3,000 for any one person.

23 (f) All amounts collected as civil penalties
24 provided in this Act shall be paid into the second injury
25 fund.

26 Sec. 33. COVERAGE. (a) Compensation shall be payable
27 under this Act in respect of disability or death of an employee.

28 (b) No compensation shall be payable if the injury
29 was occasioned solely by the intoxication of the employee.

1 or by the willful intention of the employee to injure or
2 kill himself or another.

3 Sec. 34. SECTIONS RETAINED. It is intended that the
4 provisions of this Act shall be construed as supplemental to and
5 not in conflict with Sections 43-3-18, 43-3-19, 43-3-20, 43-3-21,
6 43-3-25, 43-3-27, 43-3-32, 43-3-33 and 43-3-34, ACLA 1949, and
7 Section 43-3-5, ACLA 1949 as amended by Ch. 104, SLA 1949.

8 Sec. 35. Sections 43-3-3, 43-3-4, 43-3-6, 43-3-7, 43-3-9,
9 43-3-10, 43-3-11, 43-3-12, 43-3-13, 43-3-14, 43-3-15, 43-3-16,
10 43-3-17, 43-3-22, 43-3-23, 43-3-24, 43-3-26, 43-3-28, 43-3-29,
11 43-3-30, 43-3-31, 43-3-35, 43-3-37, 43-3-38, 43-3-39, ACLA 1949;
12 Sections 43-3-1, 43-3-2 and 43-3-8, ACLA 1949, as amended by
13 Ch. 60, SLA, 1953; Sec. 43-3-36, ACLA 1949, as repealed and re-
14 enacted by Ch. 133, SLA, 1951, and as repealed and reenacted by
15 Ch. 24, SLA, 1953, are hereby repealed.

16 Sec. 36. SEVERABILITY. If any provision of this Act or
17 the application thereof to any person or circumstances, is held
18 invalid, the remainder of this Act, and the application of such
19 provision to other persons or circumstances, shall not be affect-
20 ed thereby.

21 Sec. 37. EFFECTIVE DATE. This Act shall take effect
22 July 1, 1957.

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