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'Nonexecutive' stress leads heart attack risks

By BRYCE NELSON
The New York Times

Executive stress has been a popular subject for years among industrial psychologists and mass market writers. But the greater cause for concern in occurrence of heart disease, as a group of American and Swedish researchers now sees it, might appropriately be called nonexecutive stress.

From four studies based on 5,100 Swedish and American men, the investigators found that heart disease is more prevalent in workers such as cooks, waiters, hospital orderlies and assembly line personnel, who combine heavy job demands with a low ability to influence how their tasks are done.

The lowest tenth of such workers, measured in ability to control their own jobs, was approximately five times as likely to develop coronary heart disease as the privileged top tenth of workers in job control, according to Dr. Robert A. Karasek, an assistant professor of industrial engineering at Columbia University who led the multidisciplinary research effort.

The health risk of low job control in developing heart disease is "roughly the same order of magnitude as smoking or an elevated serum cholesterol level," he said in an interview last week. Machine-paced assembly line workers were from 70 to 200 percent more likely to develop heart disease than low-level managerial personnel.

The studies could eventually play a role in altering perceptions about the causes of heart disease, though the researchers emphasize that their work is not yet complete. They assert, however, that the project already points to the first scientific conclusions linking decision-making capacities on the job to the incidence of heart disease.

Karasek blamed the creation of so many low-control jobs in this century not only on the introduction of the manufacturing assembly line, but on the great influence of Frederick W. Taylor, the founder of scientific management and industrial engineering in the United States. In his theories, Taylor argued that mental and manual abilities had to be separated in designing jobs and that workers had to be restricted in their range of skills in order to develop depth of a specific skill—notions widely implemented by industry.

The chief investigators included Dr. Tores Theorell, professor at the National Institute for Psychosocial Factors and Health in Stockholm, and Dr. Joseph E. Schwartz, an assistant professor of sociology at Columbia. They reported their findings, based on examination of 2,950 Swedish workers, in the July 1981 issue of the American Journal of Public Health and in the March 1982 issue of Social Science Medicine, a British journal. Another study, based on 2,150 American workers, which was completed in September 1982, is still in manuscript.

"What's so exciting is that the American study confirms the Swedish findings," Karasek said.

"We've known that job factors are linked to stress, but these researchers have jumped over the stress link and gotten to the disease link," said Dr. Michael Smith, who directs research in motivation and stress for the National Institute for Occupational Safety and Health, the federal agency that financed the project.

The researchers compared workers with heart disease with a control group, matched for age, sex, race, smoking and education, that did not suffer from the illness. For example, in one of their studies they compared 334 Swedish workers with heart disease to 882 without it. Using research done by the Swedish Central Statistical Bureau to determine which occupations were low in job control, they found that a significantly larger proportion of the afflicted workers were in positions with low control over their jobs than were the disease-free workers.

"Job control" involved two factors: the worker's ability to make his own decisions at his work site and his capacity to use a range of skills. They found that high-control positions included those in forestry, dentistry and natural science, as well as jobs that seem like relics of a bucolic past: blacksmiths, auctioneers, peddlers and millwrights.

While they did not measure the stress the workers were under, they said their findings implicated psychological stress or strain as the pathway through which low job control is translated into heart disease. Exposure to high levels of psychological strain "is most effectively handled when the individual can most effectively translate that energy into action," Karasek said. "When the individual has no control, the sympathetic nervous system and its close control over the cardiovascular system may be adversely affected. A second result may be that hormonal and endocrinal accumulations build up, which the body is not well adapted to deal with over the long term. Chronic excess levels of psycho-endocrine hormones, such as adrenaline, noradrenaline and cortisol have been correlated with hypertension and predisposition to heart attacks. Also, long-term changes in the pattern of synthesis of these hormones and of the lipoproteins may be a pathway toward deterioration of the cardiovascular system. All of these mechanisms together may combine to put an individual at high risk for an episode of coronary heart disease."

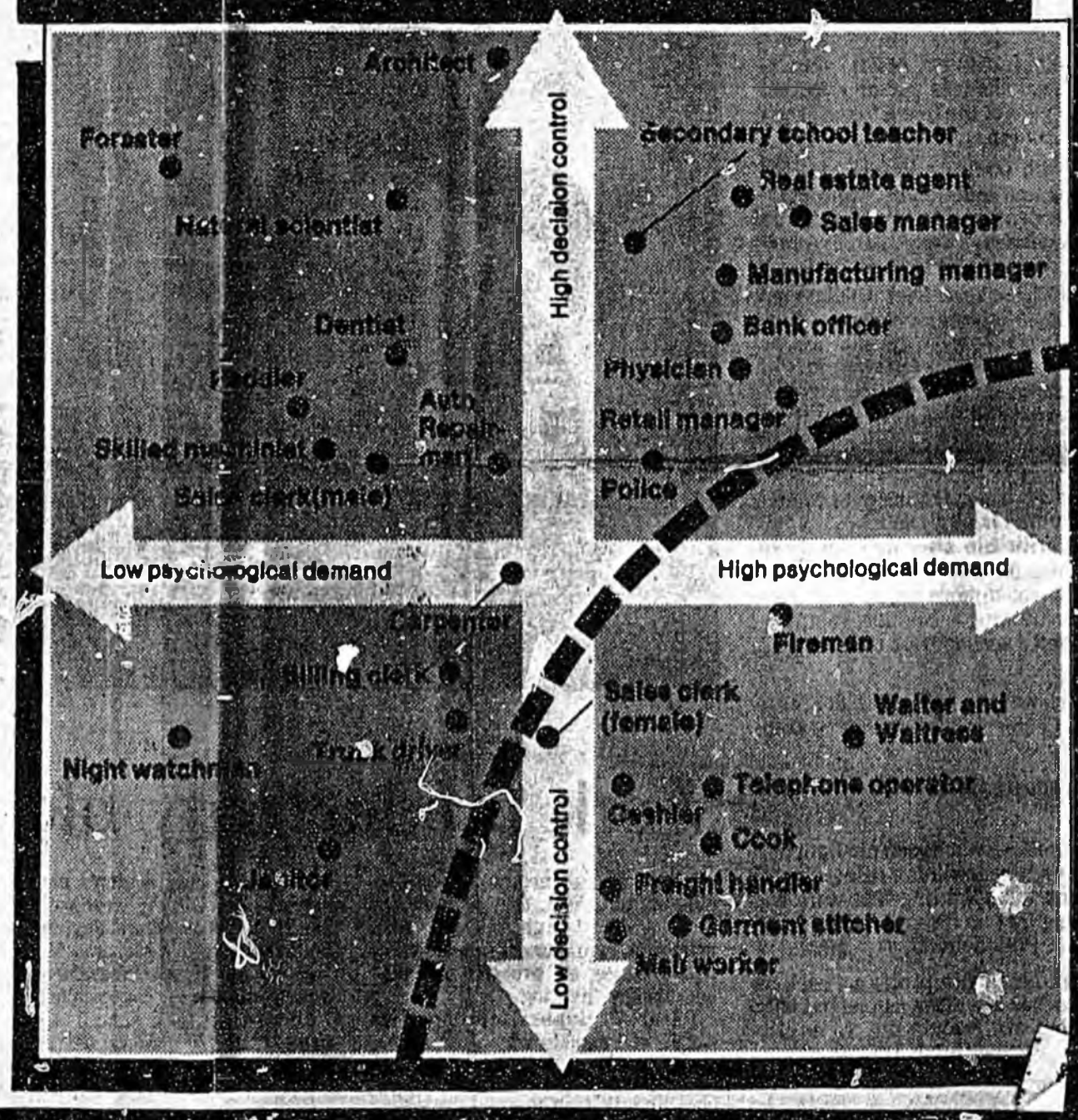
It is unfortunate, Karasek added, that more studies have not been done on women, especially because female workers are heavily concentrated in the stressful areas where job demands are high but where worker control is low.

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Stress at work

Research suggests that workers whose jobs involve high psychological strain but little decision making are more subject to cardiovascular illness. Jobs at right of curve in model below are among the top 25 percent in combined risk factor of low control and high psychological demands.

Source: Columbia University Department of Industrial Engineering and Operations Research



A BILL

TO BE ENTITLED

AN ACT

To provide that the disability or death of a firefighter caused by hypertension, heart disease or respiratory disease shall be considered as a service connected disability or death, subject to certain conditions prescribed in the Act, within the meaning of any laws which provide benefits for firefighters who, while employed by a municipality, are disabled in the line of duty or for the widow, children or other dependents of firefighters who, while employed by a municipality, are killed in the line of duty.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Definitions. As used herein the following words and terms shall have the meanings ascribed to them herein unless a contrary meaning is indicated by the context: "city" shall mean any municipality of the State, regardless of its population; "firefighter" shall mean a person employed as a firefighter or fireman by a city; "firefighter's occupational disease" shall mean any condition or impairment of health caused by hypertension, heart disease or respiratory disease; "disability" shall mean disability to perform duties as a firefighter; "benefit" shall mean any monetary allowance payable by a city, or from a pension system established for the firemen of a city, to a firefighter on account of his disability or to his dependents on account of his death, irrespective of whether the same is payable under a pension law of the State or under some other law of the State.

Section 2. The provisions of this Act shall apply to firefighters who upon entering the service of the city as firefighters have successfully passed a physical examination which failed to reveal any evidence of a firefighter's occupational disease and who have completed at least three years service as firefighters; provided, however, a physical examination was required at the time of entry into service.

Section 3. If a physical examination was not required at the time of entry into service, a firefighter who has had at least three years continuous service as a firefighter, next proceeding (sic) the effective date of this act, shall be deemed eligible for benefits under the provisions of this act.

Section 4. If a firefighter who qualifies for benefits under the provisions of this act suffers disability as a result of a firefighter's occupational disease his disability shall be compensable the same as any service connected disability under any law which provides benefits for firefighters of such city injured in the line of duty. If a firefighter who qualifies for benefits under the provisions of this act dies as the result of a firefighter's occupational disease, his death shall be compensable to the same extent as the death of a firefighter killed in the line of duty.

Sec. 450 (4). Disability or death of fire fighter caused by hypertension, heart disease or respiratory disease.--(1) Definitions.--As used herein the following words and terms shall have the meanings ascribed to them herein unless a contrary meaning is indicated by the contex: "City" shall mean any municipality of the state, regardless of its population; "fire fighter" shall mean a person employed as a fire fighter or fireman by a city "fire fighter's occupational disease" shall mean any condition or impairment of health caused by hypertension heart disease or respiratory disease; "disability" shall mean disability to perform duties as a fire fighter; "benefit" shall mean any monetary allowance payable by a city, or from a pension system established for the firemen of a city, to a fire fighter on account of his disability, or to his dependents on account of his death, irrespective of whether the same is payable under a pension law of the state or under some other law of the state.

(2) The provisions of this section shall apply to fire fighters who upon entering the service of the city as fire fighters have successfully passed a physical examination which failed to reveal any evidence of a fire fighter's occupational disease and who have completed at least three years service as fire fighters; provided, however, a physical examination was required at the time of entry into service.

(3) If a physical examination was not required at the time of entry into service, a fire fighter who has had at least three years continuous service as a fire fighter, next preceding the effective date of this section, shall be deemed eligible for benefits under the provisions of this section.

(4) If a fire fighter who qualifies for benefits under the provisions of this section suffers disability as a result of a fire fighter's occupational disease his disability shall be compensable the same as any service connected

disability under any law which provides benefits for fire fighters of such city injured in the line of duty. If a fire fighter who qualifies for benefits under the provisions of this section dies as the result of a fire fighter's occupational disease, his death shall be compensable to the same extent as the death of a fire fighter killed in the line of duty. (1967, p.1323, appvd. Sept. 8, 1967)

Section 5. All laws and parts of laws, including general, special and local laws, in conflict herewith are hereby repealed.

Section 6. If any part of this Act should be held unconstitutional, such holding shall not affect the validity of the remaining parts of said Act.

Section 7. This act shall become effective upon its approval by the Governor or upon its otherwise becoming a law.

Copies Supplied by: PROFESSIONAL FIRE FIGHTERS ASSOCIATION OF ALABAMA, 9-22-67

Calif.

of 1950, including training necessary or proper to engage in such activities.

(Added by Stats.1946, 1st Ex.Sess. c. 104, p. 133, § 4, eff. March 8, 1946. Amended by Stats.1951, c. 1440, p. 3400, § 3.)

Historical Note

The 1951 amendment added the reference to the Civil Defense Act of 1950.

Cross References

California Emergency Services Act, see Government Code § 8550 et seq.

Library References

Sovereign Immunity study. Cal.Law Revision Comm. (1963) Vol. 3, pp. 153, 159.

Words and Phrases (Perm.Ed.)

§ 3211.93a Disaster service; exclusion of activities for which disaster council receives fee

"Disaster service" does not include any activities or functions performed by a person if the disaster council with whom such person is registered receives a fee or other compensation for the performance of such activities or functions by such person.

(Added by Stats.1957, c. 1103, p. 2408, § 1.)

Cross References

Disaster preparedness and relief, see Military and Veterans Code § 1600 et seq.

Library References

Sovereign Immunity study. Cal. Law Revision Comm. (1963) Vol. 3, p. 159.

Words and Phrases (Perm.Ed.)

§ 3212. Injury; inclusion of hernia, heart trouble and pneumonia

In the case of members of a sheriff's office or of police or fire departments of cities, counties cities and counties, districts or other public or municipal corporations or political subdivisions, whether such members are volunteer, partly paid, or fully paid, and in the case of active firefighting members of the Division of Forestry of the State Department of Natural Resources whose duties require firefighting or of any county forestry or firefighting department or unit, whether voluntary, fully paid, or partly paid, and in the case of members of the warden service of the Wildlife Protection Branch of the Department of Fish and Game whose principal duties consist of active law enforcement service, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of ac-

tive law enforcement service such as stenographer, telephone operators, and other office-workers, the term "injury" as used in this act includes hernia when any part of the hernia develops or manifests itself during a period while such member is in the service in such office, division, department or unit, and in the case of members of such fire departments, except those whose principal duties are clerical, such as stenographers, telephone operators and other office-workers, and in the case of county forestry or firefighting departments, except those whose principal duties are clerical, such as stenographers, telephone operators and other office-workers, and in the case of active firefighting members of the Division of Forestry whose duties require firefighting, and in the case of members of the warden service of the Wildlife Protection Branch of the Department of Fish and Game whose principal duties consist of active law enforcement service, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement service such as stenographer, telephone operators, and other office-workers, the term "injury" includes pneumonia and heart trouble which develops or manifests itself during a period while such member is in the service of such office, department or unit. In the case of regular salaried county or city and county peace officers, the term "injury" also includes any hernia which manifests itself or develops during a period while the officer is in the service. The compensation which is awarded for such hernia, heart trouble or pneumonia, shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by the workmen's compensation laws of this state.

Such hernia, heart trouble or pneumonia so developing or manifesting itself in such cases shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it.

Such hernia, heart trouble or pneumonia so developing or manifesting itself in such cases shall in no case be attributed to any disease existing prior to such development or manifestation.

(Stats.1937, c. 90, p. 266, § 3212. Amended by Stats.1939, c. 256, p. 1511, § 1; Stats.1945, c. 742, p. 1428, § 1; Stats.1947, c. 1210, p. 2721, § 1; Stats.1949, c. 730, p. 1347, § 1; Stats.1955, c. 797, p. 1398, § 1; Stats.1959, c. 752, p. 2744, § 1; Stats.1965, c. 1513, p. 3567, § 52.5, operative Jan. 15, 1966; Stats.1965, c. 1690, p. 3817, § 1.)

Historical Note

The 1939 amendment added the words, "and in the case of members of such fire departments, county forestry or fire fighting departments, and in the case of active

Research Department

From the Desk of:
WALT LAMBERT

Washington Post
3/4/75

Police Heart Attack Compensation Allowed

HARTFORD, Conn., March 4 (UPI)—The state supreme court has upheld a law allowing monetary awards to the families of policemen and firemen who die from heart attacks, whether at home or on the job.

The law provides unemployment compensation benefits if the law officers, and firemen passed physical examinations when they first began the job.

The high court noted that firemen and policemen were found to have an unusually high rate of heart disease and hypertension, and they deserved the benefits.

No. 9, pp. 12, 17); *Manchester Memorial Hospital, Inc. v. State Board of Labor Relations,* Conn. (36 Conn. L.J., No. 6, pp. 1, 3); Maltbie, Conn. App. Proc. § 327. Other assignments were attacks on the finding which would not materially affect the issues on appeal. *Ferino v. Palmer,* 133 Conn. 463, 465, 52 A.2d 433.

There is no error.

In this opinion the other judges concurred.

SUPREME COURT

December Term, 1974

MURIEL P. GROVER *v.* TOWN OF MANCHESTER ET AL.
(No. 7591)

MURIEL P. GROVER *v.* TOWN OF MANCHESTER ET AL.
(No. 7606)

Appeal by the named defendant from an award of the workmen's compensation commissioner for the first district, brought to the Court of Common Pleas in Hartford County, *Collins, J.*, and to the Superior Court in Hartford County, *Driscoll, J.*, and reserved by both courts for the advice of this court.

Maurice T. FitzMaurice, for the appellant (named defendant in both cases).

Thomas P. FitzGerald, with whom, on the brief, was *Herbert A. Phelon, Jr.,* for the appellee (plaintiff in both cases).

MACDONALD, J. The issues raised by these two reservations, one from the Superior Court and one from the Court of Common Pleas under the same name, are identical and involve the constitutionality of § 7-433c of the General Statutes entitled "Benefits for policemen or firemen disabled or dead as a result of hypertension or heart disease."

The relevant facts, as stipulated by the parties, are as follows: The plaintiff, Muriel Grover, is a dependent of Leo Grover, hereafter Grover, who died on September 7, 1971, from a coronary occlusion and who, at the time of his death, was employed as a regular paid member of the police department of the defendant town of Manchester. When first employed as a policeman, Grover successfully passed a physical examination which revealed no evidence of hypertension or heart disease. He did not sustain any accidental injury arising out of and in the course of his employment or suffer any repetitive trauma or acts which caused or contributed to his death, nor did he suffer from any occupational disease. His death was not compensable within the meaning of chapter 568 of the General Statutes, the Workmen's Compensation Act, and the commissioner, at a hearing, denied offers of the defendant town of Manchester to prove the foregoing facts concerning the cause of death. The commissioner also declined to rule on the constitutional questions raised by the defendant town, and these questions, by stipulation, have been reserved to this court under the provisions of § 31-324 for reservations from the Superior Court, and § 31-301 for reservations from the Court of Common Pleas, in workmen's compensation appeals. The two questions thus reserved are as follows: (1) Does § 7-433c of the General Statutes deprive the town of Manchester of property without due process of law in violation of the due process clauses of the United States and Connecticut constitutions? (2) Does the class preference created by § 7-433c contravene § 1 of article first of the Connecticut constitution?

Section 7-433c recently was before us in *Grover v. Manchester,* Conn. (35 Conn. L.J., No. 27, p. 7) raising a procedural issue which was decided without a resolution of the two collateral constitutional questions raised here. It was enacted in its present form in 1971, as set forth in full in the footnote,[1] within two weeks of our decision in

[1] "[Public Acts 1971, No. 324 § 1; General Statutes] Sec. 7-433c. BENEFITS FOR POLICEMEN OR FIREMEN DISABLED OR DEAD AS A RESULT OF HYPERTENSION OR HEART DISEASE. In recognition of the peculiar problems of uniformed members of paid fire departments and regular members of paid police departments, and in recognition of the unusual risks attendant upon these occupations, including an unusual high degree of susceptibility to heart disease and hypertension, and in recognition that the enactment of a statute which protects such fire department and police department members against economic loss resulting from disability or death caused by hypertension or heart disease would act as an inducement in attracting and securing persons for such employment, and in recognition that the public interest and welfare will be promoted by providing such protection for such fire department and police department members, municipal employers shall provide compensation as follows: Notwithstanding any provision of chapter 568 or any other general statute, charter, special act or ordinance to the contrary, in the event a uniformed member of a paid municipal fire department or a regular member of a paid municipal police department who successfully passed a physical examination on entry into such service, which examination failed to reveal any evidence of hypertension or heart disease, suffers either off duty or on duty any condition or impairment of health caused by hypertension or heart disease resulting in his death or his temporary or permanent, total or partial disability, he or his dependents, as the case may be, shall receive from his municipal employer compensation and medical care in the same amount and the same manner as that provided under chapter 568 if such death or disability was caused by a personal injury which arose out of and in the course of his employment and was suffered in the line of duty and within the scope of his employment, and from the municipal or state retirement system under which he is covered, he or his dependents, as the case may be, shall receive the same

Ducharme v. *Putnam*, 161 Conn. 135, 285 A.2d 318, which declared unconstitutional a predecessor statute, Public Acts 1969, No. 380 § 1 (§ 7-433a), which had attempted to provide benefits identical to those of the statute now before us by raising a conclusive presumption. In *Ducharme*, we did not consider the merits of the legislature's intended purpose but only the method employed to attain that purpose. In other words, our legislature promptly acted to do what this court could not and refused to do in *Ducharme* and rewrote the statute by simply providing special compensation, or even an outright bonus, to qualifying policemen and firemen.

[illegible]d recently in *Whitfield* v. *Empire Mu[illegible]*, [illegible] Conn. (36 Conn. L.J., No. 30, pp. [illegible]. "[A] plaintiff who attacks a statute on [illegible]al grounds has no easy burden.' . . . [illegible] constitutionality of legislation is in question, it is the duty of the court to sustain it unless its invalidity is beyond a reasonable doubt. . . . It is a rule of statutory construction . . . that courts are bound to assume that the legislature, in enacting a particular law, did so upon proper motives and to accomplish a worthy objective.'" Although the statute under consideration is not regulatory, it does impose upon a town a financial obligation which, like restrictive regulations, is justified in the interest of promoting public safety, and does not deprive a town of property without due process of law.

It is difficult to call to mind any field of activity more closely related to the public safety than the encouragement of qualified individuals to seek employment as firemen and policemen.[2] It is evident from the preamble to § 7-433c that the legislature took into consideration the peculiar problems and unusual risks attendant upon these occupations in determining that they properly occupy a different status from other municipal employees. No other group has to withstand the abuses and attacks of the oppressed and frustrated of our modern society or carry with them a constant apprehension that they may be the target of maniacal revenge; no other municipal employees are called out from the security of their homes to ensure the security of the homes of others: no other municipal employees are required to make immediate decisions which are the subject of debate and deliberation in our courts. This is, indeed, class legislation somewhat analogous to the veterans' bonus legislation which passed the constitutional tests applied in *Lyman* v. *Adorno*, 133 Conn. 511, 514, 52 A.2d 702, and we refer to the extensive collection of authorities cited in the opinion in that case.

We conclude that the statute under consideration serves a proper public purpose and that, accordingly, the fact that it incidentally confers a direct benefit upon a certain class of individuals does not render it invalid as creating a class preference which contravenes § 1 of article first of the Connecticut constitution.

For the foregoing reasons, each of the two questions submitted to us by reservation from the Court of Common Pleas in No. 7591 must be answered in the negative.

Since the same two questions have been raised by reservation from the Superior Court in No. 7606, it would appear to serve no useful purpose and only to create unnecessary duplication of procedure and expense to require rendition of judgment in that court based upon identical answers. The reservation from the Court of Common Pleas was filed pursuant to § 31-301 of the General Statutes, which provides that all appeals from an award by a workmen's compensation commissioner shall be taken to the Court of Common Pleas.[3] As originally adopted in 1961, this section provided for such appeals to be taken to the Superior Court, but it was amended in 1972 (Public Act No. 108, § 6, effective September 1, 1972) by the substitution throughout of "Court of Common Pleas" for "Superior Court." At that time, no action was taken specifically to amend or repeal § 31-324, which then provided, as it does now, for reservation by the Superior Court to this court, "[w]hen, in any case arising under the provisions of this chapter, the superior court is of the opinion that the decision involves principles of law which are not free from reasonable doubt," and, further, that a pro forma award be made by the commissioner pending the opinion of this court on such

retirement or survivor benefits which would be paid under said system if such death or disability was caused by a personal injury which arose out of and in the course of his employment, and was suffered in the line of duty and within the scope of his employment. If successful passage of such a physical examination was, at the time of his employment, required as a condition for such employment, no proof or record of such examination shall be required in evidence in the maintenance of a claim under this section or under such municipal or state retirement system. As used in this section, the term 'municipal employer' shall have the same meaning and shall be defined as said term is defined in section 7-467."

[2] We employ the exact terminology of the statute rather than the more recent references to "firepersons" and "policepersons."

[3] The relevant portions of § 31-301, at all times pertinent to this action read, and presently read, as follows: "At any time within ten days after entry of such award by the commissioner or after a decision of the commissioner upon a motion, either party may appeal therefrom to the court of common pleas for the county in which the injury occurred . . . . The procedure in appealing from an award of the compensation commissioner shall be the same as the procedure employed in an appeal from the court of common pleas to the supreme court."

reservation.[1] The reference to "any case arising under the provisions of this chapter" identifies such case as falling within the broad spectrum covered by § 31-301, and the conclusion is at least logical, if not inescapable, that it was only through oversight that § 31-324 was not either expressly repealed or amended by substituting "Court of Common Pleas" for "Superior Court" wherever the latter appears therein. In addition to that consideration, the provisions of Public Act No. 74-183, effective December 31, 1974, for appellate sessions of the Superior Court for the review of cases on appeal from the Court of Common Pleas, lead us to the conclusion that the reservation from the Court of Common Pleas was the proper procedure to follow and that the reservation from the Superior Court should be and hereby is dismissed for lack of jurisdiction.

No costs will be taxed in this court in favor of any party.

In this opinion the other judges concurred.

SUPREME COURT

January Term, 1975

PAULINE LEBLANC *v.* JOHN R. BRAY

Action to recover damages for personal injuries alleged to have been caused by the negligence of the defendant, brought to the Superior Court in Fairfield County and tried to the jury before *George, J.*; verdict for the defendant and motion to set aside the verdict denied; judgment for the defendant from which the plaintiff appealed. *No error.*

Sturges N. Laros, for the appellant (plaintiff).

Arnold J. Bai, with whom, on the brief, was *Stephen W. Lcermakers*, for the appellee (defendant).

PER CURIAM. This case arises out of an accident which occurred when a motor vehicle operated by the plaintiff in a southerly direction on Mill Plain Road, a public highway in Fairfield, was struck on the left side by the front of a motor vehicle operated by the defendant which had just exited from a private hospital driveway. The finding is not challenged and the only assignments of error not specifically abandoned by the plaintiff in her appeal from the judgment rendered on a defendant's verdict pertain to (1) the denial of the plaintiff's motion to set aside the verdict as not supported by the evidence and (2) claimed errors in the court's charge to the jury.

With respect to the first claim, the verdict returned by the jury was a general one in favor of the defendant which imports that all issues submitted to the jury were found in favor of the defendant. *Bradley* v. *Niemann*, 137 Conn. 81, 83, 74 A.2d 876. If the jury could reasonably have found for the defendant on either the issue of his negligence or the plaintiff's contributory negligence, the verdict must stand, and the court, in considering a motion to set aside, must weigh the evidence in the light most favorable to the sustaining of the verdict. *Petrizzo* v. *Commercial Contractors Corporation*, 152 Conn. 491, 499, 208 A.2d 748; Maltbie, Conn. App. Proc. § 189. The court's action in this regard is to be tested by the evidence printed in the appendices to the briefs. Practice Book §§ 713–716, 718, 720–721. The record amply supports the court's action in denying the motion to set aside the verdict.

Shortly before the jury returned their verdict, they sent in the following question: "If, in our opinion, the plaintiff is negligent on just one count of the special defense, can we consider that the plaintiff has failed to prove her case?" The court answered this question in the affirmative followed by some explanatory remarks to which no exception was taken by the plaintiff.

In considering the plaintiff's attack on the court's charge, we must, of course, view the charge in its

[1] Section 31-324, at all times pertinent to this action read, and presently reads, as follows: "RESERVATION OF CASES FOR THE SUPREME COURT. When, in any case arising under the provisions of this chapter, the superior court is of the opinion that the decision involves principles of law which are not free from reasonable doubt and which public interest requires shall be determined by the supreme court, in order that a definite rule be established applicable to future cases, said court may, on its own motion and without any agreement or act of the parties or their counsel, reserve such case for the opinion of the supreme court. Upon a reservation so made, no costs shall be taxed in favor of either party, and no entry fee, record fee, judgment fee or other clerk's fee in either court shall be taxed. If the commissioner finds that a claim before him involves a doubtful question of law, which the public interest requires should be finally and definitely determined, he may find the facts as in other cases and make his award, indicating that it is pro forma. A pro forma award shall be of the same effect as an award in ordinary cases except in the following particulars: On the filing of a pro forma award, the question shall come before the superior court as though an appeal had been taken, and said court shall thereupon reserve the case for the opinion of the supreme court in the manner herein indicated; but if, in the opinion of the superior court, the principles of law involved in the decision are in fact free from reasonable doubt and the public interest does not in fact require that they be determined by the supreme court, the superior court may, in its discretion, hear and determine the controversy as in other cases."

CHAPTER 75

AN ACT TO AMEND CHAPTER 118, VOLUME 33, LAWS OF DELAWARE, AS AMENDED BY CHAPTER 180, VOLUME 49, LAWS OF DELAWARE, ENTITLED "AN ACT PROVIDING FOR A FIREMEN'S PENSION FUND FOR MEMBERS OF THE BUREAU OF FIRE OF THE DEPARTMENT OF PUBLIC SAFETY OF THE CITY OF WILMINGTON" BY PROVIDING FOR A BASE MONTHLY MINIMUM PENSION PAYMENT.

Be it enacted by the General Assembly of the State of Delaware(two-thirds of all the Members elected to each Branch thereof concurri g therein):

Section 1. Chapter 118, Volume 33, Laws of Delaware, as amended by Chapter 180, Volume 49, Laws of Delaware, is amended by striking out the words "One Hundred Fifty Dollars ($150.00)" as they appear in lines 5 and 6 of the last paragraph and inserting in lieu thereof the words "Two Hundred Twenty-five Dollars ($225.00)".

Section 2. Chapter 118, Volume 33, Laws of Delaware, as amended by Chapter 180, Volume 49, Laws of Delaware, is amended by striking out the words "Seventy-five Dollars ($75.00)" as they appear in lines 10 and 11 of the last paragraph and inserting in lieu thereof the words "One Hundred Twelve Dollars ($112.00)".

Section 3. The benefits conferred by this Act shall apply to all persons who had retired from the Bureau of Fire of the Department of Public Safety and to the widows of all persons who shall have so retired prior to the effective date of this Act, as well as any person retiring from the Bureau of Fire of the Department of Public Safety after the effective date of this Act.

Section 4. The increase in benefits provided by this Act shall become effective on the first day of the month following the date when this Act becomes law.

Approved June 25, 1963.

CHAPTER 118

THE CITY OF WILMINGTON

AN ACT providing for a firemen's pension fund for members of the Bureau of Fire of the Department of Public Safety of the City of Wilmington.

Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met: (two-thirds of each branch thereof concurring therein):

Firemen's Pension Fund

Section 1. Whenever a member of the Bureau of Fire of the Department of Public Safety shall have become disabled or incapacitated from injuries received while in the active performance of official duty and whenever any member of said Bureau who has performed faithful continuous service as such member for a period of not less than fifteen years shall have become permanently incapacitated from performing such regular active duty, he may be retired by the Directors of the Department of Public Safety from the regular active service and placed upon the retired list and all members of said Bureau who shall have performed faithful continuous service as such member for a period of at least twenty years shall upon their own application be placed upon the retired list whether they are disabled or not. Each person so retiring shall be entitled to receive from the sum herein established an amount equal to one-half of the amount of his salary at the time of his retirement, so long as he may remain upon the retired list, said sum to be paid monthly, provided said sum shall be sufficient for the payment of all persons entitled to receive same, and in case it shall not be sufficient for that purpose at any time, then the claim of all persons entitled shall abate proportionately, but said sum at no time shall be reduced below the sum of one hundred thousand dollars.

To whom paid.

Service

Retired list

Amount

Paid monthly

Claims abated, when.

Section 2. No member of said Bureau shall be so retired until he has been duly notified by said Directors of the

Notification of retirement by Directors.

THE CITY OF WILMINGTON

Department of Public Safety of their intention to so retire him, and until he has had a fair opportunity of being heard in opposition thereto, provided that any member of said Bureau deeming himself entitled to the benefits of this Act may make written application to said Directors for that purpose.

Written application, when

No member of said Bureau of Fire shall be placed upon said retired list unless he shall first have undergone an examination as to his physical condition to be made by a Board of Physicians consisting of the Surgeon of the Department of Public Safety, the family physician of the said fireman and a third reputable physician of the City of Wilmington to be selected by the other members of said Board of Physicians; said Board shall report in writing to the Directors of Public Safety, the result of said physical examination together with a statement as to how far, in the opinion of said Board, the fireman examined is incapacitated from performing regular active duty as a fireman; upon the receipt of said report of said Board of Physicians, the Directors of Public Safety may retire such fireman in accordance with the provisions of this Act.

Examination of physical condition

Report to Directors of Public Safety

Section 3. Said Directors may at any time require any fireman on the retired list, except those retired by reason of having served twenty years to be re-examined by the Surgeon of said Department or some other competent physician authorized by said Directors to act in the premises and if on such re-examination said fireman is reported capable of performing regular duty, he may be required by said Directors to return to regular duty in the rank and grade in which he was serving at the time of his retirement.

Re-examination

If capable return to regular duty

Section 4. The widow or sole dependent parent of any member of the Bureau of Fire, or retired member thereof, who shall have lost his life in the performance of duty, or who shall have died from other causes after having performed faithful continuous service for a period of not less than fifteen years, shall receive a pension equal in amount to one-half of the amount of pension such member would have been entitled to as a retired fireman at the time of his death, pro-

Widow or dependent to receive pension

Amount

Proviso

THE CITY OF WILMINGTON

provided, however, that no widow shall be entitled to a pension who shall have married such member during his last illness or after he shall have been placed on the retired list; and provided further, that if any widow entitled to a pension as aforesaid shall remarry, or shall lead and live an immoral life, then such pension shall cease.

Members Firemen's Pension Fund

Section 5. The Board of Trustees of the Firemen's Pension Fund shall consist of the Directors of the Department of Public Safety of the City of Wilmington, the chairman of the Finance Committee of the Council of Wilmington, the Chairman of the Public Safety Committee of the Council of Wilmington (or their successors in office) and five members of the Bureau of Fire, said five members to be elected only by vote of the members of the Bureau of Fire.

Officers

The Presiding Officer of the Department of Public Safety shall be the President of the Board of Trustees of the said Firemen's Pension Fund. The Board of Trustees of the Firemen's Pension Fund shall appoint a Secretary from among their own number. The said Secretary shall execute a bond for the faithful performance of his duties with respect to the said fund in such sum and form and with such surety as will be satisfactory to the Board of Trustees. The cost of said bond shall be defrayed from the proceeds of the fund.

Secretary to give bond

Fund to consist of

Section 6. All moneys collected in payment of fines imposed by the Directors of Public Safety upon the members of the Bureau of Fire, all money deducted or withheld from the pay of members of the Bureau of Fire by reason of absence from duty from any cause, all moneys donated to this fund and all rewards and testimonials paid to the members of the Bureau of Fire shall be credited to said Firemen's Pension Fund. The Trustees of the Firemen's Pension Fund may also receive such annual sums from each member of the Bureau of Fire as he may voluntarily agree to be paid monthly to said fund, which sum shall not be less than one per cent of the salaries of firemen who shall participate in the benefits of said Firemen's Pension Fund. The said Council of Wil-

Amount to be paid by beneficiaries

THE CITY OF WILMINGTON

Council of Wilmington to appropriate $5000

mington shall annually appropriate not less than Five Thousand Dollars, which shall be credited to the Firemen's Pension Fund.

Custodian of fund

Section 7. The Treasurer of the City of Wilmington shall be the custodian of said fund and shall disburse the same upon the written order of the Board of Trustees. Said Treasurer shall execute a bond for the faithful performance of his duties with respect to this fund and in such sum and form and with such surety as will be satisfactory to said Board of Trustees. The cost of said bond shall be defrayed from the proceeds of the fund.

Bond

Cost of bond, how paid.

Securities, where kept

The securities belonging to the fund shall be kept in a safe deposit company, to be approved by the Trustees of the Firemen's Pension Fund, and access to the safe of said fund shall only be had by the Treasurer jointly with either the President or Secretary.

Investment funds

Section 8. The Board of Trustees of the Firemen's Pension Fund may invest any part of said Firemen's Pension Fund that they deem proper in national, state, county or municipality bonds, said Board of Trustees shall make a report to the City Council of the City of Wilmington of the condition of said fund on the first day of April of each year. The fiscal year of the Firemen's Pension Fund shall begin on the first day of July of each year, and end on the thirtieth day of June the following year.

Fiscal year

When placed on retired list

Section 9. No member of the Bureau of Fire shall be placed upon the said retired list by the said Directors of Public Safety until such time as the said Firemen's Pension Fund created by Section 6 of this Act shall have amounted to at least the sum of Five Thousand Dollars.

Section 10. All Acts or parts of Acts inconsistent with the provisions of this Act be and the same are hereby repealed.

Approved April 5, A. D. 1923.

Walt Lambert

June 25, 1973

Mr. Allen Wilson
Firefighters 747
1880 64th Avenue North
St. Petersburg, Florida

Mr. Sam Sinardi
Firefighters 754
1725 West Buffalo
Tampa, Florid

Gentlemen:

I have now been able to get a copy of Senate bill 847 which is effective July 1, 1973 and a copy is attached for each of you. This is the bill amending F.S. 112.18, commonly known as the "Heart & Lung Bill." I am also enclosing a photostatic copy of F.S. 112.18 as it appeared prior to Senate bill 847.

You will recall that after the Heart & Lung bill was first passed, attempts were made to apply it to Chapter 440 of the Florida Statutes, the Workmen's Compensation Provisions. The statutory language was clear, and the courts so held, that F.S. 112.18 had no affect whatsoever on the Florida Workmen's Compensation Provisions. The alleged purpose of Senate bill 847 is to change that, make the Heart & Lung bill applicable to the Workmen's Compensation Statutes, as well as providing Heart & Lung bill benefits in other areas. I have been asked to correspond with each of you, with reference to the applicability of the bill and its affect.

APPLICABILITY OF SENATE BILL 847
TO THE FLORIDA WORKMEN'S COMPENSATION
STATUTES

You will note that Senate bill 847 provides, at line 23 through 25, page 2,

"nothing herein shall be construed to extend or otherwise affect the provisions of Chapter 440.09 (4) pertaining to Workmen's Compensation." Florida Statute 112.18 as it previously appeared provided "nothing herein shall be construed to extend or otherwise affect the provisions of Chapter 440 pertaining to Workmen's Compensation." As you can see, the only change is the addition of the .09 (4). I think, however, this clearly shows legislative intent that this bill applies to Chapter 440. As you will recall, Florida Statute 440.09 (4) was the provision of the compensation statutes relating to governmental and municipal employees, providing for an offset of compensation against pension. It would appear that the obvious intent of the legislature and the change made in Section 112.18 was, at the time, to make it clear that the offset so provided would still be applicable so that firemen would have no advantage over other injured employees under the compensation act.

In talking with Ed Hoffman in West Palm Beach, it appears that what happened in this case was that Senate bill 847 passed while 440.09 (4) was still in the statutes. Shortly after Senate bill 847 passed, House bill 311 was passed deleting 440.09 (4) from the statutes. Now that 440.09 (4) has been repealed the language contained with reference to workmen's compensation (lines 23 through 25 of page 2, Senate bill 847) is really superfluous language. There is the possibility that this language will be deleted when the bill is codified in the general statutes. I hope so, as I think removing completely any reference to Workmen's Compensation Provisions will clearly show the intent.

Ed Hoffman advises me that in discussion of Senate bill 847 the issue of workmen's compensation applicability was specifically discussed, the specific intent was that it applied to the Workmen's Compensation Statutes and that the Department of Commerce has so accepted it. We can be sure that its applicability will be tested in the courts but to me the legislative intent does appear clear and it is my opinion that F.S. 112.18, as revised, will be applicable to the Florida Workmen's Compensation Law.

Assuming this is correct, the question then becomes what affect this will have on firemen, particularly in three groups. These groups would be:

a. Those firemen already disabled and retired as a result of heart disease.

b. Those firemen disabled or affected by hypertension or heart disease but still on combat duty.

c. Those firemen with no evidence of heart disease or hypertension

at this time.

In approaching this, I think it is important to note that paragraph 1 of F.S. 112.18 provides "any condition or impairment of health---caused by tuberculosis, heart disease, or hypertension resulting in total or partial disability or death shall be presumed to have been accidental ---." The statute seems to clearly provide that there is a presumption of causal relation to employment and that there is a presumption of accidental injury as distinguished from occupational disease. I think this is further seen by the fact that it covers total as well as partial disability. Should the Heart & Lung Act be construed to create a new class of occupational illness, a fireman would be entitled to compensation benefits only if he was totally disabled, which as you know is seldom the case. Insomuch as heart disease and hypertension is defined as an accident, this would entitle the individual to payment for partial disability.

THOSE FIREMEN ALREADY DISABLED AND RETIRED AS OF JULY 1, 1973, THE EFFECTIVE DATE OF SENATE BILL 847

It would be my opinion that those firemen already disabled and retired as of July 1, 1973 would not be affected by the amendments to F.S. 112.18. The applicability of a Heart & Lung law to the workmen's compensation provisions opens a remedy to the firemen not previously available, as such. It also increases benefits to the firemen not available before in that it provides workmen's compensation payments that would ordinarily have been offset by pension. This would seem obviously to have been taken into account in the underwriting process by insurance carriers underwriting these risks and it would be my opinion that to apply F.S. 112.18 as it will appear on July 1, 1973 to this class of individual would be unconstitutional.

THOSE FIREMEN DISABLED OR AFFECTED BY HEART DISEASE OR HYPERTENSION ON JULY 1, 1973 BUT STILL ON COMBAT DUTY

Individuals falling in this class will probably be treated the same as any other employee who has a disability or pre-existing impairment. They should be handled the same, for example, as an employee who has had pre-existing back surgery, re-injures his back and requires additional surgery. This, for illustration, is a little over simplification. The problem is going to be whether or not a person who had heart disease or hypertension prior to July 1, 1973, but remained on combat duty, and became disabled for combat duty subsequent to July 1, 1973, was so disabled because of the

natural progression of the heart disease and hypertension or because of worsening of his condition caused by additional "accident" subsequent to July 1, 1973. This is going to be primarily a medical question. I think it would be a good idea for any fireman suffering from hypertension or heart disease to provide himself a complete evaluation, as closely around July 1, 1973 as can be arranged, to provide a case line for future studies. I don't see how a general characterization for individuals in this catagory can be made and each case will have to be handled on its own facts and merits.

THOSE FIREMEN WITHOUT EVIDENCE OF HYPERTENSION OR HEART DISEASE ON JULY 1, 1973

Firemen in this catagory are the most fortunate under the statutory amendment. The statute places a presumption that disability resulting from hypertension or heart disease is causally related to the employment and is accidental. It would seem, at this point, that heart attacks, for example, suffered on or off the job would be compensable without differentiation and it is no longer necessary for the employee to show "unusual exertion." In short, any firemen who develops hypertension or heart disease subsequent to July 1, 1973 will have the benefit of Florida Workmen's Compensation proceedings and assuming he is disabled for combat duty, will also have the benefit of the municipal pension.

I realize that I have not answered all the questions that will come to your mind after you have read this legislation and this letter. I have attempted only to answer the questions specifically put to me. If either of you have any additional questions please feel free to call me at any time.

Yours very truly,

WILLIAM D. DOUGLAS

WDD/sc
Enclosure

cc: Mr. Lawrence E. Hoffman
940 - 32nd Street
West Palm Beach, Florida 33407

GEORGIA

Occupational Diseases

1. Diseases Covered--The compensation law imposes liability on employers for disability and death only in cases of poisoning by 22 listed substances, diseased condition caused by exposure to X-ray or radioactive substances, asbestosis, and silicosis (Sec. 114-803).

2. Benefits Provided--If death or disability arises out of a covered occupational cause, the disablement or death is treated as the happening of an injury by accident, and compensation is payable according to the benefits provided for accidental injuries and deaths (Sec. 114-801).

3. Limitations as to Coverage--To be covered the disablement or death must occur within three years in the case of asbestosis and silicosis or within one year for other covered cause after the last injurious exposure to the hazard in such employment. In the event death occurs within seven years after the last exposure and follows continuous disablement which commenced within the above time limits, compensation will be payable (Sec. 114-801).

4. Employer Responsibility--The date of last exposure is taken as the date of injury for purposes of the law, and the employer in whose employment the last injurious exposure took place, is held solely liable for any compensation benefits payable (Sec. 114-809).

A BILL FOR AN ACT

RELATING TO DISABILITY RETIREMENT BENEFITS FOR FIREMEN AND AMENDING CHAPTER 6, REVISED LAWS OF HAWAII 1955, AS AMENDED.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

Section 1. Section 6-46 of the Revised Laws of Hawaii 1955, as amended, is hereby amended in the following respects:

(a) By amending the first paragraph thereof to read as follows:

Upon application of a member, or of the head of his department, any member who has been permanently incapacitated as the natural and proximate result of an accident occurring which in the actual performance of duty at some definite time and place, or as the cumulative result of some occupational hazard, through no wilful negligence on his part, may be retired by the board for service-connected total disability provided that:

(b) By adding the following paragraph after the first paragraph of subsection (4) thereof:

In the case of firemen, the cumulative effect of the inhalation of smoke, toxic gases, chemical fumes and other toxic vapors on the heart, lungs and respiratory system shall be construed as an injury received or disease contracted while in the performance of their duty and as the cumulative result of some occupational hazard for the purpose of determining total disability retirement under this section.

SECTION 2. Section 6-46.1 of the Revised Laws of Hawaii 1955, as amended, is hereby amended in the following respects:

(a) By amending the first paragraph thereof to read as follows:

Upon application of a member, or of the head of his department, any member who has been permanently incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty at some definite time and place, or as the cumulative result of some occupational hazard, through no wilful negligence on his part, may be retired by the board for service-connected occupational disability provided that:

(b) By adding the following paragraph after the first paragraph of subsection (4) thereof:

In the case of firemen, the cumulative effect of the inhalation of smoke, toxic gases, chemical fumes and other toxic vapors on the heart, lungs and respiratory system shall be construed as an injury received or disease contracted while in the performance of their duty and as the cumulative result of some occupational hazard for the purpose of determining occupational disability retirement under this section.

SECTION 3. This Act shall take effect on Junaury 1, 1966.

INTRODUCED BY: _____

JUN 18 1971

HAWAII FIRE FIGHTERS ASSOCIATION
Local 1463, IAFF, AFL-CIO
2305 S. Beretania Street
Honolulu, Hawaii 96814

am L 1964, c 62, §5; am L 1965, c 222, §5; am L 1967, c 130, §§2, 4]

Revision note

Provisions have been rewritten and rearranged for clarity and uniformity of expression. RLH 6-42B(3) omitted as having no present application.

§88-65 Ordinary disability retirement. Upon the application of a member in service or of the head of his department, any member who has had ten or more years of creditable service shall be retired by the board of trustees, not less than thirty and not more than ninety days next following the date of filing the application, on an ordinary disability retirement allowance if the medical board after a medical examination of the member certifies that:

(1) He is mentally or physically incapacitated for the further performance of duty;

(2) The incapacity is likely to be permanent; and

(3) The member should be retired. [L 1925, c 55, §6(3); RL 1935, pt of §7925; RL 1945, §708, subs 3; am L 1951, c 158, §1(a); RL 1955, §6-44]

§88-66 Allowance on ordinary disability retirement. Upon retirement for ordinary disability, a member shall receive a service retirement allowance if he has attained the age of fifty-five years, otherwise he shall receive a retirement allowance of twenty-five per cent of his average final compensation plus one per cent of his average final compensation for each full year of creditable service over fifteen, except that for each year of creditable service as a judge or an elective officer, he shall receive a retirement allowance computed as provided in section 88-64(3). [L 1925, c 55, §6(4); RL 1935, pt of §7925; RL 1945, §708, subs 4; RL 1955, §6-45; am L 1957, c 143, §4 and c 231, §1(d); am L 1961, c 175, §3 and c 181, §5; am L 1962, c 20, §3; am L 1963, c 127, §5; am L 1964, c 62, §7; am L 1965, c 222, §7]

§88-67 Service-connected total disability retirement. (a) Upon application of a member, or of the head of his department, any member who has been permanently incapacitated as the natural and proximate result of an accident occurring while in the actual performance of duty at some definite time and place, or as the cumulative result of some occupational hazard, through no wilful negligence on his part, may be retired by the board of trustees for service-connected total disability provided that:

(1) In the case of an accident occurring after July 1, 1963, the employer shall file with the board a copy of the employer's report of the accident submitted to the bureau of workmen's compensation;

(2) An application for retirement is filed with the board within two years of the date of the accident, or the date upon which workmen's compensation benefits cease, whichever is later;

(3) Certification is made by the head of the agency in which the member is employed, stating the time, place, and conditions of service performed by the member resulting in his disability and that the disability was not the result of wilful negligence on the part of the member;

(4) The medical board certifies that the member is incapacitated for gainful employment and that his incapacity is likely to be permanent.

(b) The board may waive strict compliance with the time limits within which a report of the accident and an application for service-connected disability retirement must be filed with the board if it is satisfied that the failure to file within the time limited by law was due to ignorance of fact or law, inability, or to the fraud, misrepresentation, or deceit of any person, or because the applicant was undergoing treatment for the disability or was receiving vocational rehabilitation services occasioned by the disability.

(c) The board shall have the power to determine whether or not the disability is the result of an accident occurring while in the actual performance of duty at some definite time and place and that the disability was not the result of wilful negligence on the part of the member. The board may accept as conclusive:

(1) The certification made by the head of the agency in which the member is employed; or

(2) A finding to this effect by the medical board.

In the case of firemen, the cumulative effect of the inhalation of smoke, toxic gases, chemical fumes, and other toxic vapors on the heart, lungs, and respiratory system shall be construed as an injury received or disease contracted while in the performance of their duty and as the cumulative result of some occupational hazard for the purpose of determining total disability retirement under this section. [L 1925, c 55, §6(5); RL 1935, pt of §7925; RL 1945, §708, subs 5; am L 1951, c 158, §1(b); am L 1955, c 24, §1; RL 1955, §6-46; am L 1963, c 127, §6; am L 1965, c 225, §1]

§88-68 Allowance on retirement for service-connected total disability. Upon retirement for service-connected total disability, a member shall receive a retirement allowance which shall consist of (1) an annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and (2) a pension, in addition to the annuity, of sixty-six and two-thirds per cent of his average final compensation, except that if a member was, at any time, a class A member, the pension payable subsequent to the time when the member becomes eligible for a social security benefit, shall be reduced by sixteen and two-thirds per cent of the part of his average final compensation not in excess of $4,200 a year. [L 1925, c 55, §6(6); RL 1935, pt of §7925; RL 1945, §708, subs 6; RL 1955, §6-47; am L 1957, c 143, §5; am L 1961, c 175, §4; am L 1963, c 127, §8]

§88-69 Service-connected occupational disability retirement. (a) Upon application of a member, or of the head of his department, any

member who has been permanently incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty at some definite time and place, or as the cumulative result of some occupational hazard, through no wilful negligence on his part, may be retired by the board of trustees for service-connected occupational disability provided that:

(1) In the case of accident occurring after July 1, 1963, the employer shall file with the board a copy of the employer's report of the accident submitted to the bureau of workmen's compensation;

(2) An application for retirement is filed with the board within two years of the date of the accident, or the date upon which workmen's compensation benefits cease, whichever is later;

(3) Certification is made by the head of the agency in which the member is employed, stating the time, place and conditions of service performed by the member resulting in his disability and that the disability was not the result of wilful negligence on the part of the member; and

(4) The medical board certifies that the member is incapacitated for the further performance of duty, that his incapacity is likely to be permanent.

(b) The board may waive strict compliance with the time limits within which a report of the accident and an application for service-connected disability retirement must be filed with the board if it is satisfied that the failure to file within the time limited by law was due to ignorance of fact or law, inability, or to the fraud, misrepresentation, or deceit of any person, or because the applicant was undergoing treatment for the disability or was receiving vocational rehabilitation services occasioned by the disability.

(c) The board shall have the power to determine whether or not the disability is the result of an accident occurring while in the actual performance of duty at some definite time and place and that the disability was not the result of wilful negligence on the part of the member. The board may accept as conclusive:

(1) The certification made by the head of the agency in which the member is employed; or

(2) A finding to this effect by the medical board.

In the case of firemen, the cumulative effect of the inhalation of smoke, toxic gases, chemical fumes, and other toxic vapors on the heart, lungs and respiratory system shall be construed as an injury received or disease contracted while in the performance of their duty and as the cumulative result of some occupational hazard for the purpose of determining occupational disability retirement under this section. [L 1963, c 127, §7; am L 1965, c 225, §2; Supp. §6-46.1]

§38-70 Allowance on retirement for service-connected occupational disability. Upon retirement for service-connected occupational disability, a member shall receive for a period of three years from the date of retirement an allowance computed in the manner prescribed for service-connected total disability. In addition, within this three-year period,

he shall be reimbursed in full for all expenses for all services, drugs, and appliances approved by the medical board as being necessary to the treatment and care of the disability, which expenses are not met by the Hawaii public employees' health fund. Within the three-year period, the system shall also pay the cost of any physical and vocational rehabilitation services approved by the medical board. After the completion of three years, the annuity being paid shall be continued and the pension shall be thirty-three and one-third per cent of his average final compensation; provided, if the medical board shall, within the three-year period of time, find and certify that the disability pensioner is totally incapacitated for gainful employment, the board of trustees shall award a service-connected total disability benefit in which case benefits shall be paid under section 88-68.

Any other provision of this part notwithstanding, a pensioner, receiving service-connected occupational disability benefits, shall continue to receive such benefits irrespective of his later employment or if he later becomes a member of the system. If such a pensioner again becomes a public employee, his membership status in the retirement system shall be determined as though he were entering public employment for the first time and all benefits related to such new membership shall be accrued and paid without reference to the service-connected occupational disability benefits being paid. [L 1963, c 127, §9; Supp, §6-47.1]

IDAHO HEART AND LUNG LAW

OCCUPATIONAL DISEASES

Compensation shall be payable for disability or death of an employee resulting from the following Occupational Diseases:

> "Cardiovascular or pulmonary or respiratory diseases of a Paid Fireman, employed by a municipality, village, or Fire District as a regular member of a lawful established Fire Department, caused by overexertion in times of stress, or danger, or by proximate exposure or by cumulative exposure over a period of four (4) years or more to heat, smoke, chemical fumes, or other toxic gases arising directly out of, or in the course of, his employment."

The above enumerated Occupational Diseases are not to be taken as exclusive.

ILLINOIS

Chapter 108½ 6-151.1 of the Illinois Pension Code refers firemen "in any city whose population exceeds 500,000 according to the last Federal or State census," i.e., Chicago. Here firemen draw benefits from The Firemen's Annuity and Benefit Fund. Elsewhere in Illinois, the Illinois Workmen's Compensation law pertains to firemen.

6—151.1 Occupational disease disability benefits.] § 6-151.1. The General Assembly finds and declares that service in the Fire Department requires that firemen, in times of stress and danger must perform unusual tasks; that by reason of their occupation, firemen are subject to exposure to great heat and to extreme cold in certain seasons while in performance of their duties; that by reason of their employment firemen are required to work in the midst of and are subject to heavy smoke fumes, and poisonous, toxic or chemical gases from fires. The General Assembly further finds and declares that all the aforementioned conditions exist and arise out of or in the course of such employment.

Any active fireman who has completed ten or more years of service and is unable to perform his duties in the Fire Department by reason of heart disease, tuberculosis or any disease of the lungs or respiratory tract, resulting solely from his service as a fireman, shall be entitled to receive an occupational disease disability benefit during any period of such disability for which he does not have a right to receive salary. Any fireman who shall enter the service after the effective date of this amendatory Act shall be examined by one or more practicing physicians appointed by the Board, and if said examination discloses impairment of the heart, lungs or respiratory tract, such fireman shall not be entitled to receive occupational disease disability benefit unless and until a subsequent examination reveals no such impairment.

Occupational disease disability benefit shall be 50% of the fireman's salary at the time of his removal from the Department payroll.

Such fireman also shall have a right to receive child's disability benefit of $20.00 a month on account of each unmarried child less than 18 years of age and dependent upon the fireman for support, either the issue of the fireman or legally adopted by him. The total amount of child's disability benefit payable to the fireman, when added to his occupational disease disability benefit, shall not exceed 75% of the amount of salary which he was receiving at the time of the grant of occupational disease disability benefit.

The first payment of occupational disease disability benefit or child's disability benefit shall be made not later than one month after the benefit is granted. Each subsequent payment shall be made not later than one month after the date of the latest payment.

Occupational disease disability benefit shall be payable during the period of the disability until the fireman reaches the age of compulsory retirement. Child's disability benefit shall be paid to such a fireman during the period of disability until such child or children attain age 18 or marry, whichever event occurs first. The fireman thereafter shall receive such annuity or annuities as are provided for him in accordance with other provisions of this Article. Added by act approved Aug. 11, 1967. L.1967, p. 2906.

CHAPTER 411

IOWA RETIREMENT SYSTEMS FOR POLICEMEN AND FIREMEN

[illegible] of [illegible] . . .

5. *Accidental disability benefit.* Upon application of a member in service or of the chief of the police or fire departments, respectively, any member who has become totally and permanently incapacitated for duty as the natural and proximate result of an injury or disease incurred in or aggravated by the actual performance of duty at some definite time and place, or while acting pursuant to order, outside of the city or town by which he is regularly employed, shall be retired by the respective board of trustees, provided, that the medical board shall certify that such member is mentally or physically incapacitated for further performance of duty, that such incapacity is likely to be permanent and that such member should be retired.

Should a member in service or the chief of the police or fire departments become incapacitated for duty as a natural or proximate result of an injury or disease incurred in or aggravated by the actual performance of duty at some definite time or place or while acting, pursuant to order, outside the city or town by which he is regularly employed, he shall, upon being found to be temporarily incapacitated following an examination by the board of trustees, be entitled to receive his full pay and allowances until re-examined by said board and found to be fully recovered or permanently disabled.

Disease under this section shall mean heart disease or any disease of the lungs or respiratory tract and shall be presumed to have been contracted while on active duty as a result of strain or the inhalation of noxious fumes, poison or gases.

(The "disease" clause at the end of provision 5 above also pertains to provision 9, contained elsewhere in the law, referring to accidental death benefits.)

disabled member shall remain upon the pension roll unless and until reinstated in such department by reason of such examination. [S13,§§932-g,-p; C24, 27, 31, 35, 39,§6322; C46, 50, 54, 58, 62, 66, 71,§410.14]

410.15 Guarantee of pension benefits. Each city, in which contributory fire or police retirement systems based upon actuarial tables, shall be established by this Act* for the benefit of firemen or policemen appointed to either force after the establishment of the same, is hereby bound and obligated to carry out, and authorized to enter into a written agreement evidencing the same, with each person, on retired or active service, who has heretofore contributed, or, at the time of the taking effect of this Act, is contributing to the pension system now in effect in said city, in consideration of his past and his future payments to the pension fund of the system to which he is, or has been contributing, the present and prospective benefits provided by the pension system to which he is or has been contributing, guaranteeing that the present rate of payment by such person to said pension fund shall not be increased, also guaranteeing that the present and prospective rights and benefits provided for by said systems shall not be abridged nor lessened, and guaranteeing to all such persons so contributing all of the rights and benefits present and prospective provided in such pension system. The obligation of each such city for said rights and benefits shall be a direct charge on said city. [S13,§§932-h,-q; C24, 27, 31, 35, 39,§6323; C46, 50, 54, 58, 62, 66, 71,§410.15]

*45ExGA, ch 78, effective date, March 2, 1934

410.16 Moneys drawn — how paid — report. All pensions paid and all moneys drawn from the pension fund under the provisions of this chapter shall be upon warrants signed by the appropriate board of trustees, which warrants shall designate the name of the person and the purpose for which payment is made. The treasurer's annual report shall show the receipts and expenditures of each fund for the preceding fiscal year, the money on hand, and how invested. [S13,§§932-l,-r; C24, 27, 31, 35, 39, §6324; C46, 50, 54, 58, 62, 66, 71,§410.16]

Fiscal year, §363.29

410.17 City marshal. Service by any member of the police department as city marshal shall not deprive him of any rights under this chapter, in any matter in which said city marshal shall be individually interested and which requires the action of the board of trustees of the policemen's pension fund, he shall not act as a member of said board, but the mayor of the city shall act with the other two trustees of the board with respect thereto. Upon the termination of his term as city marshal, he shall regain the rank he held in the police department at the time of his appointment as city marshal. [C24, 27, 31, 35, 39,§6325; C46, 50, 54, 58, 62, 66, 71,§410.17]

410.18 Hospital expense. Cities and towns shall provide hospital, nursing, and medical attention for the members of the police and fire departments of such cities, when injured while in the performance of their duties as members of such department, and the cost of such hospital, nursing and medical attention shall be paid out of the appropriation for the department to which such injured person belongs: provided that any amounts received by such injured person under the workmen's compensation law of the state, or from any other source for such specific purposes, shall be deducted from the amount paid by such city or town under the provisions of this section. [C24, 27, 31, 35, 39,§6326; C46, 50, 54, 58, 62, 66, 71,§410.18]

HOURS OF SERVICE

410.19 Hours on duty limited. Firemen employed in the fire department of cities of ten thousand population or more, or under civil service, shall not be required to remain on duty for periods of time which will aggregate in each month more than an average of fifty-six hours per week and no single period of time, or shift, shall exceed twenty-four hours in length, provided that in cases of serious emergencies such firemen may be required to remain on duty until such emergency has passed, when so ordered by the chief of the department or person acting in his place. Firemen called back to duty under this provision shall be duly compensated in accordance with their regular hourly wage. [C27, 31, 35,§6326-a1; C39,§6326.01; C46, 50, 54, 58, 62, 66, 71,§410.19]

Referred to in §410.20
See also §411.16

410.20 Exceptions. The provisions of section 410.19 shall not apply to the chief, or other persons when in command of the fire department, nor to firemen who are employed subject to call only. [C27, 31, 35,§6326-a2; C39, §6326.02; C46, 50, 54, 58, 62, 66, 71,§410.20]

CHAPTER 411

RETIREMENT SYSTEMS FOR POLICEMEN AND FIREMEN

Applicable to all cities and towns

Referred to in §§85.1, 363.11, 366.15, 602.34

Creating retirement systems for policemen and firemen appointed after March 2, 1934

411.1 Definitions controlling.
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411.1 Definitions controlling. The following words and phrases as used in this chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

1. "Retirement system" shall mean either the fire or the police retirement system of the said cities as defined in section 411.2.

2. "Policeman" or "policemen" shall mean only the members of a police department who have passed a regular mental and physical civil service examination for policeman, policewoman, or matron, and who shall have been duly appointed to such positions. Such members shall include patrolmen, patrolwomen, probationary patrolmen, matrons, sergeants, lieutenants, captains, detectives, and other senior officers who are so employed for police duty.

3. "Fireman" or "firemen" shall mean only the members of a fire department who have passed a regular mental and physical civil service examination for fireman and who shall have been duly appointed to such position. Such members shall include firemen, probationary firemen, lieutenants, captains, and other senior officers who have been so employed for the duty of fighting fires.

4. "Member" shall mean a member of either the police or fire retirement systems as defined by section 411.3.

5. "He", "his", and all other terms in the masculine gender shall be considered to include the feminine gender.

6. "Board of fire trustees" and "board of police trustees" shall mean the boards provided in section 411.5 to administer the fire retirement system and the police retirement system respectively.

7. "Medical board" shall mean the board of physicians provided for in section 411.5.

8. "Membership service" shall mean service as policemen or firemen rendered since last becoming a member, or, where membership is regained as provided in this chapter, all of such service.

9. "Beneficiary" shall mean any person receiving a pension, an annuity, a retirement allowance or other benefit as provided by this chapter.

10. "Widow" shall mean only such surviving spouse of a marriage consummated prior to retirement of a deceased member from active service.

11. "Child" or "children" shall mean only surviving issue of a deceased active or retired member, or the child or children legally adopted by a deceased member prior to [illegible] retirement.

12. "Regular interest" shall mean interest at the rate of four percent per annum, compounded annually.

13. "Accumulated contributions" shall mean the sum of all amounts deducted from the compensation of a member and credited to his individual account in the annuity savings fund together with regular interest thereon as provided in section 411.8.

14. "Earnable compensation" or "[illegible]tion earnable" shall mean the regular compensation which a member would earn during a year on the basis of the stated compensation for his rank or position.

15. "Amount earned" shall mean the amount of money actually earned by a beneficiary in some definite period of time.

16. "Average final compensation" shall mean the average earnable compensation of a member during the five years of service in which he earned his highest salary as a policeman or fireman, or if he has had less than five years of such service, then the average earnable compensation of his entire period of service.

17. "Annuity" shall mean annual payments for life derived from the accumulated contributions of a member. All annuities shall be payable in monthly installments.

18. "Pensions" shall mean annual payments for life derived from appropriations provided by the said cities. All pensions shall be payable in equal monthly installments.

19. "Retirement allowance" shall mean the sum of the annuity and the pension, or any benefits in lieu thereof granted to a member upon retirement.

20. "Annuity reserve" shall mean the present value of all payments to be made on account of an annuity, or benefit in lieu of an annuity, granted under the provisions of this chapter, upon the basis of such mortality tables as shall be adopted by the board of trustees, and regular interest.

See mortality tables at end of Vol. II

21. "Pension reserve" shall mean the present value of all payments to be made on account of any pension, or benefit in lieu of a pension granted under the provisions of this chapter upon the basis of such mortality tables as shall be adopted by the boards of trustees, and regular interest.

22. "Actuarial equivalent" shall mean a benefit of equal value, when computed upon the basis of mortality tables adopted by the board of trustees, and regular interest.

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23. "City" or "cities" shall mean any city or cities in which fire or police retirement systems are established by this chapter.

24. "Superintendent of public safety" shall mean any elected city official who has direct jurisdiction over the fire or police department, or the city manager in cities under the city manager form of government.

25. "Pension compensation" shall mean the member's average final compensation adjusted in the ratio of the earnable compensation payable on each July 1 to an active member having the same or equivalent rank or position as was held by the retired or deceased member at the time of retirement or death to the earnable compensation of such member at his retirement or death. [C35,§6326-f1; C39,§6326.03; C46, 50, 54, 58, 62, 66, 71,§411.1; 64GA, ch 1102,§1]

411.2 Name and date of establishment. In any city in which the firemen or policemen are or shall be appointed under the civil service law of this state, there are hereby created and established two separate retirement or pension systems for the purpose of providing retirement allowances only for firemen or policemen of said cities who shall be so appointed after the date this chapter takes effect, or benefits to their dependents. Each such system shall be under the management of a board of trustees hereinafter described, and shall be known as the "fire retirement system of ..... (name of city)", and the "police retirement system of ..... (name of city)", and by such names all of their business shall be transacted, all funds invested, and all cash and securities and other property held. The retirement systems so created shall begin operation as of the first day of the month in which said systems are there established by this chapter. [C35,§6326-f2; C39,§6326.04; C46, 50, 54, 58, 62, 66, 71,§411.2]

Referred to in §411.1(1)

411.3 Membership.

1. All persons who become policemen or firemen after the date such retirement systems are established by this chapter, shall become members thereof as a condition of their employment. Such members shall not be required to make contributions under any other pension or retirement system of city, county, or state of Iowa, anything to the contrary notwithstanding.

2. Should any member in any period of five consecutive years after last becoming a member, be absent from service for more than four years, or should he withdraw his accumulated contributions, or should he become a beneficiary or die, he shall thereupon cease to be a member. [C35,§6326-f3; C39,§6326.05; C46, 50, 54, 58, 62, 66, 71,§411.3; 64GA, ch 1124, §159]

Referred to in §411.1(4)
Omnibus repeal, 55GA, ch 193,§2

411.4 Service creditable. The board of trustees shall fix and determine by proper rules and regulations how much service in any year shall be equivalent to one year of service, but in no case shall more than one year of service be creditable for all service in one calendar year, nor shall the board of trustees allow credit as service for any period of more than one month duration during which the member was absent without pay. [C35,§6326-f4; C39, §6326.06; C46, 50, 54, 58, 62, 66, 71,§411.4]

411.5 Administration.

1. *Boards.* The general administration and the responsibility for the proper operation of the retirement systems and for making effective the provisions of this chapter are hereby vested in a board of fire trustees to administer the system relating to firemen and a board of police trustees to administer the system relating to policemen. The said boards shall be constituted as follows:

a. The chief officer of the fire department, the city treasurer, the city solicitor or attorney, two firemen elected by ballot by the members of said department who are entitled to participate in a firemen's pension fund established by law, and two citizens who do not hold any other public office, who shall be appointed by the mayor with the approval of the city council, shall constitute the members of the board of trustees of the fire retirement system.

b. The chief officer of the police department, the city treasurer, the city solicitor or attorney, two policemen elected by ballot by the members of said department who are entitled to participate in a policemen's pension fund established by law, and two citizens who do not hold any other public office, who shall be appointed by the mayor with the approval of the city council, shall constitute the members of the board of trustees of the police retirement system.

c. The two citizens appointed by the mayor shall serve on both of said boards.

d. Upon the taking effect of this chapter, such members of each said department in said cities shall elect by ballot two active members of each such department to serve as members of said respective boards; one of whom shall serve until the first Monday in April of the second year, and one until the first Monday in April of the fourth year. Thereafter each such department shall, every second year, on such date and in such manner as shall be prescribed by said board of trustees, elect by ballot one such member to serve for a term of four years.

e. Upon the taking effect of this chapter, the mayor, with the approval of the city council, shall appoint two citizens who do not hold any other public office, to serve as members of said boards of trustees; one of whom shall serve until the first Monday in April of the second year, and one until the first Monday in April of the fourth year. Thereafter, every second year, one such citizen shall be so appointed for a four-year term.

f. If a vacancy occurs in the office of trustee, the vacancy shall be filled for the unexpired

term in the same manner as the office was previously filled.

2. *Voting.* Each trustee shall be entitled to one vote on each board. Four concurring votes shall be necessary for a decision by the trustees at any meeting of either board.

3. *Compensation.* The trustees shall serve as such without compensation, but they shall be reimbursed from the expense fund for all necessary expenses which they may incur through service on the board.

4. *Rules.* Subject to the limitations of this chapter, each board of trustees shall, from time to time, establish rules and regulations for the administration of funds created by this chapter and for the transaction of its business.

5. *Employees.* Each board of trustees shall elect from its membership a chairman, and shall, by majority vote of its members, appoint a secretary, who may, but need not be, one of its members. It shall engage such actuarial and other services as shall be required to transact the business of the retirement system. The compensation of all persons engaged by each board of trustees and all other expenses of each board necessary for the operation of the retirement system, shall be paid at such rates and in such amounts as each board of trustees shall approve.

6. *Data.* Each board of trustees shall keep in convenient form such data as shall be necessary for actuarial valuation of the various funds of the retirement system and for checking the experience of the system.

7. *Records—reports.* Each board of trustees shall keep a record of all its proceedings, which record shall be open to public inspection. It shall annually make a report to the city council showing the fiscal transactions of the retirement system for the preceding fiscal year, the amount of the accumulated cash and securities of the system, and the last balance sheet showing the financial condition of the system by means of an actuarial valuation of the assets and liabilities of the retirement system.

8. *Legal adviser.* The city attorney or solicitor of the said cities shall be the legal adviser of the boards of trustees.

9. *Medical board.* The board of fire trustees and the board of police trustees jointly shall designate a medical board to be composed of three physicians who shall arrange for and pass upon all medical examinations required under the provisions of this chapter and shall report in writing to each board of trustees, respectively, its conclusions and recommendations upon all matters duly referred to it.

10. *Duties of actuary.* The actuary shall be the technical adviser of the board of trustees on matters regarding the operation of the funds created by the provisions of this chapter and shall perform such other duties as are required in connection therewith.

11. *Tables—rates.* Immediately after the establishment of each retirement system, the actuary shall make such investigation of the mortality, service and compensation experience of the members of the system as he shall recommend and the board of trustees shall authorize, and on the basis of such investigation he shall recommend for adoption by the board of trustees such tables and such rates as are required in subsection 12 of this section. The board of trustees shall adopt tables and certify rates of contribution to be used by the system.

See mortality tables at end of Vol. II

12. *Actuarial investigation.* In the year 1928, and at least once in each five-year period thereafter, the actuary shall make an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries of the retirement system and shall make a valuation of the assets and liabilities of the funds of the system, and taking into account the results of such investigation and valuation, the board of trustees shall:

a. Adopt for the retirement system such mortality and other tables as shall be deemed necessary;

b. Certify the rates of contribution, payable by the said cities in accordance with section 411.8 of this chapter.

13. *Valuation.* On the basis of such tables as the boards of trustees shall adopt, the actuary shall make an annual valuation of the assets and liabilities of the funds of the retirement systems created by this chapter. [C35, §6326-f5; C39,§6326.07; C46, 50, 54, 58, 62, 66, 71, §411.5]

Referred to in §§365.5, 411.1(6, 7)

411.6 Benefits.

1. *Service retirement benefit.* Retirement of a member on a service retirement allowance shall be made by each board of trustees as follows:

a. Any member in service may retire upon his written application to the board of police or fire trustees as the case may be, setting forth at what time, not less than thirty nor more than ninety days subsequent to the execution and filing therefor, he desires to be retired, provided, that the said member at the time so specified for his retirement shall have attained the age of fifty-five and shall have served twenty-two years or more in said department, and notwithstanding that, during such period of notification, he may have separated from the service.

b. Any member in service who has attained the age of sixty-five years, shall be retired forthwith, provided, that upon the request of the superintendent of public safety, the respective board of trustees may permit such member to remain in service for periods not to exceed one year from the date of the last request from the superintendent of public safety. Provided further that no member of said departments employed on July 4, 1965, shall be so retired until he has completed twenty-two years' service for service retirement and will receive his pension benefits.

c. Any member in service who has been a member of the retirement system fifteen or more years and whose employment is terminated prior to his retirement, other than by death or disability, shall upon attaining retirement age, receive a service retirement allowance of fifteen twenty-seconds of the retirement allowance he would receive at retirement if his employment had not been terminated, and an additional one twenty-second of such retirement allowance for each additional year of service not exceeding twenty-two years of service. The amount of the retirement allowance shall be based on the average final compensation at the time of termination of employment. The allowance shall not be available to a member who has chosen to withdraw his accumulated contributions as provided in subsection 10 of this section.

2. *Allowance on service retirement.* Upon retirement from service, a member shall receive a service retirement allowance which shall consist of:

a. An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

b. A pension given by the city in addition to his annuity which together with his annuity shall make a total service retirement allowance equal to one-half of his average final compensation.

Referred to in subsection 13

3. *Ordinary disability retirement benefit.* Upon the application of a member in service or of the chief of the police or fire departments, respectively, any member who has had five or more years of membership service shall be retired by the respective board of trustees, not less than thirty and not more than ninety days next following the date of filing such application, on an ordinary disability retirement allowance, provided, that the medical board after a medical examination of such member shall certify that said member is mentally or physically incapacitated for further performance of duty, that such incapacity is likely to be permanent and that such member should be retired.

4. *Allowance on ordinary disability retirement.* Upon retirement for ordinary disability a member shall receive a service retirement allowance if he has attained the age of fifty-five, otherwise he shall receive an ordinary disability retirement allowance which shall consist of:

a. An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of retirement; and

b. A pension which together with his annuity shall make a total retirement allowance equal to ninety percent of his average final compensation multiplied by the number of years of membership service, if such retirement allowance exceeds one-half of his average final compensation, otherwise a pension which together with his annuity shall provide a total retirement allowance equal to one-half of his average final compensation.

Referred to in subsection 13
Amendment of 56GA, en 204, retroactive to July 4, 1954

5. *Accidental disability benefit.* Upon application of a member in service or of the chief of the police or fire departments, respectively, any member who has become totally and permanently incapacitated for duty as the natural and proximate result of an injury or disease incurred in or aggravated by the actual performance of duty at some definite time and place, or while acting pursuant to order, outside of the city or town by which he is regularly employed, shall be retired by the respective board of trustees, provided, that the medical board shall certify that such member is mentally or physically incapacitated for further performance of duty, that such incapacity is likely to be permanent and that such member should be retired.

Should a member in service or the chief of the police or fire departments become incapacitated for duty as a natural or proximate result of an injury or disease incurred in or aggravated by the actual performance of duty at some definite time or place or while acting, pursuant to order, outside the city or town by which he is regularly employed, he shall, upon being found to be temporarily incapacitated following an examination by the board of trustees, be entitled to receive his full pay and allowances until re-examined by said board and found to be fully recovered or permanently disabled.

Disease under this section shall mean heart disease or any disease of the lungs or respiratory tract and shall be presumed to have been contracted while on active duty as a result of strain or the inhalation of noxious fumes, poison or gases.

6. *Retirement after accident.* Upon retirement for accidental disability a member shall receive an accidental disability retirement allowance which shall consist of:

a. An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

b. A pension, in addition to the annuity, of 66⅔ percent of his average final compensation.

Referred to in subsection 13

7. *Re-examination of beneficiaries retired on account of disability.* Once each year during the first five years following the retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the respective board of trustees may, and upon his application shall, require any disability beneficiary who has not yet attained age fifty-five to undergo a medical examination at a place designated by the medical board. Such examination shall be made by the medical board or in special cases, by an additional physician or physicians designated by such board. Should any disability beneficiary who has not attained the age of fifty-five refuse to submit

to such medical examination, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year all rights in and to his pension may be revoked by the respective board of trustees.

a. Should any beneficiary for disability not incurred in line of duty, be engaged in a gainful occupation paying more than the difference between his retirement allowance and his average final compensation, then the amount of his pension shall be reduced to an amount which together with his annuity and the amount earned by him shall equal the amount of his average final compensation. Should his earning capacity be later changed, the amount of his pension may be further modified, provided, that the new pension shall not exceed the amount of the pension originally granted nor an amount which, when added to the amount earned by the beneficiary together with his annuity, equals the amount of his average final compensation. A beneficiary restored to active service at a salary less than the average final compensation upon the basis of which he was retired at age fifty-five or greater, shall not again become a member of the retirement system and shall have his retirement allowance suspended while in active service.

b. Should a disability beneficiary under age fifty-five be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member and he shall contribute thereafter at the same rate he paid prior to disability, and any former service on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect and upon his subsequent retirement he shall be credited with all his service as a member and also with the period of disability retirement, provided that during such period of disability he has not engaged in a gainful occupation from which his net earnings exceeded the difference between his disability retirement allowance and the amount he would have received for said period if his compensation at the time of disability had continued.

c. The chief of the fire department or the chief of the police department of such city may, subject to approval of the medical board, assign any former member of such department who is retired and drawing a pension for disability under the provisions of this chapter, to the performance of light duties in such department.

8. *Ordinary death benefit.* Upon the receipt of proper proofs of the death of a member in service, there shall be paid to such person having an insurable interest in his life as he shall have nominated by written designation duly executed and filed with the respective board of trustees:

a. His accumulated contributions and, if the member has had one or more years of membership service and no pension is payable under the provisions of subsection 9 of this section, in addition thereto—

b. An amount equal to fifty percent of the compensation earnable by him during the year immediately preceding his death; or

If there be no such nomination of beneficiary, the benefits provided in paragraphs "*a*" and "*b*" shall be paid to his estate; or in lieu thereof, at the option of the following beneficiaries, respectively, even though nominated as such, there shall be paid a pension which, together with the actuarial equivalent of his accumulated contributions, shall be equal to one-fourth of the average final compensation of such member, but in no instance less than seventy-five dollars. In addition to the benefits herein enumerated, there shall also be paid for each child of a member under the age of eighteen years the sum of twenty dollars per month:

Referred to in subsection 9(c)

c. To the spouse to continue so long as said party remains unmarried; or

Referred to in subsection 9(b)

d. If there be no spouse, or if the spouse dies or remarries before any child of such deceased member shall have attained the age of eighteen years, then to the guardian of his child or children under said age, divided in such manner as the board of trustees in its discretion shall determine, to continue as a joint and survivor pension until every such child dies or attains the age of eighteen; or

Referred to in subsection 9(b)

e. If there be no surviving spouse or child under age eighteen, then to his dependent father or mother or both, as the board of trustees in its discretion shall determine, to continue until remarriage or death.

Referred to in subsections 9 and 14(b)

9. *Accidental death benefit.* If, upon the receipt of evidence and proof that the death of a member in service or the chief of police or fire departments was the natural and proximate result of an injury or disease incurred in or aggravated by the actual performance of duty at some definite time and place, or while acting pursuant to order, outside of the city or town by which he is regularly employed, the board of trustees shall decide that death was so caused in the performance of duty, there shall be paid, in lieu of the ordinary death benefit provided in subsection 8 of this section, to his estate or to such person having an insurable interest in his life as he shall have nominated by written designation duly executed and filed with the respective board of trustees the benefits set forth in paragraphs "*a*", "*b*" and "*c*" of this subsection:

a. His accumulated contributions; and in addition thereto—

b. A pension equal to one-half of the average final compensation of such member shall be paid to his spouse, children or dependent parents as provided in paragraphs "*c*", "*d*" and "*e*" of subsection 8 of this section.

addition to the benefits for the spouse herein enumerated, there shall also be paid for each dependent child of a member under the age of eighteen years the sum of twenty dollars per month.

c. If there be no spouse children under the age of eighteen years or dependent parent surviving such deceased member, the death shall be treated as an ordinary death case and the benefit payable in accordance with the provisions of subsection 8, paragraph "*b*", in lieu of the pension provided in paragraph "*b*" of this subsection 9, shall be paid to his estate.

Disease under this subsection shall mean heart disease or any disease of the lungs or respiratory tract and shall be presumed to have been contracted while on active duty as a result of strain or the inhalation of noxious fumes, poison, or gases.

Referred to in subsection 14(b)

10. *Return of accumulated contributions.* Should a member cease to be a policeman or fireman except by death or retirement, he shall be paid on demand the amount of his accumulated contributions standing to the credit of his individual account in the annuity savings fund.

Referred to in subsection 1

11. *Optional allowance.* With the provision that no optional selection shall be effective in case a beneficiary dies within thirty days after retirement, in which event such a beneficiary shall be considered as an active member at the time of death; until the first payment on account of any benefit becomes normally due, any beneficiary may elect to receive his benefit in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent at that time of his retirement allowance in a lesser retirement allowance payable throughout life with the provision that an amount in money not exceeding the amount of his accumulated contributions shall be immediately paid in cash to such member or some other benefit or benefits shall be paid either to the member or to such person or persons as he shall nominate, provided such cash payment or other benefit or benefits, together with the lesser retirement allowance, shall be certified by the actuary to be of equivalent actuarial value to his retirement allowance and shall be approved by the board of trustees; provided, that a cash payment to such member or beneficiary at the time of retirement of an amount not exceeding fifty percent of his accumulated contributions shall be made by the board of trustees upon said member's or beneficiary's election.

12. *Pensions offset by compensation benefits.* Any amounts which may be paid or payable by the said cities under the provisions of any workmen's compensation or similar law to a member or to the dependents of a member on account of any disability or death, shall be offset against and payable in lieu of any benefits payable out of funds provided by the said cities under the provisions of this chapter on account of the same disability or death. In case the present value of the total commuted benefits under said workmen's compensation or similar law is less than the pension reserve on the benefits otherwise payable from funds provided by the said cities under this chapter, then the present value of the commuted payments shall be deducted from the pension reserve and such benefits as may be provided by the pension reserve so reduced shall be payable under the provisions of this chapter.

Workmen's compensation, ch 85

13. *Pension to spouse and children of deceased pensioned member.* In the event of the death of any member receiving a retirement allowance under the provisions of subsections 2, 4, or 6 of this section there shall be paid a pension:

a. To the spouse to continue so long as said partner remains unmarried, equal to one-half the amount received by such deceased beneficiary, but in no instance less than seventy-five dollars per month, and in addition thereto the sum of twenty dollars per month for each child under eighteen years of age; or

b. In the event of the death of the spouse either prior or subsequent to the death of the member, to the guardian of each surviving child under eighteen years of age, in the sum of twenty dollars per month for the support of such child.

Referred to in subsection 14(b)

14. *Annual readjustment of pensions.* Pensions payable under this section shall be adjusted as follows:

a. As of the first of July of each year, the monthly pensions authorized in this section payable to each retired member and to each beneficiary, except children, of a deceased member shall be recomputed. The formula authorized in this section which was used to compute the retired member's or beneficiary's pension at the time of retirement or death, including all amendments to the formula which may be adopted subsequent to the member's retirement or death, shall be used in the recomputation except the pension compensation shall be used in lieu of the average final compensation which the retired or deceased member was receiving at the time of retirement or death. The adjusted monthly pension shall be the amount payable at the member's retirement or death adjusted by one-half of the difference between the recomputed pension and the amount payable at the member's retirement or death. At no time shall the monthly pension or payment to the beneficiary be less than the amount which was paid at the time of the member's retirement or death.

b. As of the first of July of each year, the monthly pension payable to each surviving child in accordance with subsections 8, 9, and 13 of this section shall be adjusted to equal six percent of the monthly salary payable on such July 1 to an active member having the rank of first-class fireman, in the case of a child of a deceased member of the fire depart-

ment, or of a first-class patrolman, in the case of a child of a deceased member of the police department. If the monthly pension so computed is less than the amounts provided in subsections 8, 9 and 13 of this section, the amounts provided for in said subsections shall be payable.

c. All monthly pensions adjusted as provided in this subsection shall be payable beginning on July 1 of the year in which the adjustment is made and shall continue in effect until the next following July 1 at which time the monthly pensions shall again be recomputed and all monthly pensions shall be adjusted in accordance with the recomputations.

d. The adjustment of pensions required by this subsection shall recognize the retired or deceased member's position on the salary scale within his rank at the time of his retirement or death. In the event that the rank or position held by the retired or deceased member at the time of retirement or death is subsequently abolished, adjustments in the pensions of the member or of the member's spouse or children shall be computed by the board of trustees as though such rank or position had not been abolished and salary increases had been granted to such rank or position on the same basis as increases granted to other ranks and positions in the department.

e. A retired member who became eligible for benefits under the provisions of subsection 1 of this section but who did not serve twenty-two years and did not attain the age of fifty-five years prior to his termination of employment shall not be eligible for the annual readjustment of pensions provided for by this subsection. [C35,§6326-f6; C39,§6326.08; C46, 50, 54, 58, 62, 66, 71,§411.6; 64GA, ch 1102,§§2,3]

411.7 Management of funds.

1. The respective boards of trustees shall be the trustees of the several funds created by this chapter as provided in section 411.8 and shall have full power to invest and reinvest such funds subject to the terms, conditions, limitations and restrictions imposed by subsection 2 of this section, and subject to like terms, conditions, limitations, and restrictions said trustees shall have full power to hold, purchase, sell, assign, transfer, or dispose of any of the securities and investments in which any of the funds created herein shall have been invested, as well as of the proceeds of said investments and any moneys belonging to said funds.

2. The city treasurer may invest at the direction of the respective boards of trustees such portion of the several funds created by this chapter as in the judgment of the respective boards are not needed for current payment of benefits under this chapter in interest-bearing securities issued by the United States, or interest-bearing bonds issued by the state of Iowa, or bonds issued by counties, school districts, or general obligation or limited levy bonds issued by municipal corporations in this state as authorized for investment by insurance companies under section 511.8 and subject to all limitations contained in said section. In the event of loss on the redemption or sale of securities, where invested as prescribed by law, neither the treasurer nor the trustees shall be personally liable, but such loss shall be charged against the retirement funds. The city treasurer may sell any securities in such funds and reinvest the proceeds in accordance with the direction of the respective boards of trustees when such action may be deemed advisable by the trustees for the protection of said funds or the preservation of the value of the investment.

Referred to in subsection 1

3. Each board of trustees annually shall allow regular interest on the mean amount for the preceding year in each of the funds with the exception of the expense fund. The amount so allowed shall be due and payable to said funds and shall be annually credited thereto by the respective board of trustees from interest and other earnings on the moneys and other assets of the retirement system. Any additional amount required to meet the interest on the funds of the retirement system shall be paid by the cities and any excess of earnings over such amount required shall be deductible from the amounts to be contributed by the said cities.

4. The treasurer of the said cities shall be the custodian of the several funds. All payments from said funds shall be made by him only upon vouchers signed by two persons designated by the respective board of trustees. A duly attested copy of the resolution of the respective board of trustees designating such persons and bearing on its face specimen signatures of such persons shall be filed with the treasurer as his authority for making payments upon such vouchers. No voucher shall be drawn unless it shall previously have been allowed by resolution of the respective board of trustees.

5. For the purpose of meeting disbursements for pensions, annuities, and other payments there may be kept available cash not exceeding ten percent of the total amount in the several funds of the retirement system on deposit in one or more banks or trust companies in said cities, organized under the laws of the state of Iowa, or of the United States, provided, that the amount on deposit in any one bank or trust company shall not exceed twenty-five percent of the paid-up capital and surplus of such bank or trust company.

6. No trustee and no employee of either board shall have any direct interest in the gains or profits of any investment made by the respective boards of trustees. No trustee shall receive any pay or emolument for his services except as secretary. No trustee or employee of either board of trustees shall directly or indirectly for himself or as an agent in any manner use the assets of the retirement system except to make such current and necessary payments as are authorized by the board of trustees, nor shall any trustee or

ployee of the boards become an endorser or surety or become in any manner an obligor for moneys loaned by or borrowed from the respective board of trustees. [C35,§6126-f7; C39, §6126.09; C46, 50, 54, 58, 62, 66, 71,§411.7]

411.8 Method of financing. All the assets of each retirement system created and established by this chapter shall be credited according to the purpose for which they are held to one of five funds, namely, the annuity savings fund, the annuity reserve fund, the pension accumulation fund, the pension reserve fund, and the expense fund.

1. *Annuity savings fund.*

a. The annuity savings fund shall be the fund in which shall be accumulated contributions from the compensation of the members to provide for their annuities. The rates of contribution payable by members according to their ages when becoming members shall be as follows:

Age when becoming a member	Rate of contribution
20	4.91%
21	4.97%
22	5.04%
23	5.11%
24	5.18%
25	5.26%
26	5.33%
27	5.41%
28	5.48%
29	5.56%
30	5.64%
31	5.72%
32	5.80%
33	5.88%
34	5.97%
35	6.05%
36	6.14%
37	6.22%
38	6.31%
39	6.40%
40	6.50%

Credit of excess paid before July 4, 1947, see 52GA, ch 219,19

b. The proportions so computed for a person at age forty shall be applied to a member who attains a greater age before he becomes a member. The respective boards of trustees shall certify to the superintendent of public safety and the superintendent of public safety shall cause to be deducted from the salary of each member on each and every payroll for each and every pay period, the proportion of the compensation of each member so computed.

c. The deductions provided for herein shall be made notwithstanding that the minimum compensation provided by law for any member shall be reduced thereby. Every member shall be deemed to consent to the deductions made and provided for herein, and shall receipt for his full salary or compensation, and payment of salary or compensation less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for services rendered during the period covered by the payment except as to benefits provided by this chapter. The superintendent of public safety shall certify to the respective boards of trustees on each and every payroll, or in such other manner as the said boards of trustees shall prescribe, the amount deducted from each member's salary, and such amounts shall be paid into the respective annuity savings fund and shall be credited together with regular interest thereon to the individual account of the member from whose compensation said deduction was made.

d. The accumulated contributions of a member withdrawn by him or paid to his estate or designated beneficiary in the event of his death shall be paid from the annuity savings fund. Upon the retirement of a member his accumulated contributions shall be transferred from the annuity savings fund to the annuity reserve fund.

Military service exception, §411.9

2. *Annuity reserve fund.* The annuity reserve fund shall be the fund from which shall be paid all annuities and all benefits in lieu of annuities payable as provided in this chapter. Should a beneficiary retired on account of disability be restored to active service and again become a member of the retirement system, his annuity reserve shall be transferred from the annuity reserve fund to the annuity savings fund and credited to his individual account therein.

3. *Pension accumulation fund.* The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and other benefits payable from contributions made by the said cities and from which shall be paid the lump-sum death benefits for all members payable from the said contributions. Contributions to and payments from the pension accumulation fund shall be as follows:

a. On account of each member there shall be paid annually into the pension accumulation fund by the said cities an amount equal to a certain percentage of the earnable compensation of the member to be known as the "normal contribution". The rate percent of such contribution shall be fixed on the basis of the liabilities of the retirement system as shown by actuarial valuations. Until the first valuation the normal contribution shall be 7.9 percent.

b. On the basis of regular interest and of such mortality and other tables as shall be adopted by the boards of trustees, the actuary engaged by the said boards to make each valuation required by this chapter, shall immediately after making such valuation, determine the uniform and constant percentage of the earnable compensation of the average new entrant, which, if contributed throughout his entire period of active service, would be suffi-

cient to provide for the payment of any death benefit or pension payable on this account. The rate percent so determined shall be known as the "normal contribution rate". The normal contribution rate shall be the rate percent of the earnable compensation of all members obtained by deducting from the total liabilities of the fund the amount of the funds in hand to the credit of the fund and dividing the remainder by one percent of the present value of the prospective future compensation of all members as computed on the basis of mortality and service tables adopted by the boards of trustees and regular interest. The normal rate of contribution shall be determined by the actuary after each valuation.

c. The total amount payable in each year to the pension accumulation fund shall be not less than the rate percent known as the normal contribution rate of the total compensation earnable by all members during the year, provided, however, that the aggregate payment by the said cities shall be sufficient when combined with the amount in the fund to provide the pensions and other benefits payable out of the fund during the then current year.

d. All lump-sum death benefits on account of death in active service payable from contributions of the said cities shall be paid from the pension accumulation fund.

e. Upon the retirement or death of a member an amount equal to the pension reserve on any pension payable to him or on account of his death shall be transferred from the pension accumulation fund to the pension reserve fund.

4. *Pension reserve fund.* The pension reserve fund shall be the fund in which shall be held the reserves on all pensions granted to members or to their beneficiaries and from which such pensions and benefits in lieu thereof shall be paid. Should a beneficiary retired on account of disability be restored to active service and again become a member of the retirement system, his pension reserve shall be transferred from the pension reserve fund to the pension accumulation fund. Should the pension of a disability beneficiary be reduced as a result of an increase in his amount earned, the amount of the annual reduction in his pension shall be paid annually into the pension accumulation fund during the period of such reduction.

5. *Expense fund.* The expense fund shall be the fund to which shall be credited all money provided by the said cities to pay the administration expenses of the retirement system and from which shall be paid all the expenses necessary in connection with the administration and operation of the system. Annually the boards of trustees shall estimate the amount of money necessary to be paid into the expense fund during the ensuing year to provide for the expense of operation of the retirement system. [C35,§6326-f8; C39,§6326.10; C46, 50, 54, 58, 62, 66, 71,§411.8]

Referred to in §§411.1(13), 411.5(12,b), 411.7, 411.9

411.9 Military service exceptions. Any member who is absent while serving in the armed services of the United States or its allies and is discharged or separated therefrom under honorable conditions shall have any such period or periods of absence while serving in such armed services on other than a voluntary basis and one such period of absence, not in excess of four years, while serving in such armed forces on a voluntary basis included as part of his period of service in the department. Such member shall not be required to continue the contributions required of him under section 411.8 during such period of military service, provided that he shall, within six months after he has been discharged or separated under honorable conditions from such military service, return and resume his duties in the department, and provided further, that such member shall be declared physically capable of resuming such duties upon examination by the medical board. [C46, 50, 54, 58, 62, 66, 71,§411.9]

Referred to in §411.10

Resolutions before January 1, 1947, restoring to active duty legalized, 52GA, ch 319,§1

411.10 Fund to pay contributions of absent members. The cities which have a retirement system as provided under this chapter, shall create a fund for the purpose of paying the contributions to this fund of those members who voluntarily or by induction enter the military service or who are serving in the armed forces. Such fund shall be used for the purpose of paying the contributions which are required of the members, but which under the provisions of section 411.9 are waived during periods of military service as defined by section 411.9 and six months thereafter following discharge or separation under honorable conditions. Should any member fail to return to the department within six months after his honorable discharge from the military service the amount credited to his account in the fund by the city shall revert back to such city and such member or his representative shall not be entitled to claim any interest in the contribution so made by the city. [C46, 50, 54, 58, 62, 66, 71,§411.10]

411.11 Contributions by the city.

1. On or before the first day of July in each year the respective boards of trustees shall certify to the superintendent of public safety the amounts which will become due and payable during the year next following to the pension accumulation fund and the expense fund. The amounts so certified shall be included by the superintendent of public safety in his annual budget estimate. The amounts so certified shall be appropriated by the said cities and transferred to the retirement system for the ensuing year. Said cities shall annually levy a tax sufficient in amount to cover such appropriations.

2. To cover the requirements of the respective retirement systems for the period prior to

the date when the first regular appropriation is due as provided in subsection 1 of this section, such amounts as shall be necessary to cover the needs of the retirement system shall be paid into the pension accumulation fund and expense fund by special appropriations to the retirement system. [C35,§6326-f9; C39, §6326.11; C46, 50, 54, 58, 62, 66, 71,§411.11]

411.12 Guaranty. Regular interest charges payable, the creation and maintenance of reserves in the pension accumulation fund and the maintenance of annuity reserves and pension reserves as provided for the payment of all pensions, annuities, retirement allowances, refunds, and other benefits granted under the provisions of this chapter and all expenses in connection with the administration and operation of the retirement systems are hereby made direct liability obligations of the said cities. All income, interest, and dividends derived from deposits and investments authorized by this chapter shall be used for the payment of the said obligations of the said cities. Any amounts derived therefrom, which, when combined with regular appropriations made under the provisions of this chapter, exceed the amount required to provide for the discharge of such obligations, shall be used to reduce the regular appropriations otherwise required. [C35,§6326-f10; C39,§6326.12; C46, 50, 54, 58, 62, 66, 71,§411.12]

411.13 Exemption from tax and execution. The right of any person to a pension, annuity, or retirement allowance, to the return of contributions, the pension, annuity, or retirement allowance itself, any optional benefit or death benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the various funds created under this chapter, are hereby exempt from any tax of the state and shall not be subject to execution, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this chapter specifically provided. [C35,§6326-f11; C39,§6326.13; C46, 50, 54, 58, 62, 66, 71,§411.13]

411.14 Protection against fraud. Any person who shall knowingly make any false statement, or shall falsify or permit to be falsified any record or records of such retirement system in any attempt to defraud such system as a result of such act, shall be guilty of a misdemeanor, and shall be punishable therefor under the laws of this state. Should any change or errors in records result in any member or beneficiary receiving from the retirement system more or less than he would have been entitled to receive had the records been correct, the respective board of trustees shall correct such error, and, as far as practicable, shall adjust the payments in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled, shall be paid. [C35,§6326-f12; C39,§6326.14; C46, 50, 54, 58, 62, 66, 71,§411.14]

Constitutionality, 46ExGA, ch 75,§28
Punishment, §687.7

411.15 Hospitalization and medical attention. Cities and towns shall provide hospital, nursing, and medical attention for the members of the police and fire departments of such cities, when injured while in the performance of their duties as members of such department, and the cost of such hospital, nursing, and medical attention shall be paid out of the appropriation for the department to which such injured person belongs; provided that any amounts received by such injured person under the workmen's compensation law of the state, or from any other source for such specific purposes, shall be deducted from the amount paid by such city or town under the provisions of this section. [C66, 71,§411.15]

411.16 Hours of service. Firemen employed in the fire department of cities of ten thousand population or more, or under civil service, shall not be required to remain on duty for periods of time which will aggregate in each month more than an average of fifty-six hours per week and no single period of time, or shift, shall exceed twenty-four hours in length, provided that in cases of serious emergencies such firemen may be required to remain on duty until such emergency has passed, when so ordered by the chief of the department or person acting in his place. Firemen called back to duty under this provision shall be duly compensated in accordance with their regular hourly wage. [C66, 71,§411.16]

Referred to in §411.17
See also §410.10

411.17 Provisions not applicable. The provisions of section 411.16 shall not apply to the chief, or other persons when in command of a fire department, nor to firemen who are employed subject to call only. [C66, 71,§411.17]

CHAPTER 412

MUNICIPAL UTILITY RETIREMENT SYSTEM

Applicable to cities over 8,000 population

See waterworks employees group insurance, ch 400

412.1 Authority to establish system.
412.2 Source of funds.
412.3 Rules and regulations.
412.4 Legal reserve insurance.
412.5 Public utility defined.

STATE OF KENTUCKY

WORKMEN'S COMPENSATION LAW

342.316 Occupational disease defined; medical examination; time for filing claim; presumption in the case of respiratory disease; provisions for determining liable employer. (1) "Occupational disease" as used in this chapter means a disease arising out of and in the course of the employment.

(a) A disease shall be deemed to arise out of the employment only if there is apparent to the rational mind, upon consideration of all the circumstances, a direct causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident to the work as a result of the exposure occasioned by the nature of the employment and which can be fairly traced to the employment as the proximate cause. The disease shall be incidental to the character of the business and not independent of the relationship of employer and employe. The disease need not have been foreseen or expected but, after its contraction, it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.

(b) "Injurious exposure" as used in this section shall mean that exposure to occupational hazard which would, independently of any other cause whatsoever, produce or cause the disease for which claim is made.

(2) (a) The procedure with respect to the giving of notice and determination of claims in occupational disease cases and the compensation and medical benefits payable for disability or death due to such disease shall be the same as in cases of accidental injury or death under the general provisions of this chapter except that notice of claim shall be given to the employer as soon as practicable after the employe first experiences a distinct manifestation of an occupational disease in the form of symptoms reasonably sufficient to apprise him that he has contracted such disease, or a diagnosis of such disease is first communicated to him, whichever shall first occur.

(b) The procedure with respect to filing of claims shall be as follows:

1. The application shall set forth the work history of the applicant with a concise description of injurious exposure to a specific occupational disease together with the names and addresses of employer or employers with the approximate date of employment and shall also include with the application two written medical reports supporting his claim. These medical reports shall be made on the basis of comprehensive clinical examinations and shall contain full and complete statements of the results thereof. The reports shall be made by duly licensed physicians. The clinical examinations shall include x-ray examinations. However, the failure of an x-ray examination to disclose the presence of an occupational disease shall not affect the legal presumption referred to in subsection (6) of this section.

2. The filing of a properly executed application for adjustment of claim, accompanied by the two medical reports described in subparagraph 1. of this paragraph, shall satisfy the requirements of the presumptive clause set out in subsection (6) of this section and the burden of proof shall immediately thereafter shift to the employer and the Special Fund.

3. Immediately upon receipt of said application for adjustment of claim, the board shall notify the affected employer, the Special Fund and any other interested party of such claim and shall furnish them with a full and complete copy of the claim.

4. Upon receipt of notice of claim the employer, the Special Fund, and any other interested party shall have the right as provided under KRS 342.021 to have the claimant examined by competent medical experts.

5. Within sixty days of the filing of the claim the employer, the Special Fund, and any other interested party shall notify the board and the claimant whether or not the claim will be resisted. If the claim is not resisted, then the board shall within ten days enter an order and award for the claimant. If the claim is resisted, the board shall set a date for a hearing and shall notify all parties thereof. In litigated claims the regular procedures prescribed by the Workmen's Compensation Board shall be followed.

(3) The right to compensation under this chapter for disability resulting from an occupational disease shall be forever barred unless a claim is filed with the Workmen's Compensation Board within one year after the last injurious exposure to the occupational hazard or after the employe first experiences a distinct manifestation of an occupational disease in the form of symptoms reasonably sufficient to apprise him that he has contracted the disease, whichever shall last occur; and if death results from the occupational disease within said period, unless a claim therefor be filed with the Workmen's Compensation Board within one year after such death; provided, however, that notice of such claim shall be deemed waived in case of disability or death where the employer or his insurance carrier, voluntarily makes pay-

ment therefor, or, if the incurrence of the disease or the death of the employe, and its cause was known to the employer. Provided, however, that the right to compensation for any occupational disease shall be forever barred unless a claim is filed with the Workmen's Compensation Board within five years from the last injurious exposure to the occupational hazard, except that, in cases of radiation disease, a claim must be filed within ten years from the last injurious exposure to the occupational hazard.

(4) In claims for compensation due to the occupational disease of silicosis or any other compensable pneumoconiosis it must be shown that the employe was exposed to the hazards of the disease in his employment within this state for at least two years immediately next before his disability or death.

(5) The amount of compensation payable for disability due to occupational disease or for death from such disease, and the time and manner of its payment, shall be the same as provided for accidental injury or death under the general provisions of the Workmen's Compensation Act, but in no event to exceed such amounts as were in effect at the time of the last injurious exposure, and provided further, that the time of the beginning of compensation payments shall be the date of the employe's last injurious exposure to the cause of the disease, or the date of actual disability, whichever is later, and provided further, that in case of death where the employe has been awarded compensation or made timely claim within the period provided for in this section, an employe has suffered continuous disability to the date of his death occurring at any time within ten years from the date of disability, his dependents, if any, shall be awarded compensation for his death as provided for under the general provisions of the Workmen's Compensation Act and in this section.

(6) In case of disability or death from silicosis, coal workers' pneumoconiosis, or any other compensable pneumoconiosis, complicated with tuberculosis of the lungs, pulmonary emphysema or other pulmonary dysfunction and there has been employment exposure to harmful dust or industrial hazards reasonably competent to produce such accompanying disease or dysfunction, there is a rebuttable legal presumption that all resultant disability therefrom is work related and compensable, and compensation shall be payable as for the uncomplicated disease, provided, however, that the disease or dysfunction was an essential factor in causing such disability or death.

(7) If an autopsy has been performed, no testimony relative thereto shall be competent unless the employer or his representative and a representative of the deceased employe shall have participated therein or been given reasonable opportunity to do so.

(8) No compensation shall be payable for occupational disease if the employe at the time of entering the employment of the employer by whom compensation would otherwise be payable, falsely represented himself, in writing, as not having been previously disabled, laid off, or compensated in damages or otherwise, because of such disease, or failed or omitted truthfully to state to the best of his knowledge, in answer to written inquiry made by the employer, the place, duration and nature of previous employment, or, to the best of his knowledge, the previous state of his health.

(9) No compensation for death from occupational disease shall be payable to any person whose relationship to the deceased, which, under the provisions of this chapter would give right to compensation, arose, subsequent to the beginning of the first compensable disability, save only to after-born children of a marriage existing at the beginning of such disability.

(10) Whenever any claimant misconceives his remedy and files an application for adjustment of claim under the general provisions of this chapter and it is subsequently discovered, at any time before the final disposition of such cause, that the claim for injury, disability or death which was the basis for such application should properly have been made under the provisions of this section, then the application so filed may be amended in form or substance, or both, to assert a claim for such injury, disability or death under the provisions of this section, and it shall be deemed to have been so filed as amended on the date of the original filing thereof, and such compensation may be awarded as is warranted by the whole evidence pursuant to the provisions of this chapter. When such amendment is submitted, further or additional evidence may be heard by the board when deemed necessary. Nothing this section contains shall be construed to be or permit a waiver of any of the provisions of this chapter with reference to notice of time for filing of a claim, but notice of filing a claim, if given or done, shall be deemed to be a notice of filing of a claim under provisions of this chapter, if given or done within the time required herein.

(11) When an employe has an occupational disease that is covered by this chapter, the employer in whose employment he was last injuriously exposed to the hazard of the disease, and the employer's insurance carrier, if any, at the time of the exposure, shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier; except as otherwise provided herein.

(12) (a) The employer liable for compensation for occupational diseases, other than silicosis or any other compensable pneumoconiosis, which developed to the point of disablement only after an exposure of five or more years, or for silicosis and any other compensable pneumoconiosis, shall be the employer in whose employment the employe was last exposed to the hazard of such occupational disease during a period of six months or more. In those cases where disability or death are not conclusively proven to be the result of such last exposure all compensation shall be paid out of the Special Fund. In all other cases of occupational diseases, other than silicosis or any other compensable pneumoconiosis, which de-

veloped to the point of disablement only after an exposure of five or more years, or for silicosis and any other compensable pneumoconiosis, the compensation for disability or death due to such diseases shall be paid jointly by the employer and the Special Fund, and the employer shall be liable for sixty percent of the compensation due and the Special Fund shall be liable for forty percent of the compensation due. Provided, however, that when there is a joint award against the carrier or self-insured employer and the Special Fund under this section, all of the compensation awarded shall be paid by the carrier or self-insured employer, and the carrier or self-insured employer shall be reimbursed for such payments from the Special Fund on a quarterly basis and under such regulations as the board may provide for such purpose.

(b) In all claims for compensation partially payable by the Special Fund the Commissioner of Labor, as custodian of said fund, shall be designated as co-defendant.

(c) In all agreements for the payment of compensation and awards the amount payable by the employer and the amount payable out of the Special Fund shall be separately stated. An award against the employer shall be for only the percentage of the total compensation which the employer is obligated to pay. A separate award shall be made against the Special Fund for the balance of the compensation payable. Nothing in this section shall prohibit the Commissioner of Labor, as custodian of the Special Fund, from entering into agreements to pay the compensation for which it is liable; provided, however, that where compensation is payable by both the employer and the Special Fund, the commissioner shall not enter into an agreement unless the employer is a party to the agreement. (1944, c. 82, § 3; 1948, c. 151, § 4; 1956, c. 77, § 12; 1960, c. 147, § 16; 1960, c. 35; 1962, c. 276, § 3; 1964, c. 192, § 24; 1970, c. 16, § 3)

Note: Election of coverage.

(1944, c 82, §3; 1948, c 151, §4)

1953. Where the claimant established that he had contracted silicosis, and there was no proof that he had the disease when he began working in employer's mine in 1933, and his proof did show that the rock strata at the mine in the areas where he did his last drilling contained large amounts of silica, and also that on occasions there was a large amount of dust in the air while drilling was being done, his proof was sufficient to meet the burden placed upon him of proving that silicosis was contracted while he was working in employers coal mine under conditions prescribed in this section. United States Steel Co. v. Lockhart et al., 261 S. W. (2d) 643.

1953. The sixty day exposure provision in this section was intended to fix liability as between two or more employers in instances where a employe had been exposed to the hazards of the disease silicosis under more than one employer. Jones v. Crummies Creek Coal Co. et al., 264 S. W. (2d) 295.

1954. In silicosis cases existence of disease is essential fact; and if disease does exist question of whether there was an exposure to hazard in employment then will be determined, not as an abstract proposition, but in light of fact that disease exists. Kinker v. American Radiator & Standard Sanitary Corp., 265 S. W. (2d) 948.

1954. Board's failure to determine question as to whether claimant in silicosis case had the disease would require reversal of its decision to deny compensation for failure of proof of exposure, where board stated in its written opinion that if evidence had been such that it could be definitely determined that plaintiff was actually suffering from silicosis, requirement of definite proof of exposure to hazard would not be insisted upon. Ibid.

1956. In workmen's compensation proceedings, evidence was adequate to sustain finding that the employe, who sought partial permanent disability benefits for silicosis had been sufficiently exposed to silica dust for enough time to satisfy requirements of this section. United States Coal and Coke Company v. Hooks 286 S. W. (2d) 918.

1956. The purpose of provision of Workmen's Compensation Act, requiring one claiming compensation for disability due to silicosis to show that employee was exposed to hazards of disease in his employment within the state for at least two years before his disability or death was to afford employers protection against such claims by migrant workers and those who have incurred the disease in employment out of the state. Mary Helen Coal Corporation v. Parrott, 290 S. W. (2d) 477.

Provision of Workmen's Compensation Act, requiring one claiming compensation for disability due to silicosis to show that employe was exposed to hazards of disease in his employment within the state for at least two years before disability or death was intended to limit or qualify the class of employes who may become entitled to compensation benefits for silicosis and provision was not intended to require a specific number of days or hours of exposure to silica dust. Ibid.

Where claimant had been employed by coal company as a motorman for at least two years and in such capacity was exposed to inhalation of silica dust from sand used on tram tracts, though he actually worked as a motorman only 430 days during such two-year period, provision of Workmen's Compensation Act, requiring claimant to show that employee was exposed to hazards of silicosis in his employment within the state for at least two years before disability or death, did not preclude recovery of compensation for disability due to silicosis. Ibid.

See annotations to KRS 342.005 (2) and 342.395.

1948 Amendment to Workmen's Compensation Act changing the procedure for determining disability in silicosis cases, including those pending before Workmen's Compensation Board at effective date of amendment, is not unconstitutional as impairing the obligation of a contract, since such change in remedial procedure does not abrogate or so circumscribe or restrict any rights of employer or employe under the Act as seriously to impair the value of such right. General Refractories Co. v. Henderson, 313 Ky. 613, 232 S. W. (2d) 846.

1948 Amendment to KRS 342.315 and 342.316 merely altered the procedural method of establishing that claimant did not have silicosis and did not deprive employer of any vested defense, even though medical committee had already determined that claimant did not have silicosis. Ibid.

Since a report of medical committee (abolished in 1948) was subject to review by Workmen's Compensation Board upon exceptions seasonably filed, prior to such review and a determination by the Board, a finding by medical committee that claimant did not have silicosis created no vested right in employer to such a finding, consequently, 1948 Amendment changing procedure for determining disability in silicosis cases could be applied to case then pending before Board. Ibid.

Where the claimant established that he had contracted silicosis, and there was no proof that he had the disease when he began working in employer's mine in 1933, and his proof did show that the rock strata at the mine in the areas where he did his last drilling contained large amounts of silica, and also that on occasions there was a large amount of dust in the air while drilling was being done, his proof was sufficient to meet the burden placed upon him of proving that silicosis was contracted while he was working in employer's coal mine under conditions prescribed in this section. United States Steel Co. v. Lockhart et al., 261 S. W. (2d) 643.

intended to fix liability as between two or more employers in instances where an employe had been exposed to the hazards of the disease silicosis under more than one employer. Jones v. Crummies Creek Coal Co. et al., 264 S. W. (2d) 294.

1954. Where an employe had not been exposed to the hazards of silicosis following his acceptance of the silicosis provision of this section, the employe could not recover for disability caused by that disease. Fuston v. Consolidated Coal Co. et al., 265 S. W. (2d) 933.

Where the employe and the employer had not accepted the provisions of the silicosis section of the Workmen's Compensation Act, the one-year statute of limitations on actions for personal injuries applied even though employe alleged breach of contract by failure to furnish a reasonably safe place to work. Columbus Mining Co. v. Walker, 271 S. W. (2d) 276.

Where the employe and the employer had not accepted the provisions of the silicosis section of the Workmen's Compensation Act, the employe's action for disability caused by silicosis allegedly contracted in employer's mine accrued on the date of last exposure, rather than on the date of diagnosis, for purposes of determining application of statute of limitations. Ibid.

1954. In workmen's compensation case wherein the Workmen's Compensation Board had refused to grant an employe compensation for disability allegedly caused by silicosis, evidence of exposure to inhalable silica was sufficient to justify compensation award in the Board concluded that the employe had silicosis, since a high degree of proof was not necessary to establish such exposure. Robinson v. Peabody Coal Co., 273 S. W. (2d) 573.

In workmen's compensation proceeding, evidence was adequate to sustain finding that the employe, who sought partial permanent disability benefits for silicosis had been sufficiently exposed to silica dust for enough time to satisfy requirements of this section. United States Coal and Coke Company v. Hooks, 286 S. W. (2d) 918.

The purpose of provision of Workmen's Compensation Act, requiring one claiming compensation for disability due to silicosis to show that employe was exposed to hazards of disease in his employment within the state for at least two years before his disability or death, was to afford employers protection against such claims by migrant workers and those who have incurred the disease in employment out of the state. Mary Helen Coal Corporation v. Parrott, 290 S. W. (2d) 477.

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1956. In determining whether employe gave notice of disability due to silicosis as soon as practicable in compliance with statutory requirement, statutory provision as to reasonable cause for delay or failure to give notice may be read as a part of such requirement, and hence delay in giving notice is not fatal to claim for compensation, if employe had reasonable cause for such delay. Harlan Fuel Co. v. Burkhart, 296 S. W. (2d) 722.

1956. Finding of Workmen's Compensation Board that employer had adequate and timely notice of disability due to silicosis was supported by the evidence, in view of circumstances giving rise to reasonable cause for delay in giving such notice. Ibid.

[illegible] findings of Workmen's Compensation Board as to date on which claimant was informed that he had contracted silicosis and period of delay in giving notice thereof to employer. Deal v. United States Steel Corporation, 296 S. W. (2d) 724.

1956. Where record contained evidence to support finding of Workmen's Compensation Board as to period of delay in giving notice to employer of disability due to silicosis, reviewing court would not disturb such finding. Ibid.

1956. Employer's knowledge of an ailment affecting employe's lungs prior to and at the time employe quit work may be taken into consideration in determining whether employe had reasonable cause for delay in giving notice of disability. Ibid.

1956. Where employe contracted silicosis but did not notify employer thereof until four months after employe had been advised of his condition, the employer's knowledge that the employe had been suffering from an ailment of chest and lungs for four years might not be sufficient to excuse the giving of notice to the employer "as soon as practicable", but the knowledge would have a material bearing as to whether the delay in giving notice was for "reasonable cause." United States Steel Corporation v. Burchfield, 296 S. W. (2d) 726.

1956. The reasons for the requirement of prompt notice to the employer are to enable the employer to investigate the claim and to make it posible that the employe be given prompt medical care to minimize the disability. Ibid.

1956. Where employe who quit work to be hospitalized for treatment of a lung condition did not notify the employer that he had contracted silicosis until four months after he had been so advised but employer had knowledge that employe was hospitalized and had been suffering for four years from a lung ailment, the employe had "reasonable cause" for the delay. Ibid.

1957. Evidence sustained award to coal miner, under provision of Workmen's Compensation Law that in cases of disability or death from silicosis, complicated with tuberculosis of lungs, compensation should be payable as for uncomplicated silicosis, if silicosis was an essential fact in causing such disability or death, rather than under provision that where silicosis is aggravated by other disease or infirmity not itself compensable, compensation shall be apportioned between the two disabling causes. Pond Creek Colliery v. Taylor, 302 S. W. (2d) 838.

1957. Evidence sustained award to coal miner, who was suffering from both tuberculosis and silicosis, under KRS 342.316 (7) (1953) rather than under subsection (11), KRS 1953. Ibid.

1957. Three month's interim between knowledge of coal mining employe that he had silicosis and notice to his employer was reasonable notice and "as soon as practicable" within meaning of this section (1955), notwithstanding that a year earlier the employe had been thrown out of work when employer closed mine. Lewallan v. Peabody Coal Co., 306 S. W. (2d) 262.

1957. Provision of Workmen's Compensation Act requiring claimant to give notice to the employer as soon as practicable after the claimant has knowledge he has contracted an occupational disease should be construed liberally in favor of the employe in order to effectuate the beneficient purposes of the Workmen's Compensation Act. Ibid.

1957. The Kentucky Compensation Act authorizing employer and employe to voluntarily subject themselves to silicosis provisions of Act by making voluntary application to board for coverage became a part of contract between employer and miner's union requiring employer to provide protection of benefits under Workmen's Compensation and occupational disease laws and it was duty of employer to join with employe in making written application to board to be included in silicosis provisions, and while employer under contract had no choice, employe had right to election to determine whether he would prefer statutory or common law protection. Relliford v. Eastern Coal Corporation, 149 F. S. 778.

1958. Evidence supported findings of the compensation board denying compensation for neurological condition involving atrophy of muscles and spastic tremors, on

ground that disability was attributable to pre-existing disease. Homer Brown Coal Co. v. Mays, 307 S. W. (2d) 934.

1958. Employer which had, by collective bargaining agreement, committed itself to comply with the workmen's compensation and occupational disease laws of state but had not formally or specially accepted silicosis provisions would be deemed as a matter of law and justice to have done so. Dick v. International Harvester Co., 310 S. W. (2d) 514.

1958. Where employe was paid a lump sum in satisfaction of award for disability from occupational disease, a claim for further compensation made more than one year after satisfaction of the award was barred. Harvey Coal Co. v. Colwell, 313 S. W. (2d) 274.

1958. Where employe who had been employed by three coal mining companies and who was operated upon in August 1954, for removal of portion of lung because of silicosis condition filed a claim against last company to employ him and first company to employ him in January 1955, but employe made no attempt to make known to second company that he had such a disease and he never made formal claim upon or proceeded directly against second company which was made a party defendant on motion by one of other defendants on April 11, 1955, notice given after a delay of 8 months to second company was not given "as soon as practicable" and failure to comply with statutory requirements precluded recovery for compensation benefits by employe in absence of excuse for failure to give earlier notice. Maas v. Tyler, 316 S. W. (2d) 211.

1959. In proceeding for compensation by 50-year-old operator of wagon drill who drilled holes in limestone rock inside underground large rooms or caverns for charges of explosives, wherein it appeared that employe was suffering from silicosis, bronchiectasis and emphysema and no claim was made that he suffered any temporary or permanent disability as result of blow on his chest by steel tongue while helping in moving of drill, substantial evidence, including biopsy report, sustained board's finding that employe was not exposed to hazards of disease of silicosis or any occupational disease in his employment with present employer within state for two years before his disability, and the diseases from which he was suffering were not aggravated or lighted up by any conditions of his employment by his present employer. Pace v. Louisville Crushed Stone Co., 323 S. W. (2d) 539.

1960. Right of recovery of compensation for silicosis may not be defeated by delay in giving notice where the employer is not prejudiced. Osborne Mining Corp. v. Barrera, 334 S. W. (2d) 917.

1960. Where compensation law made liable a last employer in whose services silicosis victim had been previously employed, it could be presumed that employer purchasing prior employer's business would not have employed the victim had it known of his condition. Ibid.

1960. Employe was not entitled to recover compensation for silicosis against last employer purchasing prior employer's mine for failure to give notice of the silicosis condition to the last employer, where excusing the delay would prejudice the last employer which was innocent of any fraud, negligence or other conduct that could form a just basis for fastening liability upon it. Ibid.

1960. Where it was established by medical testimony that coal-cutting machine operator had silicosis in January 1955, and where the diagnosis had been made by his employer's doctor and where mine superintendent, foreman, and section foreman were also notified of such conditions, and where, subsequent to new employer taking over mine on January 2, 1955, these employes were kept on by new employer, notice of claimant of his condition was imputable to new employer. Osborne Mining Co. v. Davidson, 339 S. W. (2d) 626.

1960. Where claimant, seeking workmen's compensation benefits for silicosis, had worked as a coal-cutting machine operator from March 9, 1924, until September 18, 1953, and where it was established by medical testimony in January 1955 that claimant had silicosis but where claimant continued to work even after new employer had taken over on January 2, 1955, and had continued working until he had become disabled, last employer was solely liable for compensation payments. Ibid.

1960. Where coal-cutting machine operator had been employed from March 9, 1924, until September 18, 1953, and where, in January 1955, it was medically established and diagnosed that operator had silicosis but where continued to work until he became disabled, claim for benefits filed November 25, 1958, was timely. Ibid.

1961. Where employe did not have injurious exposure during his 14 months' employment with certain coal mining company in outside work, company was not liable to employe for compensation for disability resulting from silicosis, anthracosis or a combination of both inasmuch as such condition antedated his employment by company. Webb v. Elkhorn Coal Co., 342 S. W. (2d) 533.

1961. In workmen's compensation proceeding brought by miner who had worked over 30 years inside mines and five years on the outside and who had been forced to quit work because of disability after 14 months of employment by defendant, evidence sustained finding that employe's condition, whether caused by silicosis anthracosis or a combination of both, antedated his employment by defendant. Ibid.

1961. Claimant was entitled to compensation for disability caused by silicosis where he became disabled while working for employer under occupational conditions which exposed him to the hazard of the disease, even if claimant had contracted silicosis on or before his employment by last employer. Gibson v. Blue Diamond Coal Co., 342 S. W. (2d) 693.

1961. Disability plus last exposure constitutes basis for an occupational disease claim against an employer, regardless of prior exposures or manifestations of the disease. Ibid.

1961. Controlling factor in determining an employer's liability for an occupational disease is not when or where the disease developed but where the employe became disabled while working under occupational conditions, which would, regardless of the time element, cause such disease. Ibid.

1961. Both amount of a common-law settlement of a claim and cause of action for disability because of silicosis, and degree of disability, should have been credited on whatever amount of disability might be found, and whatever award might be made by the Board of claimant's disability, where amount paid in settlement reflected degree of disability attributable at that time to silicosis. Blevins v. Johnson, 344 S. W. (2d) 375.

1961. Provision of this section requiring employment within the state for at least two years before disability, should be construed liberally to effectuate the purposes of the Act. Ibid.

1961. Settlement of a common-law action for disability caused by silicosis, was not a bar to a subsequent claim for workmen's compensation for disability, where legal right to workmen's compensation did not exist at time the common-law action was filed. Ibid.

1961. Date of disability under conditions which could cause disabling occupational disease is controlling factor in fixing liability for compensation as between various employers. W. M. Coal Company v. Campbell, 344 S. W. (2d) 794.

1961. Proof that conditions in last employment were such that over indefinite period of time they could have caused disabling occupational disease is sufficient to establish liability of last employer for compensation, though disease may have been contracted in substantial degree during prior employment. Ibid.

1961. Employer's insurer at time coal miner became totally disabled due to silicosis while working under conditions which could cause disease was liable for compensation, though policy had been issued only twelve days before disability. Ibid.

(1962) Notice to employer of occupational disease not required until disease causes disability which impairs capacity of employe to perform work, and employe knows or should know by exercise of reasonable care and diligence that he is suffering from the disease. Tungstall v. Blue Diamond Coal Co., 359 S. W. (2d) 614.

(1962) Workmen's compensation claimant who became disabled with pneumoconiosis and was last injuriously ex-

posed to hazard of that disease while in employment in coal company's mine was entitled to compensation. High Splint Coal Company v. Chandler, 363 S. W. (2d) 103.

(1962) Evidence supported finding that coal miner suffered occupational pneumoconiosis rather than silicosis, which would have required miner to show two-year exposure in order to obtain compensation. Ibid.

(1963) Notice of disability not required to be given until employe has disability from occupational disease which impairs capacity to perform work and employe knows or should know by exercise of reasonable care and diligence that he is suffering from disease. Inland Steel Company v. Mullins, 367 S. W. (2d) 250.

(1963) Board's finding that coal miner was totally disabled due to disease of silicosis, supported by evidence. Ibid.

(1963) Amendment 1962 (Sub (13) (a)) providing for workmen's compensation payments partially out of subsequent claim fund and partially by employer changed substantive rights and did not affect pending litigation, therefore, board did not err in failing to make fund party to pending proceedings and in failing to order partial payment from fund on final award entered after effective date of amendment. Ibid.

(1963) Proof relating to other possible contributing factors to total and permanent disability of one employed by coal mining company and found disabled by occupational disease of respiratory nature acquired in employment was insufficient to require apportionment. Bethlehem Mines Corporation v. Davis, 365 S. W. (2d) 176.

(1963) So long as man is able to carry on his duties, though he may suffer while doing them, he is not yet disabled within meaning of this section requiring timely notice of disability. Ibid.

(1963) Court could not supplant Board in its finding of fact that Board could not determine that claimant's disability which he asserted was silicosis resulted from occupational disease where evidence was conflicting, three physicians testified that claimant had silicosis and three testified that he did not. Roark v. Alva Coal Corporation, 371 S. W. (2d) 856.

(1965) Where worker was employed by one company which ceased operation in May 1961 and thereafter in December 1961 he was employed by another coal company and worked three days, and subsequently discovered that he had silicosis he was not disabled at the time he left employment of the first employer and consequently that company was not responsible for his occupational disease. Davis v. Harlan Everglow Coal Co., 392 S. W. (2d) 62.

(1965) Where on pre-employment examination, doctor recommended that the employe be not employed in mine where he would be exposed to dust, and he did not file claim for more than two years thereafter, the claim for occupational disease was barred by this statute. Good v. Russell Fork Coal Co., 387 S. W. (2d) 842.

(1965) Claim for condition in right hand which prevented worker from performing her duties, diagnosed as tenosynovitis, which was specifically attributable to the repetitious use of the right palm and wrist in operating a calculating machine during employment held to constitute one for a compensable disability from an occupational disease. National Stores, Inc. v. Hester, 393 S. W. (2d) 603.

(1965) Where claimant worked in coal mines in Kentucky for 33 years prior to November 1961 and then obtained work in West Virginia and continued work until September 1962 during all of which employment he was exposed to the occupational disease of silicosis, his disability due to silicosis was not compensable under the Kentucky law for the reason that he was not exposed to the hazards of the disease within this state for at least two years immediately next before his disability. Lovell v. Osborne Mining Corp., 395 S. W. (2d) 596.

(1965) Where statute which barred a claim not filed within 3 years after the last injurious exposure was amended before the bar had become complete so that the three year limitation was removed, the claim was not barred if otherwise filed within the statutory period. Kiser v. Bartley Mining Co., 397 S. W. (2d) 56.

(1966) Limitations prescribed by the workmen's compensation law did not apply to actions or breach of union contract requiring coverage for occupational diseases. Blankenship v. Majestic Collieries Co., 399 S.W. (2d) 699.

(1966) Where claimant's claim for workman's compensation benefits was denied on the ground that he did not suffer from an occupational disease his subsequent death from a cause not attributable to his work was not compensable. Marcus v. United States Steel Corp., 402 S.W. (2d) 692.

(1966) The maximum award available to claimant suffering from silicosis for which the employer could be liable would be fixed at the maximum amount allowable under the law at the time he separated from the employer's employment. Beth-Elkhorn Corp. v. Thomas, 404 S.W. (2d) 16.

(1966) Subsection (4) of this section becomes applicable only when an injurious exposure in Kentucky for two years has been interrupted by an injurious exposure outside of Kentucky. Ibid.

(1967) Where employe who had engaged in coal mining for various employers for many years had engaged in actual mining operations for two or three weeks in his last two years of employment, his claim for disability from silicosis against his last employer was allowable. Moore Mining Co. v. Gibbons, 412 S.W. (2d) 261.

(1967) Award in 1962 on the basis of 57.2% of disability as a result of silicosis, could be reopened and an award of 100% disability substituted as result of same disease on the basis of a finding of a change in condition. Daugherty v. Watts, 419 S.W. (2d) 137.

(1967) Where employe was totally disabled as a result of an injury while at work and it was later found that he was also totally disabled from silicosis for which special fund was liable, an award imposing complete liability on the employer for permanent disability so long as the disability was attributable to the injury at work was proper. Estep Coal Co. v. Ward, 421 S.W. (2d) 367.

342.320 Regulation of charges by attorneys, physicians and hospitals; policy as to attorney's fees. (1) All fees of attorneys and physicians, and all charges of hospitals under this chapter, shall be subject to the approval of the board. No attorney fees shall be allowed or approved against any party not represented by said attorney, nor shall any attorney fee be allowed or approved exceeding an amount equal to 20 percent of the amount recovered. Provided, however, the board, in making an allowance of attorney fees, shall in each case examine the record to ascertain the extent of the services rendered, and fix a reasonable fee for the services rendered, not to exceed the maximum authorized by this section. The board may reduce the attorney's fee to an amount commensurate with the services performed, or may deny or reduce an attorney's fee upon proof of solicitation of employment.

(2) No attorney's fee in any case involving benefits under this chapter shall be paid until the fee is approved by the board, and any contract for the payment of attorney's fees otherwise than as provided in this section shall be void. The entire attorney's fee in a lump sum shall be paid directly to the attorney of record, and the board in allowing or approving an attorney's fee, as provided in this section, shall order the payment of same directly to the attorney, commuting sufficient of the final payments of compensation payable under the award to a lump sum for that purpose.

LOUISIANA

Sec. 2581. Development of heart and lung disease during employment in classified fire service; occupational disease

Any disease or infirmity of the heart or lungs which develops during a period of employment in the classified fire service in the State of Louisiana shall be classified as a disease or infirmity connected with the employment. The employee affected, or his survivors, shall be entitled to all rights and benefits to which one suffering an occupational disease is entitled as service connected in the line of duty, regardless of whether the fireman is on duty at the time he is stricken with the disease or infirmity. Such disease or infirmity shall be presumed, prima facie, to have developed during the employment whenever same is manifested at any time after the first five years of employment.

Title of Act: Declaring heart and lung disease developing during employment in the classified fire service in the State of Louisiana an occupational disease and providing for benefits to an affected employee; creating a presumption as to the development of the disease. Acts 1968, No. 337.

Act 2 Heart & Lung

HOUSE BILL NO. 118 BY: MR. STRAIN

AN ACT

Declaring heart and lung disease developing during employment in the classified fire service in the State of Louisiana an occupational disease and providing for benefits to an affected employee; creating a presumption as to the development of the disease.

Be it enacted by the Legislature of Louisiana:

Section 1. Any disease or infirmity of the heart or lungs which develops during a period of employment in the classified fire service in the State of Louisiana shallbe classified as a disease or infirmity connected with the employment. The employee affected, or his survivors, shall be entitled to all rights and benefits to which one suffering an occupational disease is entitled as service connected in the line of duty, regardless of whether the fireman is on duty at the time he is stricken with the disease or infirmity. Such disease or infirmity shall be presumed, prima facie, to have developed during the employment whenever same is manifested at any time after the first five years of employment.

Section 2. If any provision of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions or applications hereof which can be given effect without the invalid provisions or applications and, to this end, the provisions of this Act are hereby declared severable.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

LIEUTENANT GOVERNOR AND PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

STATE OF MAINE

APPROVED

APR 24 '75

BY GOVERNOR

CHAPTER

169

PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED SEVENTY-FIVE

H. P. 230 — L. D. 286

AN ACT Relating to Pulmonary and Cardiac Diseases under the Workmen's Compensation Act.

Be it enacted by the People of the State of Maine, as follows:

39 MRSA §§ 64-B and 64-C are enacted to read:

§ 64-B. Cardiovascular injury or disease or pulmonary disease suffered by a fire fighter

If any person has been an active member of a municipal fire department or of a volunteer fire fighters' association for at least 2 years prior to a cardiovascular injury or the onset of a cardiovascular disease or pulmonary disease and if said disease has developed or the injury has occurred within 6 months of having participated in fire fighting or training or drill which actually involves fire fighting, it shall be presumed, unless the employer proves the contrary by a preponderance of the evidence, that the employee received the injury or contracted the disease arising out of and in the course of his employment, that sufficient notice of the injury or disease has been given, and that the injury or disease was not occasioned by the willful intention of the employee to injure himself or another.

§ 64-C. Cardiovascular injury or disease or pulmonary disease resulting in a firefighter's death

If any person had been an active member of a municipal fire department or of a volunteer fire fighters' association for at least 2 years prior to a cardiovascular injury or the onset of a cardiovascular disease or pulmonary disease and provided that the person had developed the disease or had suffered the injury which resulted in death within 6 months of having a cardiovascular disease or pulmonary disease which resulted in his death, and had participated in fire fighting or training or drill which actually involves fire fighting, it shall be presumed, unless his employer proves to the contrary by a preponderance of the evidence, that the person received the injury or disease arising out of and in the course of his employment, that sufficient notice of the injury or disease was given, and that the injury or disease was not occasioned by the willful intention of the employee to injure himself or another.

CHAPTER 6

OCCUPATIONAL SAFETY RULES AND REGULATIONS BOARD

Sec.
561. Declaration of policy
562. Coverage
563. Definitions
564. Establishment of board; purpose
565. Powers and duties of board
566. Enforcement
567. Enforcement penalty
568. Appeals
569. Rules and regulations

Sec. 561. Declaration of policy

It is declared the public policy of the [redacted]e that [redacted]s employed in any occupation [redacted] [redacted]s to their health and safety.

1969, c. 454.

Sec. 562. Coverage

This chapter shall apply to all employers except those exempt under section 45-A.

1969, c. 454.

Sec. 563. Definitions

Under this chapter, the following words shall have the following meanings:

1. Approved. "Approved" shall mean as approved by the Board of Occupational Safety Rules and Regulations;

2. Board. "Board" shall mean the Board of Occupational Safety Rules and Regulations;

3. Commissioner. "Commissioner" shall mean the Commissioner of Labor and Industry;

4. Department. "Department" shall mean the Department of Labor and Industry;

5. Employ. "Employ" shall mean employ, suffer or permit to work;

6. Employee. "Employee" shall mean any individual employed or permitted to work by an employer but the following individuals shall be exempt from this chapter:

A. Any individual employed in agriculture as defined in the Maine Employment Security Commission law and the Federal Unemployment Insurance Tax Law;

B. Any individual employed in domestic service in or about a private home;

C. Any individual employed in the catching, taking, propagating, harvesting, cultivating or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing such marine products at sea as incident to, or in conjunction with, such fishing operations, including the going to and returning from work and including employment in the loading and unloading when performed by any such employee;

7. Occupation. "Occupation" shall mean employment in an industry, trade or business or branch thereof or class of work therein in which workers are gainfully employed;

8. Occupational safety and health standard. "Occupational safety and health standard" means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations or processes reasonably necessary to provide employment and places of employment that are free from hazards to safety or health;

9. Single industry. "Single industry" shall mean an industry as defined in the Standard Industrial Classification Manual 1967.

1969, c. 454.

Sec. 564. Establishment of board; purpose

For the purpose of formulating and adopting safety rules and regulations to provide reasonably safe and healthful working conditions for all employees, other than those exempt in section 45-, the Board of Occupational Safety Rules and Regulations is established.

The board shall consist of 7 members of which 6 shall be appointed by the Governor with the advice and consent of the Council. Of the 6 appointed members of the board, 2 shall represent employers; 2 shall represent employees; one shall represent an insurance company licensed to insure Workmen's Compensation within the State and one shall represent the public. The 7th member of the board shall be the Commissioner of Labor and Industry.

The term of office for the appointed members shall be 4 years. In the first appointment, 2 shall be appointed for a term of 2 years; 2 shall be appointed for a term of 3 years and 2 shall be appointed for a term of 4 years. The chairman shall be elected biennially by the members of the board. Each member shall hold office until his successor is duly appointed and qualified.

In case of a vacancy in board membership, the Governor, with the advice and consent of the Council, shall appoint a member of the proper classification to fill the unexpired term of the absent member.

The board shall meet at least twice yearly at the State Capitol or any other place designated by the chairman.

The 6 appointed members of the board shall serve without salary and shall receive their actual expenses while engaged in the performance of their duties as members of the board. The chairman of the board shall approve and countersign all vouchers for expenditures under this section.

1969, c. 454.

Sec. 565. Powers and duties of board

The board shall formulate and adopt reasonable rules and regulations for safe and healthful working conditions, including rules requiring the use of personal protective equipment. The rules and regulations so formulated shall conform as far as practicable to nationally recognized standards of industrial safety. Such rules and regulations shall become effective 90 days after the date of their adoption and promulgation. Before any rules and regulations are adopted, a public hearing shall be held after suitable notice has been published in at least 3 daily newspapers in the State. The board may at its discretion appoint ad hoc single industry's committees to advise and counsel the board on rules and regulations needed for the protection of the workers engaged in the industry. Such committees

shall be composed of an equal number of representatives of employers and from employees engaged in the single industry and not less than one member representing safety engineers engaged by insurance companies licensed to write Workmen's Compensation Insurance in the State. Such committee members shall serve without salary and shall receive their actual expenses in the performance of their duties as members of such committees.

1969, c. 454.

Sec. 566. Enforcement

The department shall inspect and enforce the rules and regulations.

1969, c. 454.

Sec. 567. Enforcement penalty

If, upon inspection or investigation, the commissioner or his agents determine that any employer or employee has violated any rule or regulation promulgated under section 565, he shall issue such orders as are deemed to be necessary to enforce such rule or regulation. Any employer or employee who has been found in violation of any rule or regulation and who refuses to obey the order of the commissioner shall be punished by a fine of not less than $25 nor more than $200 for each violation. Each violation shall be a separate offense. When the violation is of a continuing nature, each day during which it continues after a reasonable time specified in the order shall constitute a separate offense, except during the time of appeal as provided in section 568.

1969, c. 454.

Sec. 568. Appeals

Any person aggrieved by an order or act of the commissioner or of an inspector of the department under this chapter may, within 15 days after notice thereof, appeal from such order or act to the board which shall hold a hearing thereon, and said board shall, after such hearing, issue an appropriate order either approving or disapproving said order or act.

Any such order of the board or any rule or regulation formulated by the board shall be subject to review by the Superior Court by an

appeal taken within 30 days after the date of such order to the Superior Court held in and for the county in which the operation is located at the instance of any party in interest and aggrieved by said order or decision. Such appeal shall be prosecuted by complaint to which such party shall annex the order of the board and in which the appellant shall set forth the substance of and the reasons for the appeal. Upon the filing thereof, the court shall order notice thereof. Upon the evidence and after hearing, which shall be held not less than 7 days after notice thereof, the court may modify, affirm or reverse the order of the board and the rule or regulation on which it is based in whole or in part in accordance with the law and the weight of the evidence. The court, upon hearing, shall determine whether the filing of the appeal shall operate as a stay of any order pending the final determination of the appeal, and may impose such terms and conditions as may be deemed proper.

1969, c. 454.

Sec. 563. Rules and regulations

The rules and regulations formulated under this chapter may supplement, but shall in no manner supersede, the rules and regulations duly promulgated by the Board of Boiler Rules, the Board of Construction Safety Rules and Regulations and the Board of Elevator Rules and Regulations, whose rule making authority is clearly set forth in sections 173, 373 and 432, respectively.

1969, c. 454.

tion payments, any surplus or earnings remaining may be invested in the securities specified in this section.

8. If any employer shall default in any payment to the occupational disease account, the sum due may be collected by an action at law in the name of the state and such right of action shall be cumulative. The board is hereby authorized, in its discretion, to cancel any employer's right to operate under compensation plan No. 3 for failure to pay the premiums due; provided, that when the board makes an order cancelling an employer's right for failure to pay premiums or assessments it shall be the duty of the board to make such order at least sixty (60) days before the cancellation becomes effective and to send a formal notice to the sheriff or sheriffs of the county or counties wherein the employer is operating, and it shall be the duty of the said sheriff or sheriffs to post a notice in at least three (3) conspicuous places where the workmen can readily see said notices to the effect that the board has cancelled the right of the said employer to operate under the act, and said notice shall give the date of the effectiveness of said order. After said cancellation date the said employer shall have the same status as an employer who is not enrolled under the occupational disease act.

When an employer's right to operate has been cancelled by the board for failure to pay premiums and when the board, in its discretion, finds that the property and assets of said employer are not sufficient to pay said premiums, the board may compromise said claim for premiums and accept a payment of an amount less than the total amount due.

9. For any disability to any employee resulting from an occupational disease occurring during default in any payment to the occupational disease compensation account, the defaulting employer as to such disability shall be considered as having elected not to come under the provisions of this act, except that he shall be and remain liable to pay to the occupational disease compensation account the amount of such default together with the penalty prescribed in subsection 5 of this section.

10. The person entitled to sue under the provisions of subsection 9 of this section shall have the option of proceeding by suit or taking under this act. If such persons take under this act, the cause of action against the employer shall be assigned to the state for the benefit of the occupational disease compensation account. If such person shall elect to proceed against the defaulting employer, such election shall constitute a waiver of any right to compensation under the provisions of this act.

11. Any cause of action assigned to the state under the provisions of subsection 10 of this section may be prosecuted or compromised by the board in its discretion.

12. Where an employee is entitled to compensation under compensation plan No. 3, he shall file with the board his application therefor, together with the certificate of the physician attending him, and it shall be the duty of such physician to lend all necessary assistance in making application for compensation and such proof of other matters as may be required by the rules of the board without charge to the employee, provided, however, that the filing of a certificate of the attending physician shall not constitute a sworn claim for compensation.

13. For proper compliance with the provisions of subsection 12 of this section, the physician, after approval by the board, shall be paid out of the occupational disease compensation account, five dollars ($5.00) for each case.

14. Where death results from an occupational disease, the parties entitled to compensation under compensation plan No. 3, or someone in their behalf, shall make application for the same to the board. The application must be accompanied with proof of death and proof of relationship, showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof as may be required by the board.

15. In computing the payroll of any employer the entire compensation received by any employee subject to this act shall be included, whether it be in the form of salary, wage, piecework, or otherwise and whether payable in money, board or otherwise.

16. Disbursements out of the occupational disease compensation account in the agency fund shall be made by the treasurer of the board, as the board may order. If at any time there shall not be sufficient money in the occupational disease compensation account with which to pay any warrants drawn thereon, the employer, on account of whose workmen the warrant was drawn, shall pay the same, and upon his next contribution to such fund he shall be credited with the amount so paid, with interest thereon at the rate of six per centum (6%) per annum from the date of such payment to the date upon which the next assessment becomes payable; and if the amount of the credit exceeds the amount of such assessment, he shall have a warrant upon such account for the excess, and if said warrant be not paid for want of funds, it shall be credited to such employer and be applied upon succeeding assessments.

17. All earnings made by the occupational disease compensation account by reason of interest paid for the deposit thereof, or

otherwise, shall be credited to and become a part of said account, and the making of profit, either directly or indirectly, by the treasurer of the board, or any other person, out of the use of the occupational disease compensation account shall constitute a felony, and on conviction thereof shall subject the person making such profit to imprisonment in the state penitentiary for a term not exceeding two (2) years, or a fine not exceeding five thousand dollars ($5,000.00), or both such fine and imprisonment, and the treasurer of the board shall be liable upon his official bond for all profits realized for any unlawful use of the said fund.

92-1335. Hearing, findings and awards. Upon receiving a demand for hearing or rehearing by the party dissatisfied by either the first or second determination of compensability by the board, as provided in section 92-1315, the board shall hold such hearing within ninety (90) days from the date of demand for hearing or rehearing. After the final hearing by the board, it shall within thirty (30) days, make and file a finding upon all facts involved in the controversy, and its award, which shall state its determination as to the rights of the parties.

92-1336. Power of board to award compensation and time and manner of payment. The board in its award may fix and determine the total amount of compensation to be paid, and specify the manner of payment, or may fix and determine the weekly disability indemnity to be paid, subject to the limitations in this act contained; providing, however, that the payment of such award and indemnity shall be in the same manner as that of undisputed awards and indemnities coming within the particular plan provided for in this act to which said award and indemnity belong.

92-1337. Where payment due to child under eighteen years. Where payment is due to a child under eighteen (18) years of age to a person adjudged incompetent, the same shall be made to the parent or to the duly appointed guardian, as the case may be, and the written receipt of such parent or guardian shall acquit the employer, the insurer or board, as the case may be, of further liability. In other cases, payment shall be made to the person entitled thereto or to his duly authorized representative.

92-1338. Payment of compensation shall begin. Payment of compensation under this act shall begin on July 1, 1959.

92-1339. Common law defenses not available.

A. Employers subject to and who fail to comply with the provisions of section 92-1334 of this act shall not be entitled to the benefits

of this act during the period of noncompliance, and shall not avail himself of the defenses:

1. That the employee was negligent, unless such negligence was willful;

2. That the disability was caused by the negligence of a fellow employee;

3. That the employee had assumed the risks inherent, incident to, or arising out of his employment, or arising from the failure of the employer to provide and maintain a reasonably safe place to work, or reasonably safe tools or appliances.

92-1340. Penalties for violation. An employer subject to this act who fails to comply with section 92-1334, or a person who violates any other provision of this act, does an act prohibited thereby, or fails or refuses to perform a duty imposed by this act within the time prescribed by law or by the board for which no penalty is specifically provided, or fails, neglects or refuses to obey an order of the board or a judgment of a court under the provisions of this act, is guilty of a misdemeanor punishable by a fine of not less than one hundred dollars ($100.00) nor more than six hundred dollars ($600.00) for the first offense, and not less than two hundred dollars ($200.00) nor more than twelve hundred dollars ($1,200.00) for each subsequent offense.

92-1341. Deduction from wages of any part of a premium misdemeanor—hospital contributions. It shall be unlawful for the employer to deduct or obtain any part of any premium required to be paid by this act from the wages or earnings of his workmen, or any of them, and the making or attempt to make any such deduction shall be a misdemeanor, except that nothing in this section shall be construed as prohibiting contributions by employees to a hospital fund, as elsewhere in this act provided.

92-1342. False representation by employee. No compensation shall be payable for an occupational disease if the employee, at the time of entering the employment of the employer by whom the compensation would otherwise be payable, knowingly represented himself in writing as not having previously been disabled, laid off, or compensated in damages or otherwise, because of such disease when the contrary is true.

92-1343. Legal action by board. Upon request of the board, the attorney general shall institute and prosecute actions for the enforcement of the provisions of this act or for the recovery of money due the state occupational disease compensation account in the agency fund or for any penalty provided for in this act, and he shall prosecute

92-1351. Depositions may be taken. The Board, or any member thereof, or any party to the action or proceeding may, in any investigation or hearing before the board, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the district courts of this state, and to that end may compel the attendance of witnesses and the production of books, documents, papers and accounts.

92-1352. Powers of board. The board is hereby vested with full power, authority, and jurisdiction to do and perform any and all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this act.

92-1353. Powers to issue writs and process—fees for serving. The board, and each member thereof shall have power to issue writs of summons, warrants of attachment, warrants of commitment, and all necessary process in proceedings for contempt in like manner and to the same extent as courts of record. The process issued by the board or any member thereof shall extend to all parts of the state, and may be served by any persons authorized to serve process of courts of record, or by any person designated for that purpose by the board, or any member thereof.

The person executing any such process shall receive such compensation as may be allowed by the board, not to exceed the fees now prescribed by law for similar service, and such fees shall be paid in the same manner as provided herein for the fees of witnesses.

92-1354. Power to administer oaths, certify official acts, issue subpoenas—witness fees and mileage. The board and each member thereof, its secretary and referees, shall have the power to administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony in an inquiry, investigation, hearing, or proceeding in any part of the state. Each witness who shall appear by order of the board, or any member thereof shall be entitled to receive, if demanded, for his attendance the same fees and mileage allowed by law to a witness in civil cases in the district court, which amount shall be paid by the party at whose request such witness is subpoenaed, unless otherwise ordered by the board. When any witness, who has not been required to attend at the request of any party, is subpoenaed by the board, his fees and mileage may be paid from the fund appropriated for the use of the board in the same manner as other expenses of the board are paid. Any witness subpoenaed, except one whose fees and mileage may be paid from the funds of the

board, may at the time of service demand the fee to which he is entitled for travel to and from the place at which he is required to appear, and one day's attendance. If such witness demands such fees at the time of service and they are not at that time paid or tendered, he shall not be required to attend before the board, or a member thereof or referee, as directed in the subpoena.

92-1355. Power of district court concerning production of testimony —contempt. The district court in and for the county in which any inquiry, investigation, hearing, or proceeding may be held by the board, or any member thereof, shall be the power to compel the attendance of witnesses, the giving of testimony, and the production of papers, books, accounts, and documents as required by any subpoena issued by the board, or any member thereof. The board, or any member thereof, before whom the testimony is to be given or produced, in case of the refusal of any witness to attend or testify or produce any papers required by such subpoena, may report to the district court in and for the county in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place fixed for the attendance of said witness, or the production of said papers, and that the witness has been summoned in the manner prescribed in this act, and that the witness has failed and refused to attend, or produce the papers required by the subpoena before the board or any member thereof in the case of proceeding named in the notice and subpoena, or has refused to answer questions propounded to him in the course of such proceedings, and ask an order of said court compelling the witness to attend and testify or produce said papers before the Board. The court, upon the petition of the board, or any member of the board, shall enter an order directing the witness to appear before the court at the time and place to be fixed by the court in such order, not more than ten (10) days from the date of the order, and then and there show cause why he had not attended or testified, or produced such papers before the board. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the board, or a member thereof, and regularly served, the court shall thereupon enter an order that said witness appear at the time and place fixed in said order, and testify or produce the required papers, and upon failure to obey said order, said witness shall be dealt with as for contempt of court. The remedy provided in this section is cumulative, and shall not be construed to impair or interfere with the power of the board, or a member thereof, to enforce the attendance of witnesses and the production of papers, and to punish for contempt, in the same manner and to the same extent as courts of record.

92-1356. Certificates and certified copies as evidence. Copies of

official documents and orders filed or deposited according to law in the office of the board, certified to by a member of the board, or by the secretary under the official seal of the board, to be true copies of the original, shall be evidence in like manner as the originals. In any court proceeding, wherein the question as to whether or not an employer or employee has complied with and is operating under and bound by the provisions of the occupational disease act of Montana, is a question for determination, a certificate by a member of the board, or by the secretary under the official seal of the board, certifying that such employer or employee has or has not complied with, and is or is not operating under, and is or is not bound by the provisions of the occupational disease act of Montana, shall be prima facie evidence thereof.

92-1357. Apportionment of costs and disbursements—expenses. The costs and disbursements incurred in any proceeding or hearing before the board or a member thereof, may be apportioned between the parties on the same or adverse sides, in the discretion of the board. Costs and disbursements in any proceeding or hearing, arising out of cases under plan No. 3, may be paid from the occupational disease compensation account in the agency fund, and in the discretion of the industrial board, including the necessary traveling and other expenses and disbursements of the members of the board, its referees or officers or employees incurred while actually conducting investigations, hearings or proceedings, within or without the State of Montana.

92-1358. Books, records and payrolls to be open to inspection. The books, records, and payrolls of the employer, pertinent to the administration of this act shall always be open to inspection by the boards or any duly authorized employee thereof, for the purpose of ascertaining the correctness of the payroll, the number of men employed, and such other information as may be necessary for the board and its management under this act. Refusal on the part of the employer to submit said books, records and payrolls for such inspection shall subject the following employer to a penalty of one hundred dollars ($100.00) for each offense, to be collected by civil action in the name of the state.

92-1359. Jurisdiction of board to hear disputes and controversies. All proceedings to determine disputes or controversies arising under this act shall be instituted before the board, and not elsewhere, and determined by them, except as otherwise in this act provided, and the board is hereby vested with full power, authority, and jurisdiction to try and finally determine all such matters, subject only to review in the manner and within the time in this act provided.

92-1360. Presumption as to legality of rules, orders, findings, etc., of board. All orders, rules and regulations, findings, decisions, and awards of the board in conformity with law shall be in force and shall be prima facie lawful; and all such orders, rules and regulations, findings, decisions, and awards shall be presumptively presumed to be reasonable and lawful until and unless they are modified or set aside by the board or upon review.

92-1361. Collateral attack not permitted. No orders or decisions of the board shall be subject to collateral attack, and may be reviewed or modified only in the manner provided therein.

92-1362. Appeal to district court. Within thirty (30) days after the rendition of the final decision of the board provided in this act and within twenty (20) days after notice thereof, any party affected thereby, may appeal to the district court of the judiciary district of the State of Montana, in and for the county in said state wherein the occupational disease disability occurred or the employer may have a place of residence, or if such employer be a corporation may have its principal office or place of business and said appeal shall be for the purpose of having the lawfulness of the determination, order, decision or award inquired into and determined.

92-1363. Procedure upon appeal. The said appeal shall be taken pursuant to the provisions of section 92-834, Revised Codes of Montana, 1947.

92-1364. Appearance on appeal. Appearances shall be made and judgment rendered in the manner set forth in section 92-835, Revised Codes of Montana, 1947.

92-1365. Appeal to supreme court. Either the board, or the appellant, or any adversary party, if there be one, may appeal to the supreme court of the State of Montana from any final order, judgment, or decree of the said district court, which said appeal shall be taken in like manner as appeals are now taken in other civil actions to the said supreme court, and upon such appeal the said supreme court shall make such orders in reference to stay of proceedings as it finds to be just in the premises, and may stay the operation of any order, judgment, or decree of said district court, without requiring any bond or undertaking from the applicant for such stay. When any such cause is so appealed it shall have precedence upon the calendar of the said supreme court, and shall be tried by said supreme court upon the record made in said district court and before said board, and judgment and decree shall be entered therein as expeditiously as possible.

92-1366. Employer liability. There is imposed on every employer subject to this act a liability for the payment of compensation as herein provided.

92-1367. No vested right to compensation. The right to the compensation provided for herein shall not, nor shall the rate or amount there be, or become vested or continuing rights, in persons awarded compensation under this act, or any amendment hereof, but the state reserves the right, by act of the legislature, to reduce the rate or amount of compensation thereafter to be received by any person theretofore or thereafter receiving compensation under this act or any amendment hereof, or to wholly discontinue to all persons all compensation provided for by this act, or any amendment hereof.

92-1368. This act to be liberally construed. Whenever this act or any part or section thereof is interpreted by a court, it shall be liberally construed by such court.

92-1369. All acts or parts of acts in conflict herewith are hereby repealed.

92-1370. This act shall be in full force and effect from and after its date of passage and approval.

CHAPTER ....XXX.....

AN ACT to add new Section ~~102~~ 64A to Article 101 of the Annotated Code of [redacted] (1970 Supplement), title "Workmen's Compensation," ~~to be under the new subtitle "Death and Disability Payments—Fire Fighters,"~~ to follow immediately after Section ~~102~~ 6 thereof, to ~~establish certain medical conditions where the death or disability of a fire fighter is presumed to be accidental and as result of his employment~~ PROVIDE THAT THERE IS A PRE SUMPTION OF COMPENSABLE OCCUPATIONAL DISEASE IN CASES OF CERTAIN FIRE FIGHTERS SUSTAINING TEMPORARY OR TOTAL DISABILITY OR DEATH UNDER CERTAIN CONDITIONS, AND TO PROVIDE THAT BENEFITS MAY ALSO BE PAYABLE UNDER A RETIREMENT SYSTEM UNDER CERTAIN CONDITIONS.

House 1 No. 483.

Introduced by Delegates Robey and Welschgoff.

SECTION 1. *Be it enacted by the General Assembly of Maryland*, That new Section ~~102~~ 64A be and it is hereby added to Article 101 of the Annotated Code of Maryland (1970 Supplement), title "Workmen's Compensation," ~~to be under the new subtitle "Death and Disability Payments—Fire Fighters,"~~ SUBTITLE, "MISCELLANEOUS" to follow immediately after Section ~~102~~ 64 thereof, and to read as follows:

Death and Disability Payments—Fire Fighters

~~102~~ *64A.*

Any condition or impairment of health of any PAID municipal, county, airport authority, ~~port authority,~~ or fire control district fire fighter caused by lung diseases, heart diseases, or hypertension resulting in total or partial disability or death shall be ~~presumed to have been accidental and to have been suffered in the course of his employment, provided that such fire fighter had successfully passed a physical examination upon entering into service as a fire fighter which failed to reveal any evidence of any such condition or impairment of health~~ PRESUMED TO BE COMPENSABLE UNDER THIS ARTICLE AND TO HAVE BEEN SUFFERED IN THE LINE OF DUTY AND AS A RESULT OF HIS EMPLOYMENT.

NOTWITHSTANDING ANY PROVISION OF THIS ARTICLE ~~AND~~ ANY PAID FIRE FIGHTER WHOSE COMPENSABLE CLAIM RESULTS FROM A CONDITION OR IMPAIRMENT OF HEALTH CAUSED BY LUNG DISEASES, HEART DISEASES OR HYPERTENSION AND HAS BEEN SUFFERED IN THE LINE OF DUTY SHALL RECEIVE SUCH BENEFITS AS ARE PROVIDED FOR IN THIS ARTICLE IN ADDITION TO SUCH BENEFITS AS HE MAY BE ENTITLED TO UNDER THE RETIREMENT SYSTEM IN WHICH SAID FIRE FIGHTER WAS A PARTICIPANT AT THE TIME OF HIS CLAIM. THE BENEFITS RECEIVED UNDER THIS ARTICLE HOWEVER, SHALL BE ADJUSTED SO THAT THE TOTAL OF ALL WEEKLY BENEFITS SHALL NOT EXCEED ONE HUNDRED PERCENT OF THE WEEKLY SALARY WHICH WAS PAID TO SAID FIRE FIGHTER.

SEC. 2. *And be it further enacted*, That this Act shall take effect July 1, 1971.

EMERGENCY BILL

Gov

House Bill No. 911—By Delegate Friedman.

Passed 3-27
4-7-

CHAPTER.....

A BILL ENTITLED

AN ACT to repeal and re-enact, with amendments, Section 33 of Article 101 of the Annotated Code of [redacted] ~~(1964 Replacement Volume), title "Workmen's Compensation," subtitle "Application of Article; Extra-Hazardous Employments," as added by Chapter .... (House Bill 105) of the 1971 Laws of Maryland,~~ (1970 SUPPLEMENT AS AMENDED BY CHAPTER 741 OF THE ACTS OF 1970 AND CHAPTER .... (HOUSE BILL 105) OF THE ACTS OF 1971), TITLE "WORKMEN'S COMPENSATION," SUBTITLE "APPLICATION OF ARTICLE; EXTRA-HAZARDOUS EMPLOYMENTS to provide that whenever benefits are furnished by an employer, as defined, equal to or better than the benefits provided under Article 101 of the Annotated Code of Maryland, such defined employer shall be released of any obligation thereunder, but should such benefits be less than those required by the said Article 101, such defined employer shall make up the difference, and the Workmen's Compensation Commission is empowered to determine whether such benefits are equal to or better than the benefits required under said Article 101; to authorize the Workmen's Compensation Commission to make an award for any benefit furnished by an employer which is less than required by this Article; and to provide that the Workmen's Compensation Commission shall have continuing jurisdiction over cases arising under this Section.

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That Section 33 of Article 101 of the Annotated Code of Maryland ~~(1964 Replacement Volume), title "Workmen's Compensation," subtitle "Application of Article; Extra-Hazardous Employments," as added by Chapter .... (House Bill 105) of the 1971 Laws of Maryland,~~ (1970 SUPPLEMENT AS AMENDED BY CHAPTER 741 OF THE ACTS OF 1970 AND CHAPTER .... (HOUSE BILL 105) OF THE ACTS OF 1971), TITLE "WORKMEN'S COMPENSA-

EXPLANATION: *Italics indicate new matter added to existing law.*
[Brackets] indicate matter stricken from existing law.
CAPITALS indicate amendments to bill.
~~Strike outs~~ indicates matter stricken out of bill.

TION," SUBTITLE "APPLICATION OF ARTICLE; EXTRA-HAZARDOUS EMPLOYMENTS be and it is hereby repealed and re-enacted, with amendments, to read as follows:

33.

In time of peace and while engaged in military service all officers and enlisted men of the organized militia of the State of Maryland shall be deemed workmen of the State for wages within the meaning of this section; provided that, whenever and so long as provision equal to or better than that given under the terms of this article is made by the federal government for an employee of the military department of Maryland injured in the course of employment, such employee shall not be entitled to the benefit of this article.

Whenever by statute, charter, ordinances, resolution, regulation or policy adopted thereunder, whether as part of a pension system or otherwise, any benefit or benefits are furnished employees of employers covered under Section 2(a)(2) of this Article, the dependents and others entitled to benefits under this Article as a result of the death of such employees, the benefit or benefits when furnished by the employer shall satisfy and discharge pro tanto or in full as the case may be, the liability or obligation of the employer for any benefit under this Article. Should any benefits so furnished be less than those provided for in this Article the employer shall be liable to furnish the additional benefit as will make up the difference between the benefit furnished and the similar benefit required in this Article.

The Commission shall have full power to determine whether any benefit provided by the employer is equal to or better than any benefit provided for in this Article, and to render an award against the employers to furnish additional benefit or benefits to make up the difference between the benefit furnished by the employers and the benefits required by this Article as the case may be. This section shall also be subject to the continuing powers and jurisdiction of the Commission provided for in this Article.

SEC. 2. *And be it further enacted*, That this Act is hereby declared to be an emergency measure and necessary for the immediate preservation of the public health and safety and having been passed by a yea and nay vote supported by three-fifths of all members elected to each of the two Houses of the General Assembly, the same shall take effect from the date of its passage.

MASSACHUSETTS

Sec. 94. Impairment of health caused by hypertension, etc., resulting in disability or death of paid fire or police department member; presumption. Nothwithstanding the provisions of any general or special law to the contrary affecting the non-contributory or contributory system, any condition of impairment of health caused by hypertension or heart disease resulting in total or partial disability or death to a uniformed member of a paid fire department or permanent member of a police department, or of the police force of the metropolitan district commission, or of the state police in the department of public safety, or of the capitol police, or of the public works building police, or to any employee of the registry of motor vehicles in the department of public works who entered the service of the registry as an investigator or examiner and performed police duty, or to any employee in the department of correction whose regular or incidental duties require the care, supervision or custody of prisoners, criminally insane persons or defective delinquents, or to any permanent crash crewman, crash boatman, fire controlman or assistant fire controlman employed at the General Edward Lawrence Logan International Airport, shall, if he successfully passed a physical examination on entry into such service, or subsequently successfully passed a physical examination, which examination failed to reveal any evidence of such condition, be presumed to have been suffered in line of duty, unless the contrary be shown by competent evidence.

Added St.1950, c.551, as amended St.1951, c.594; St.1956, c.411; St.1956, c.511; St.1956, c.580; St.1963, c.610.

MASSACHUSETTS

Sec. 94A. Disability or death caused by disease of lungs or respiratory tract; paid fire department member; presumption. Notwithstanding the provisions of any general or special law to the contrary affecting the non-contributory or contributory retirement system, any condition of impairment of health caused by any disease of the lungs or respiratory tract, resulting in total disability or death to a uniformed member of a paid fire department, shall, if he successfully passed a physical examination on entry into such service or subsequent to such entry, which examination failed to reveal any evidence of such condition, be presumed to have been suffered in the line of duty, as a result of the inhalation of noxious fumes or poisonous gases, unless the contrary be shown by competent evidence.

Added St.1962, c.164.

MICHIGAN STATUTES

Sec. 17.237 (401) Definitions; ordinary diseases not compensable; hernia. Sec. 401. Whenever used in this act:

(a) "Disability" means the state of being disabled from earning full wages at the work in which the employee was last subject to the conditions resulting in disability.

(b) "Disablement" means the event of becoming so disabled.

(c) "Personal injury" shall include a disease or disability which is due to causes and conditions which are characteristic of and peculiar to the business of the employer and which arises out of and in the course of the employment. Ordinary diseases of life to which the public is generally exposed outside of the employment shall not be compensable. A hernia to be compensable must be clearly recent in origin and result from a strain arising out of and in the course of the employment and promptly reported to the employer.

Sec. 17.237 (405) Respiratory and heart diseases of firemen and law enforcement personnel: conditions precedent to filing claim. Sec. 405.

(1) In the case of a member of a full paid fire or police department of a city, township or incorporated village employed and compensated upon a full-time basis, a county sheriff and his deputies and members of the state police, "personal injury" shall be construed to include respiratory and heart diseases or illnesses resulting therefrom which develop or manifest themselves during a period while the member of the department is in the active service of the department and result from the performance of duties as a fire fighter or policeman.

(2) Such respiratory and heart diseases or illnesses resulting

therefrom are deemed to arise our of and in the course of employment in the absence of evidence to the contrary.

(3) As a condition precedent to filing an application for benefits, the claimant, if he is one of those enumerated in subsection (1), shall first make application for, and do all things necessary to qualify for any pension benefits which he, or his decedent, may be entitled to. If a final determination is made that pension benefits shall not be awarded, then the presumption of "personal injury" as provided in this section shall apply. The employer or employee may request two copies of the determination denying pension benefits, one copy of which may be filed with the bureau.

Sec. 17.237(411) Disablement from occupational disease or injury deemed personal injury. Sec. 411. The disablement of an employee resulting from such disease or disability shall be treated as the happening of a personal injury within the meaning of this act and the procedure and practice provided in this act shall apply to all proceedings under this chapter, except where specifically otherwise provided herein.

MICHIGAN

§ 17.237(405) Respiratory and heart diseases of firemen and law enforcement personnel; conditions precedent to filing claim.] SEC. 405. (1) In the case of a member of a full paid fire [department of an airport run by a county road commission in counties of 1,000,000 population or more or by a state university or college or of a full paid fire or police department of] a city, township or incorporated village employed and compensated upon a full-time basis, a county sheriff and his deputies and members of the state police, "personal injury" shall be construed to include respiratory and heart diseases or illnesses resulting therefrom which develop or manifest themselves during a period while the member of the department is in the active service of the department and result from the performance of duties as a fire fighter or policeman.

(2) Such respiratory and heart diseases or illnesses resulting therefrom are deemed to arise out of and in the course of employment in the absence of evidence to the contrary.

(3) As a condition precedent to filing an application for benefits, the claimant, if he is one of those enumerated in subsection (1), shall first make application for, and do all things necessary to qualify for any pension benefits which he, or his decedent, may be entitled to. If a final determination is made that pension benefits shall not be awarded, then the presumption of "personal injury" as provided in this section shall apply. The employer or employee may request 2 copies of the determination denying pension benefits, 1 copy of which may be filed with the bureau.

(CL '48, § 418.405.)

MINNESOTA

Subd. 15. Occupational disease. "Occupational disease" means a disease arising out of and in the course of employment peculiar to the occupation in which the employee is engaged and due to causes in excess of the hazards ordinary of employment and shall include undulant fever. Ordinary diseases of life to which the general public is equally exposed outside of employment are not compensable, except where such diseases follow as an incident of an occupational disease, or where the exposure peculiar to the occupation makes such disease an occupational disease hazard. A disease arises out of the employment only if there be a direct causal connection between the conditions under which the work is performed and if the occupational disease follows as a natural incident of the work as a result of the exposure occasioned by the nature of the employment. An employer is not liable for compensation for any occupational disease which cannot be traced to the employment as a direct and proximate cause and is not recognized as a hazard characteristic of and peculiar to the trade, occupation, process, or employment or which results from a hazard to which the workman would have been equally exposed outside of the employment. If immediately preceding the date of his disablement or death, an employee was employed on active duty with an organized fire or police department of any municipality, as a member of the Minnesota highway patrol, conservation officer service, state crime bureau, or sheriff or full time deputy sheriff of any county, and his disease is that of myocarditis, coronary sclerosis, pneumonia or its sequel, and at the time of his employment such employee was given a thorough physical examination by a licensed doctor of medicine, and a written report thereof has been made and filed with such organized fire or police department, with the Minnesota highway patrol, conservation officer service, state crime bureau, or sheriff's department of any county, which examination and report negatived any evidence of myocarditis, coronary sclerosis, pneumonia or its sequel, the disease is presumptively an occupational disease and shall be presumed to have been due to the nature of his employment.

STATE OF MISSOURI

87.005. Firemen, certain diseases presumed incurred in line of duty--conditions.--1. Notwithstanding the provisions of any law to the contrary, after five years service, any condition of impairment of health caused by any disease of the lungs or respiratory tract, hypertension, or disease of the heart resulting in total or partial disability or death to a uniformed member of a paid fire department, who successfully passed a physical examination within five years prior to the time a claim is made for such disability or death, which examination failed to reveal any evidence of such condition, shall be presumed to have been suffered in line of duty, unless the contrary be shown by competent evidence. 2. This section shall apply only to the provisions of chapter 87, RSMo 1959. (L.1967 p. 167Sec.1)

87.006. Firemen, certain diseases presumed incurred in line of duty--persons covered.--1. Nothwithstanding the provisions of any law to the contrary, and only for the purpose of computing retirement benefits provided by an established retirement plan, after five years' service, any condition of impairment of health caused by any disease of the lungs or respiratory tract, hypotension, hypertension, or disease of the heart resulting in total or partial disability or death to a uniformed member of a paid fire department, who successfully passed a physical examination within five years prior to the time a claim is made for such disability or death, which examination failed to reveal any evidence of such condition, shall be presumed to have been suffered in line of duty, unless the contrary be shown by competent evidence. 2. This sec. shall apply to paid members of all fire departments of all counties, cities, towns, fire districts and other governmental units.

STATE OF MONTANA

OCCUPATIONAL DISEASE ACT

OCCUPATIONAL DISEASE ACT
STATUTORY INDEX

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92-1323. Prohibiting lump sum settlements. No award made upon any claim pursuant to this act may be converted into a lump sum payment, in whole or in part, except in case the claimant, after having filed a claim with the employer, the board or the insurer, as the case may be, shall have entered into a contract of employment with an attorney for the recovery of such claim, the terms of which employment contract shall be declared to be reasonable compensation by said board for such attorney's services, in which case, the amount of such attorney's compensation may be ordered by the board to be paid by the employer, insurer or the board as the case may be, and thereafter deducted pro rata from weekly payments thereafter to be made to the claimant pursuant to this act, or said board may at its option require such payments to be deducted each week in such amount as it deems advisable from the payments thereafter to be made to the claimant pursuant to this act and paid to said attorney as they are so deducted from the weekly payments to the claimant.

92-1324. Burial expenses. In addition to and separate and apart from any other compensation or benefit provided for in this act, there shall be paid in case of death of an employee, which death is the result of an occupational disease contracted in the course of employment, the reasonable burial expenses of the employee, not exceeding five hundred dollars ($500.00).

92-1325. Medical and hospital expenses. In addition to the compensation provided by this Act, the following shall be furnished:

If an employee becomes totally disabled from an occupational disease, he shall be entitled to receive medical services, hospitalization, medicines and such other treatment as may be approved by the board not exceeding in amount the sum of twenty-five hundred dollars ($2,500.00), provided, however, that in such cases of total disability where apportionment of such sum does not meet such hospital expense, the board may allow an additional amount for such additional hospital and medical expenses as in special cases it may deem proper.

Any employee who suffers any of the occupational diseases listed in section 92-1304, but who is able to continue in his employment while being treated therefor, shall be entitled to receive such medical services, treatments and medicines reasonably required, not exceeding the value of one thousand dollars ($1,000.00).

The employer, or insurer, or the board shall not be required to furnish such services if the employee refuses to allow them to be

furnished or if the employee is under hospital contract as provided in section 92-610 (2907), Revised Codes of Montana, 1947, as amended.

When such employee is under a hospital contract as above and when hospital and medical facilities or both are inadequate to the needs of a disabled employee in a particular case such disabled employee may, any time, be placed where adequate hospital facilities are obtainable, and the cost thereof in whole or in part shall be a legal charge against the one so contracting to furnish hospital facilities, and the amount of such charge and the necessity therefor shall be determined by the board.

92-1326. Aggravation. Where an occupational disease is aggravated by any other disease or infirmity not itself compensable or where disability or death from any other cause not itself compensable is aggravated, prolonged, accelerated or in any wise contributed to by an occupational disease, the compensation payable under this act shall be reduced and limited to such proportion only if the compensation that would be payable if the occupational disease were the sole cause of the disability or death, as such occupational disease as a causative factor bears to all the causes of such disability or death.

92-1327. Silicosis with complications. In cases of disability or death from silicosis complicated with tuberculosis of the lungs, compensation shall be payable as for disability or death from an uncomplicated silicosis. In case of disability or death from silicosis when complicated with any disease not compensable under this act, and other than pulmonary tuberculosis, compensation shall be reduced as provided in section 92-1326.

92-1328. Compensation precluded by willful misconduct, willful self-exposure or willful disobedience of orders of board. Notwithstanding any other provisions of this act, no employee, beneficiary, or dependent of an employee shall be entitled to receive compensation for disability from an occupational disease when such disability was caused by the willful misconduct, willful self-exposure, or willful disobedience to such reasonable rules or regulations ordered by the board and which have been and are kept posted in conspicuous places in and about the premises of the employer, or otherwise brought to the attention of the employee.

92-1329. Assignment of compensation—exemption from attachment or execution.

A. Compensation, whether determined or not, shall not, prior to the delivery of the warrant therefor, be assignable.

B. Compensation shall be exempt from attachment, garnishment and execution.

92-1330. Agreement by employee to waive compensation or to pay premium void—no liability in certain cases. An agreement by an employee to waive his rights to compensation and except as otherwise provided in this act, an agreement by an employee to pay any portion of the premium paid by his employer, shall be void.

A. The employer may give, within two weeks of an application, physical examination to the applicants for employment. Where an applicant for employment whether such applicant has been formerly employed by the employer to whom application is made, or not, though not actually disabled, is found upon competent medical and x-ray examination to be afflicted with an occupational disease, such employer shall not be liable under this act for disability from the particular disease or diseases with which the employee is found to be afflicted or for any normal progression without aggravation of said disease or diseases, if a report of said medical examination be approved by the board as hereinafter provided.

The report of the medical examination of the applicant for employment and x rays, if any, shall be delivered to the board by the employer within five (5) days after such examination to such medical report and x-rays, if any, shall be attached a certificate by the examining physician certifying that the medical report is the report of the physical examination of the applicant for employment.

The board shall submit such medical report and x-rays, if any, to a physician of its choice from the medical panel, and such physician shall report to the board his finding as to whether the medical report is satisfactory. The board shall within twenty (20) days after the receipt of such medical report from the employer enter its order approving or disapproving such report and specifying the particular disease or diseases found. Such order shall be in writing stating the reason for such approval or disapproval. A copy of such order shall be mailed to the employer and a copy of such order shall be mailed to the applicant for employment within twenty-four (24) hours after the board has approved or disapproved such report.

An applicant for employment may commence work prior to the approval or disapproval of such report by the board, but if the board shall disapprove such report the employer may discharge such applicant for employment without liability to such applicant.

Provided, however, that if no physical examination is given to the applicant for employment within said two (2) week period then

such applicant for employment shall be fully eligible to the benefits of this act.

B. Employers may give within one hundred eighty (180) days after becoming subject to this act physical examinations to any employees which said employer has in his employment. Where an employee, though not actually disabled is found upon competent medical and x-ray examination to be afflicted with an occupational disease or diseases, such employer shall not be liable under this act for disability from the particular disease or diseases with which the employee is found to be afflicted or for any normal progression without aggravation of said disease or diseases, if a report of said medical examination be approved by the board as hereinbefore provided in subsection A of this section 92-1330.

Provided, however, that if no examination is given to the employee within said one hundred eighty (180) day period then such employee shall be fully eligible to the benefits of this act.

C. All such reports shall become permanent records of the board.

The board may make reasonable rules and regulations relative to the form, execution and filing of such reports not inconsistent with the provisions of this act.

92-1331. Rights of suit at common law. There shall be no common law right of action for damage from occupational disease against an employer who elects to come under the provisions of this act, excepting for those employees not eligible for compensation under the terms of this act, or who reject coverage of this act.

92-1332. Prohibiting supplementing of benefits. No person receiving compensation or benefits under the public welfare act of the State of Montana, as provided for by sections 71-1301 to 71-1309, inclusive, of the Revised Codes of Montana, 1947, as amended, shall be entitled to compensation or benefits under this act.

92-1333. Diminution of compensation. Compensation payable pursuant to the terms of this act to the claimant, his beneficiaries or dependents shall be diminished by the amount of any compensation paid or to be paid him or them under the Workmen's Compensation Act of Montana or any other workmen's compensation act.

92-1334. Compensation plans. Employers shall secure compensation to their employees under one of the following plans:

COMPENSATION PLAN NUMBER ONE

1. **When and how employer may elect to adopt—direct payment to employee.** Any employer in the industries, trades, works, occupations, or employments in this act specified as hazardous, by filing his election to become, subject to and be bound by compensation plan No. 1, upon furnishing satisfactory proof to the board of his solvency and financial ability to pay the compensation and benefits in this act provided for, and to discharge all liabilities which are reasonably likely to be incurred by him during the fiscal year for which such election is effective, may by order of the said board make such payments directly to his employees as they may become entitled to receive the same under the terms and conditions of this act.

2. **Proof of solvency of employer electing plan No. 1 to be filed.** Every such employer now or hereafter engaged in the State of Montana, in the industries, trades, works, occupations or employments herein mentioned, and who shall have elected to be bound by such compensation plan No. 1, shall file such proof of his solvency within the time and in such form as may be prescribed by the rules or orders of the board. The industrial accident board shall require a fee of five dollars ($5.00) for the filing of every such proof of solvency.

3. **Employer permitted to carry on business and settle directly with employee—renewal of application.** If such employer, making such election, shall be found by the board to have the requisite financial ability to pay the compensation and benefits in this act provided for, then the board shall grant to such employer permission to carry on his said business for the fiscal year within which such election is made, and such proof filed, or the remaining portion of such fiscal year, and to make such payments directly to his employees as they may become entitled to receive the same. Every employer, so long as he continues in his said employment, and so long as he continues to be bound by such compensation plan No. 1, shall, at least thirty (30) days before the expiration of each fiscal year, renew his application to be permitted to continue to make such payments as aforesaid directly to his employees for the next ensuing fiscal year, and under like circumstances as those mentioned for the granting of such permission upon such first application, the board may renew the same from year to year.

4. **Additional proof of solvency—revocation of order.** The board may at any time require from any employer acting under compensation plan No. 1 additional proof of solvency and financial ability to pay the compensation provided by this act, and may at any time,

upon notice to such employer of not less than ten (10) or more than twenty (20) days, alter and upon a hill hearing, revoke any order or approval theretofore made.

5. **Requiring security of employer.** If said industrial accident board shall find that such employer has no financial responsibility for the payment of the compensation herein provided to be paid, with regard to accidents happening to employees thereafter to be employed by such employer during the fiscal year to be covered by such permission, said industrial accident board must so find, and must require such employer before commencing [illegible] or before continuing or engaging in such employment, subject to the provisions of compensation plan No. 1 to give security for such payment, which security must be in such an amount as said board shall find reasonable and necessary to meet all liabilities of such employer, which may reasonably and ordinarily be expected to accrue during such fiscal year. Said security must be deposited with the treasurer of the board, and may be a certain estimated percentum of said employer's last preceding annual payroll, or a certain percentum of the established amount of his annual payroll for said fiscal year or said security may be in the form of a bond or undertaking executed to said industrial accident board in the amount to be fixed by it with two or more sufficient sureties, which undertaking must be conditioned that such employer will well and truly pay, or cause to be paid, all such sums and amounts for which the employer shall become liable under the terms of this act to his employees during said fiscal year; or such security may consist of any state, county, municipal, or school district bonds, or the bonds or evidence of indebtedness of any individuals or corporations which the board may deem solvent; and every such deposit and the character and amount of such securities shall at all times be subject to approval, revision, or change by the board as in its judgment may be required, and upon proof of the final payment of the liability for which such securities are given, such securities, or any remaining part thereof, shall be returned to the depositor. The treasurer of the board and his bondsmen shall be liable for the value and safekeeping of all such deposits or securities, and shall, at any time, upon demand of the bondsmen or the depositor or the board, account for the same, and the earnings thereof.

6. **Failure of employer to pay compensation — duty of board.** Upon failure of said employer to pay any compensation provided for in this act, upon the terms and in the amounts and at the times when the same shall become due and payable, it shall be the duty of said industrial accident board, upon demand of the person to whom compensation is due, to apply any deposits made with the board to the

payment of the same, and it shall be the duty to take the proper steps to recover such portion of the amount with the said board, at sufficient interest thereon, and to pay the same upon the liabilities of said employer, according under the terms of this act; and it shall be the duty, insofar as the same shall be necessary, to collect and enforce the collection of the liability of all parties upon any bonds which may be given by the said employer to insure the payment of his said liability. And to these ends, and for these purposes, the board shall be deemed to be the owner of said deposit and security and the obligee in said bond in trust for the said purposes, and may proceed in its own name to recover upon such bonds or proceeds and liquidate said securities.

7. **When employer to make deposit or security to guarantee payment of compensation.** Within thirty (30) days after the happening of an accident where death or the nature of the disability renders the amount of future payments certain, or reasonably certain, the employer shall make a deposit or give security as herein defined with the treasurer of the board for the protection and guaranty of the payment of such liability in such sums as the board may direct: provided, however, that if sufficient securities are already on deposit with the said board, or if the said board shall have determined that the employer has sufficient financial responsibility to meet said liability of the said employer, together with other liabilities already accrued, no such additional deposit or security shall be demanded.

8. **When employer may be relieved from liability.** Any employer against whom liability may exist for compensation under this act may, with the approval of the board, be relieved therefrom by:

(1) Depositing the present value or the estimated present value of the total unpaid compensation, for which such liability exists, assuming interest at five per centum (5%) per annum, with the treasurer of the board; or

(2) Purchasing an annuity within the limitation provided by law, in any insurance company granting annuities, and authorized to transact business in this state, subject to the approval of the board.

COMPENSATION PLAN NUMBER TWO

1. **Employer electing plan No. 2 to insure his liability.** Any employer in the industries, trades, works, occupations, or employments in this act specified as hazardous may filing his election to become subject to and bound by compensation plan No. 2, may insure his liability to pay the compensation and benefits herein provided for, in any [illegible] authorized by the laws of this state, such liability to pay compensation and benefits herein provided for, in any [illegible] authorized by the laws of this state.

2. **Duty of employer electing plan No. 2—amount of insurance necessary.** Any employer electing to become subject to and bound by compensation plan No. 2 shall file with the board written notice of the provisions of compensation plan No. 2, together with a statement upon forms provided by the board of the nature of his employment, the character and location of his works, the number of men employed during the preceding year, or any part of the preceding year, and the probable number of men to be employed during the first fiscal year to be covered by such election, and the board shall thereupon determine the amount of insurance which will be reasonably necessary to secure the compensation with which the said employer may reasonably be expected to become chargeable during such fiscal year. And thereupon the said employer shall file the policy or policies of insurance herein provided for with the board, which policy or policies shall insure in the amount so fixed by the board against any and all liability of the employer to pay the compensation and benefits provided for in this act. The amount of such insurance shall be fixed by the board for each ensuing fiscal year during which said employer shall engage in his said employment and shall remain subject to the provisions of compensation plan No. 2, and for the purpose of fixing such amount of said insurance, the said board may make all reasonable and necessary investigation, and the said employer shall furnish to such board all information which it may require.

3. **Policies to contain what.** All policies insuring the payment of compensation under this act must contain a clause to the effect that as between the employee and the insurer the notice to, or knowledge of the occurrence of the injury on the part of the insured, shall be deemed notice or knowledge, as the case may be, on the part of the insurer; that jurisdiction of the insured for the purpose of this act shall be jurisdiction of the insurer; and that the insurer shall, in all things, be bound by and subject to the awards, orders, judgments, or decrees rendered against the insured. When any such policy, or the renewal thereof, is filed with the industrial accident board, the same shall be accompanied by a fee of three dollars ($3.00).

4. **Agreement to be contained in policies of insurance—deposit of bonds.** No such policy shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to compensation all the installments of compensation payable under the provisions of this act provided for, and that the obligation shall not be affected by any default of the insured after the commencement of the risk or by any default in the giving of any notice required by such policy or by this act or otherwise. Such agreement shall be construed to be a direct promise by the insurer to the person entitled to compensation. Before issuance of any policy by an insurer not herein authorized, such insurer must deposit with the treasurer of the industrial accident board, bonds of the United States or the State of Montana, or any school district, county, city or town in the State of Montana, in an amount not less than twenty thousand dollars ($20,000.00) or more than one hundred thousand dollars ($100,000.00) as the industrial accident board may determine. If any insurer shall fail to discharge any liability after the amount thereof shall be determined by the board, and within the time limited by the board, it shall be the duty of the board to convert said bonds or such part thereof as is necessary, into cash, and from the proceeds liquidate such liability in the manner hereinafter provided, and thereafter said insurer must make an additional deposit to cover any deficiency caused thereby. It is intended hereby to give the industrial accident board the discretion in the matter of whether an insurer has failed to discharge any liability.

5. **Policies made subject to this act—form of insurance.** Every policy for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this act. No insurer shall enter into any such policy of insurance unless its form shall have been approved by the board or as otherwise provided by law.

6. **Renewals.** Every renewal of such policy shall be made and delivered to said board at least thirty (30) days prior to the expiration of the expiring policy.

7. **Deposits by insurer with board.** Within thirty (30) days after happening of any event of which notice is required to be given to the board which renders the amount of future payments certain or reasonably certain, the insurer shall make a deposit, as herein defined, with the treasurer of the board for the protection and satisfaction of the payment of such liability in such sum as the board may direct; provided, however, that if the board deems the amount on deposit by said insurer under the provisions of paragraph 4 of part two (2) of section 92-1204 thereof sufficient to cover all liabilities of the insurer, then no further deposit shall be required.

9. **How insurer relieved from liability.** Any insurance company which has written a policy insuring against liability that may exist for compensation under this act, may, with the approval of the board, be relieved therefrom by:

(1) Depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists, assuming interest at five per centum (5%) per annum, with the treasurer of the state; or

(2) By purchasing an annuity within the limitations provided by law of any insurance company organized under and authorized to transact business in this state, subject to the approval of the board.

8. **Cancellation of insurance policy.** No policy of insurance issued under the provisions of compensation plan No. 2 shall be cancelled within the time limited for its expiration except upon thirty (30) days' notice to the employer in favor of whom such policy is issued and to the board, unless such policy shall have been cancelled shall have been sooner replaced by other insurance.

10. **Report of insurance companies to board.** Every insurance company transacting business under this act shall, at the time and in the manner prescribed by the board, make and file with the board such reports of accidents as the board may require.

11. **Policies to contain clause agreeing to do what—approval or change.** Every policy or contract covering against liability for compensation under compensation plan No. 2 must contain a clause to the effect that the insurer shall be directly and primarily liable to and will pay directly to the employee, or in case of death, to his beneficiaries or minor or minor dependents, the compensation, if any, for which the employer is liable. Every such policy shall at all times be subject to the approval, change or revision by the board, and shall contain the clauses, agreements, and promises required by this Act.

12. **Deposits under plan No. 2 as security.** Any deposit made under the provisions of compensation plan No. 2 shall be held in trust by the treasurer of the board as security for the payment of the liability for which the deposit is made. Such deposit may be reduced from time to time with the permission of the board, as the payment of the liability of the insurer may reduce the amount required to be on deposit. Such deposit may be changed or renewed when desired by the depositor, by withdrawing the same or any part thereof, and substituting other deposits therefor; upon proof of the final payment of the liability for which such deposit was made, any deposit remaining shall be returned to the depositor. All earnings made by such deposit shall be first applied upon any liability of the depositors, and if no such

liability exists, then such earnings shall upon demand be delivered to such depositor. The treasurer of the board and his bondsmen shall be liable for the value and safekeeping of such deposit, and shall at any time upon demand of his bondsmen, the depositor, or the board, account for the same and the earnings thereof.

COMPENSATION PLAN NUMBER THREE

1. It is the intent and purpose of compensation plan number 3 that each employer subject to and bound by this plan shall be liable and pay for all disability to employees due to occupational diseases coming under the provision of this plan, and that all funds collected by assessments as herein provided shall be paid into one common account, to be known as the Occupational Disease Compensation Account in the agency fund, which account shall be devoted exclusively to the payment of all valid claims for disability from occupational diseases arising out of or in the course of employment coming under the provisions of compensation plan No. 3. Such account shall consist of all assessments and penalties received and paid into the account, or property and securities acquired by and through the use of money belonging to the account, and interest earned upon money belonging to the account, together with any money appropriated by the legislature for the purpose of this act. The accounts of employers insured in such account shall be kept in such a manner as the board may prescribe for the purpose of providing information and statistics necessary for determining any changes in rates of classification of employment. The occupational disease compensation account shall be neither more nor less than self-supporting.

2. Any employer, whether subject to and bound by this act or not, may elect to comply with the provisions of compensation plan No. 3 and pay into the occupational disease compensation account the premiums provided in this act, in which event such employer shall not be liable to respond in damages at common law or by statute for disability or death of an employee due to an occupational disease during the period covered by such premiums and shall enjoy the benefits and privileges of this act. The employee of such an employer shall be deemed to have elected to come under the provisions of this act unless such employee shall execute and file with the board on proper form to be furnished for that purpose, a specific election not to be so bound, in which event he shall not enjoy the benefits or privileges of this act until such election is withdrawn.

3. All employments, occupations, or industries affected by the provisions of compensation plan No. 3 shall be divided by the board for the purpose of the occupational disease compensation account into classes whose rates may be set and readjusted at such times as the board may determine. The board may rearrange the classes by withdrawing any employment embraced in one class and transferring it wholly or in part to another class. Separate accounts shall be kept of the amounts collected and expended in each class for determining

rates, but for paying compensation and dividends the account in the agency fund shall be one and indivisible. The board shall determine the hazard of the different classes of occupations or industries, and fix the rates of assessment therefore at a percentage of the annual total payroll of such employer at the lowest rate consistent with the maintenance of a solvent occupational disease compensation account, and the creation of necessary surpluses and reserves, and for such purpose may adopt a system of experience rating in such a manner as to take account of the peculiar hazard of each individual risk. The board, in fixing rates, shall provide for the expenses of administering the account, the disbursements on account of occupational disease to employees in each class, reserves adequate to meet anticipated and unexpected losses, reserves adequate to carry the class to maturity, and such other necessary reserves and surpluses as may be determined by the board. The board is authorized, in its discretion, to apply tentative rates, subject to modification in accordance with the loss experience of such risks.

4. The initial payment of assessments provided for herein by employers, whether presently engaged in a business, occupation or industry, subject to this act, or an employer who enters such business, occupation or industry at some future date, and all subsequent payment of assessments herein provided shall be made at such times and in such amounts as may be ordered and prescribed by the board.

5. Any employer who is in default in the observance of any order of the board issued pursuant to the provisions of this act, shall, in addition to any other penalty provided by this act, be charged an advance of twenty-five per centum (25%) over the established rate, and such advance rate shall continue to be in force until such employer shall have ceased to be in such default.

6. If at the end of any year, it shall be seen that the contribution to the occupational disease compensation account by any class of industry shall be less than the drain upon such account on account of that class, the deficiency shall be made good to the account on the first day of February of the following year by the employers of that class, in proportion to their respective payments for the previous year.

7. The treasurer of the board shall invest in bonds of the United States, bonds of the State of Montana, or bonds of any county, city, or school district in the State of Montana, or any other security which may be approved by said board, and out of the same and its earning shall be paid such compensation and benefits as the board may direct; provided, however, that when there is sufficient money in the occupational disease compensation account to meet such compensat

NEBRASKA

CHAPTER 281

CREATE PRESUMPTION IN DEATH OR DISABILITY

Legislative Bill 826

INTRODUCED BY TERRY CARPENTER, 48TH DISTRICT; EUGENE T. MAHONEY, 31H DISTRICT; WILLIAM R. SKARDA, JR., 7TH DISTRICT; BILL K. BLOOM, 20TH DISTRICT; HAROLD T. MOYLAN, 6TH DISTRICT

AN ACT relating to public employment; to provide a presumption in certain cases of death or disability of firemen or policemen as prescribed.

Be it enacted by the people of the State of Nebraska,

Section 1. Whenever any fireman who has served a total of five years as a member of a paid fire department of any city in this state or any policeman of any city or village, including any city having a home rule charter, shall suffer death or disability as a result of hypertension or heart or respiratory defect or disease, there shall be a rebuttable presumption that such death or disability resulted from accident or other cause while in the line of his duty for all purposes of Chapter 15, article 10, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto, sections 16-329 to 16-337, Revised Statutes Supplement, 1967, Chapter 35, article 2, Reissue Revised Statutes of Nebraska, 1943, and any firemen's or policemen's pension plan established pursuant to any home rule charter, the Legislature specifically finding the subject of this act to be a matter of general statewide concern. Such rebuttable presumption shall apply in any action or proceeding arising out of death or disability incurred prior to the effective date of this act and which has not been processed to final administrative or judicial conclusion prior to such date.

Approved May 5, 1969.

NEVADA

DEFINITIONS, TERMS AND PHRASES

617.060 "Disablement" and "total disablement" defined. "Disablement" and "total disablement" are used interchangeably in this chapter and shall be construed to mean the event of becoming physically incapacitated by reason of an occupational disease, as defined in this chapter, from performing any work for remuneration or profit.

617.070 "Employee" and "workman" defined. "Employee" and "workman" are used interchangeably in this chapter and shall be construed to mean every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and include, but not exclusively:

1. Aliens and minors.
2. All elected and appointed paid public officers.
3. Members of boards of directors of quasi-public or private corporations while rendering actual service for such corporations for pay.
4. Officers of quasi-public or private corporations who receive pay as provided in the charter or bylaws of the corporation for service performed, provided that a paid corporation officer shall be deemed for the pruposes of this chapter to receive a minimum pay of $3,600 per annum and a maximum pay of $15,600 per annum irrespective of the provisions of a corporation charter or bylaws.
5. A working member of a partnership receiving wages, irrespective of profits from such partnership.
6. Lessees engaged in either mining or operating reduction plants; provided:

(a) That such lessees shall be deemed employees of the lessor and for the purposes of this chapter shall be deemed to be employed at the average wage paid to miners employed regularly in the same locality; and

(b) That the lessor shall be relieved from providing and securing compensation under the provisions of this chapter if the lessee has covered itself and its employees under the provisions of this chapter.

"Silicosis" defined. "Silicosis" shall mean a disease of the lungs caused by breathing silica dust (silicon dioxide) producing fibrous nodules, distributed through the lungs and demonstrated by X-ray examination or by autopsy.

617.440 Occupational disease arising in course of employment: Necessary requirements.

1. An occupational disease defined in this chapter shall be deemed to arise out of and in the course of the employment:

(a) Only when it was contracted within 12 months previous to the date of disability except in cases of disability resulting from radium poisoning due to radioactive properties or substances, or to roentgen rays or ionizing radiation, in which cases the poisoning or illness resulting in disability must have been contracted in the State of Nevada.

(b) If there is a direct causal connection between the conditions under which the work is performed and the occupational disease;

(c) Which can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;

(d) Which can be fairly traced to the employment as the proximate cause; and

(e) Which does not come from a hazard to which workmen would have been equally exposed outside of the employment.

2. The disease must be incidental to the character of the business and not independent of the relation of employer and employee.

3. The disease need not have been foreseen or expected, but after its contraction must appear to have had its origin in a risk connected with the employment, and to have flowed from that source as a natural consequence.

[Part 26:44:1947; A 1949, 365; 1953, 297]- (NRS A 1961, 589; 1963, 874; 1967, 685)

617.450 Specific occupational diseases; schedule. The following diseases, as well as other occupational diseases defined in NRS 617.440, shall be considered occupational diseases and shall be compensable as such when contracted by an employee and when arising out of and in the course of the employment in any process described in this section.

SCHEDULE

Description of Disease or Injury	Description of Process
Anthrax	Handling of livestock wool, hair, bristles, hides and skins.
Arsenic poisoning	Any process involving the production or use of arsenic or its preparations or compounds.
Brass or zinc poisoning	Any process involving the manufacture, founding or refining of brass or the melting or smelting of zinc.

Description of Disease or Injury	Description of Process
Poisoning by flour, burned grease, bakery and kitchen fumes and other food products	Any process involving the production of or the use of flours for baking purposes, greases used in cooking, and other products used in cafes and bakeries, causing or tending to cause what is commonly called baker's disease, baker's asthma, or baker's tuberculosis.
Poisoning by gasoline, benzine, naphtha or other volatile petroleum products	Any process involving the production or use of gasoline, benzine, naphtha or other volatile petroleum products.
Poisoning by wood alcohol	Any process involving the production or use of wood alcohol or its preparations.
Potassium cyanide poisoning	Any process involving the production or use of or direct contact with potassium cyanide.
Radium poisoning or disability due to radioactive properties or substances, or to roentgen rays (X-rays), or to exposure to ionizing radiation	Any process involving the use of or direct contact with radium or a radioactive substance, or the use of or direct exposure to roentgen rays (X-rays) or ionizing radiation.
Sulfur dioxide poisoning	Any process in which sulfur dioxide gas is evolved by the expansion of liquid sulfur dioxide.
Tenosynovitis and prepatellar bursitis	Primary tenosynovitis characterized by a passive effusion or crepitus into the tendon sheath of the flexor or extensor muscles of the hand, due to frequently repetitive motions or vibrations, or prepatellar bursitis due to continued pressure.

[Part 26:44:1947; A 1949, 365; 1953, 297]—(NRS A 1961, 590)

2. Claims for compensation on account of silicosis shall be forever barred unless application shall have been made to the commission within 1 year after total disability or within 6 months after death.

3. Nothing in this chapter shall entitle an employee or his dependents to compensation, medical, hospital and nursing expenses or payment of funeral expenses for disability or death due to silicosis in the event of the failure or omission on the part of the employee truthfully to state, when seeking employment, the place, duration and nature of previous employment in answer to an inquiry made by the employer.

4. No compensation shall be paid in case of silicosis unless, during the 10 years immediately preceding the disablement or death, the injured employee shall have been exposed to harmful quantities of silicon dioxide dust for a total period of not less than 4 years in employment in Nevada, some portion of which shall have been after July 1, 1947.

5. Compensation, medical, hospital and nursing expenses on account of silicosis shall be payable only in the event of temporary total disability, permanent total disability, or death, in accordance with the provisions of chapter 616 of NRS, and only in the event of such disability or death resulting within 2 years after the last injurious exposure; provided, that:

(a) In the event of death following continuous total disability commencing within 2 years after the last injurious exposure, the requirement of death within 2 years after the last injurious exposure shall not apply.

(b) Except as provided in NRS 617.465, 617.466, 617.467 and 617.468, the maximum sum payable, including compensation, medical, nursing and hospital benefits for death or disability due to silicosis shall not exceed $14,250. Compensation shall be payable in sums provided by chapter 616 of NRS. The sum payable to a claimant may be used for any or all of the following items: Compensation, hospital, medical or nursing benefits; except that the amount payable for hospital, medical or nursing benefits shall not exceed $50 per month. The commission shall not allow the conversion of the compensation benefits provided for in this section into a lump sum payment notwithstanding the provisions of NRS 616.620. Payment of benefits and compensation shall be limited to the claimant and his dependents.

[Part 26:44:1947; A 1949, 365; 1953, 297]—(NRS A 1957, 307; 1959, 250; 1961, 449; 1963, 84; 1965, 980; 1967, 206; 1969, 898)

617.465 Silicosis: Supplemental compensation during 1963–1965 authorized.

1. Any claimant or his dependents who have received the maximum sum payable pursuant to NRS 617.460 prior to March 19, 1963, or who will receive such maximum sum payable after March 19, 1963, and prior to July 1, 1965, shall be entitled to receive supplemental compensation in an amount not to exceed $3,000 during the period between March 19, 1963, and July 1, 1965.

2. Such supplemental compensation shall be payable to a claimant or his dependents in sums provided by chapter 616 of NRS.

3. In paying the supplemental compensation authorized by this section, the commission may, in addition to any moneys required from the occupational diseases fund and the medical benefits fund, expend:

3. In paying the supplemental compensation authorized by this section, the commission may, in addition to any moneys required from the occupational diseases fund and the medical benefits fund, expend:

(a) All moneys which represent the total remainder of amounts of maximum sums payable under paragraph (b) of subsection 5 of NRS 617.460, 617.465 and 617.466 which were not paid between January 1, 1967, and July 1, 1969, because the claimants thereof died or their dependents became disqualified to receive further benefits prior to receipt of the maximum sums payable; and

(b) All moneys which represent the total remainder of amounts of supplemental compensation payable under this section which were not paid between January 1, 1967, and July 1, 1969, because the claimants thereof died or their dependents became disqualified to receive further supplemental benefits prior to receipt of the maximum supplemental compensation authorized by this section.

(Added to NRS by 1967, 207; A 1969, 899)

617.468 Silicosis: Supplemental compensation during 1969–1971 authorized; payments limited.

1. Any claimant or his dependents who have received the maximum sums payable pursuant to NRS 617.460, 617.465, 617.466 and 617.467 prior to January 1, 1969, or who will receive such maximum sum payable after January 1, 1969, and prior to July 1, 1971, shall be entitled to receive supplemental compensation in an amount not to exceed $6,125 during the period between January 1, 1969, and July 1, 1971.

2. Such supplemental compensation shall be payable to a claimant or his dependents in sums provided by chapter 616 of NRS.

3. In paying the supplemental compensation authorized by this section, the commission may, in addition to any moneys required from the occupational diseases fund and the medical benefits fund, expend:

(a) All moneys which represent the total remainder of amounts of maximum sums payable under paragraph (b) of subsection 5 of NRS 617.460, 617.465, 617.466 and 617.467 which were not paid between January 1, 1969, and July 1, 1971, because the claimants thereof died or their dependents became disqualified to receive further benefits prior to receipt of the maximum sums payable; and

(b) All moneys which represent the total remainder of amounts of supplemental compensation payable under this section which were not paid between January 1, 1969, and July 1, 1971, because the claimants thereof died or their dependents became disqualified to receive further supplemental benefits prior to receipt of the maximum supplemental compensation authorized by this section.

4. No supplemental compensation shall be paid after July 1, 1971.

(Added to NRS by 1969, 899)

617.470 Occupational diseases of respiratory tract resulting from exposure to dusts. All conditions, restrictions, limitations and other provisions of NRS 617.460 with reference to the payment of compensation or benefits on account of silicosis shall be applicable to the payment of compensation or benefits on account of any other occupational disease of the respiratory tract resulting from injurious exposure to dusts.

[28:44:1947; 1943 NCL § 2800.28]

(REPRINTED WITH ADOPTED AMENDMENTS)

THIRD REPRINT **A. B. 137**

ASSEMBLY BILL NO. 137—COMMITTEE ON LABOR AND MANAGEMENT

FEBRUARY 11, 1981

Referred to Committee on Labor and Management

SUMMARY—Makes various changes in Nevada Industrial Insurance Act and Nevada Occupational Diseases Act. (BDR 53-566)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: Yes.

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to occupational diseases; expanding certain provisions of law regarding firemen and police officers; clarifying the procedure for determining the percentage of disability; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. Chapter 617 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 4, inclusive, of this act.

SEC. 2. *"Police officer" includes a sheriff, deputy sheriff, city policeman, officer of the Nevada highway patrol, field agent or inspector of the motor carrier division, vehicle emission control officer or field dealer inspector of the registration division, member of the police department of the University of Nevada System or a uniformed employee of the Nevada state prison whose position requires regular and frequent contact with the offenders imprisoned and subjects the employee to recall in emergencies.*

SEC. 3. *A person described in this chapter may be determined to be totally disabled and eligible to receive compensation for disability as a result of a combination of injuries, illnesses and disabilities arising out of and in the course of his employment.*

SEC. 4. *1. The percentage of disability resulting from an occupational disease of the heart or lungs must be determined jointly by the claimant's attending physician and the examining physician designated by the commission, in accordance with the most recent publication of the American Medical Association entitled "Guides to the Evaluation of Permanent Impairment."*

2. If the claimant's attending physician and the designated examining physician do not agree upon the percentage of disability, they shall

designate a physician specializing in the branch of medicine which pertains to the disease in question to make the determination. If they do not agree upon the designation of such a physician, each shall choose one physician so specializing, and two physicians so chosen shall choose a third specialist in that branch. The resulting panel of three physicians shall, by majority vote, determine the percentage of disability in accordance with "Guides to the Evaluation of Permanent Impairment."

SEC. 5. NRS 617.390 is hereby amended to read as follows:

617.390 1. Compensation [must not] *may* be awarded [on account of] *for* both injury and disease.

2. If an employee claims to be suffering from both an occupational disease and an injury, the commission or self-insured employer shall determine [which is causing the disability and] *whether the disease or the injury or both are related to the disability and shall* order payment of compensation [in accordance with the provisions of chapter 616 of NRS.] *from the proper funds.*

3. Compensation awarded for both injury and disease must not exceed the amount payable for the total percentage of disability.

SEC. 6. NRS 617.455 is hereby amended to read as follows:

617.455 1. Notwithstanding any other provision of this chapter, diseases of the lungs, resulting in either temporary or permanent [total] disability or death, are occupational diseases and compensable as such under the provisions of this chapter if caused by exposure to heat, smoke, fumes, tear gas or any other noxious gases, arising out of and in the course of the employment of a person who, for 2 years or more, has been:

(a) Employed in a full-time salaried occupation of firefighting for the benefit or safety of the public;

(b) Acting as a volunteer fireman entitled to the benefits of chapter 616 of NRS pursuant to the provisions of NRS 616.070; or

(c) Employed in a full-time salaried occupation as a [sheriff, deputy sheriff, city policeman, officer of the Nevada highway patrol, field agent or inspector of the motor carrier division, vehicle emission control officer or field dealer inspector of the registration division, member of the University of Nevada System police department or a uniformed employee of the Nevada state prison whose position requires regular and frequent contact with the offenders imprisoned and subjects the employee to recall in emergency situations.] *police officer.*

2. Except as provided in subsection 3, each employee who is to be covered for diseases of the lungs pursuant to the provisions of this section shall submit to a physical examination, including a thorough test of the functioning of his lungs and the making of an X-ray film of his lungs, upon employment, upon commencement of the coverage and thereafter on an annual basis during his employment.

3. A thorough test of the functioning of the lungs is not required for a volunteer fireman.

4. All physical examinations required pursuant to subsection 2 must be paid for by the employer.

5. A disease of the lungs is presumed to have arisen out of and in the course of the employment of any fireman or [law enforcement]

police officer described in this section if [, during the 12 months before the date of the filing of a claim for compensation, that fireman or law enforcement officer underwent a medical examination which was evidenced by an X-ray picture of the lungs and] *the last physical examination required by subsection 2, as evidenced by* a written report of the medical examiner [, and the medical examination] failed to reveal any evidence of [such] *the* disease.

6. A person who is determined to be:

(a) Partially disabled from an occupational disease pursuant to the provisions of this section; and

(b) Incapable of performing, with or without remuneration, work as a fireman or police officer,

may elect to receive the benefits provided under NRS 616.580 for a permanent total disability.

SEC. . NRS 617.457 is hereby amended to read as follows:

617.457 1. Notwithstanding any other provision of this chapter, diseases of the heart, resulting in either temporary or permanent [total] disability or death, are occupational diseases and compensable as such under the provisions of this chapter if caused by extreme overexertion in times of stress or danger and a causal relationship can be shown by competent evidence that the disability or death arose out of and in the course of the employment of a person who, for 5 years or more, has been employed in a full-time continuous, uninterrupted and salaried occupation as a [firefighter, sheriff, deputy sheriff, city policeman, officer of the Nevada highway patrol, field agent or inspector of the motor carrier division, vehicle emission control officer or field dealer inspector of the registration division, member of the University of Nevada System police department or a uniformed employee of the Nevada state prison whose position requires regular and frequent contact with the offenders imprisoned and subject the employee to recall in emergency situations.] *fireman or police officer.*

2. Notwithstanding any other provision of this chapter, diseases of the heart, resulting in either temporary or permanent [total] disability or death, are occupational diseases and compensable as such under the provisions of this chapter if caused by extreme overexertion in times of stress or danger and a causal relationship can be shown by competent evidence that the disability or death arose out of and was caused by the performance of duties as a volunteer fireman by a person entitled to the benefits of chapter 616 of NRS pursuant to the provisions of NRS 616.075 and who, for 5 years or more, has served continuously as a volunteer fireman and who has not reached the age of 55 years before the onset of [such] *the* disease.

3. Each employee *who is to be* covered for diseases of the heart pursuant to the provisions of this section shall submit to [an initial] *a* physical examination, including an examination of the heart, upon *employment, upon* commencement of coverage [or commencement of employment, whichever is later. Thereafter, the employee shall submit to such examinations] *and thereafter* on [a regular,] *an* annual basis during his employment.

4. All physical examinations required pursuant to subsection 3 must be paid for by the employer.

5. Failure to correct predisposing physical conditions which lead to heart disease when so ordered in writing by the examining physician subsequent to the annual examination excludes the employee from the benefits of this section if the correction is within the ability of the employee.

6. A person who is determined to be:

(a) Partially disabled from an occupational disease pursuant to the provisions of this section; and

(b) Incapable of performing, with or without remuneration, work as a fireman or police officer,

may elect to receive the benefits provided under NRS 616.580 for a permanent total disability.

7. Claims filed under this section may be reopened at any time during the life of the claimant for further examination and treatment of the claimant upon certification by a physician of a change of circumstances related to the occupational disease which would warrant an increase or rearrangement of compensation.

SEC. 8. 1. A person whose claim for an occupational disease of the heart or lungs was accepted under the provisions of NRS 617.455 or 617.457 after January 1, 1978, and where the date of disablement occurred before July 1, 1981, may elect to receive benefits under NRS 616.580 for a permanent total disability pursuant to subsection 6 of NRS 617.455 or subsection 6 of NRS 617.457 if he makes a written request to the Nevada industrial commission for the new rating before January 1, 1982.

2. No change of rating made pursuant to subsection 1 may be retroactive.

SEC. 9. Sections 6 and 7 of this act shall become effective at 12:01 a.m. on July 1, 1981.

Research Dept

HB269 Chapter 526

STATE OF NEW HAMPSHIRE

1973

In the year of Our Lord one thousand nine hundred and seventy-three

AN ACT

relative to diseases characteristic of the occupation of firefighting.

Be it Enacted by the Senate and House of Representatives in General Court convened:

526: 1 New Provision. Amend RSA 281:2 (supp), as amended, by inserting after paragraph V the following new paragraph:

V-a. Notwithstanding the provisions of the foregoing paragraph, there shall exist a prima facie presumption that heart or lung disease in a firefighter, whether he is a regular, call, volunteer or retired member of a fire department, is occupationally related; provided, however, that a call or volunteer firefighter shall have the benefit of this prima facie presumption only if there is on record reasonable medical evidence that he was free of such disease at the beginning of his employment. It shall be the duty of the employer of call or volunteer firefighters to provide the said reasonable medical evidence; if the employer fails to do so, the call or volunteer firefighter shall have the benefit of the prima facie presumption regardless of the absence of the said reasonable medical evidence. Provided further, that a retired firefighter who agrees to submit to any physical examination requested by his city, town, or precinct shall have the benefit of the prima facie presumption only during the period of time of five years from the effective date of his retirement. For the purposes of this paragraph,

a call or volunteer firefighter shall mean a firefighter not regularly employed by a fire department of any city, town or precinct in the state, but answering for duty only to alarms of fire, and who has been appointed by the fire department and is a member of the New Hampshire State Firemen's Association, provided however, that the benefits of this section shall not continue in effect beyond one month after a call, volunteer or permanent firefighter, reaches his sixty-fifth birthday.

506: 2 Effective Date. This act shall take effect sixty days after its passage.

Approved July 2, 1973
Effective Date August 31, 1973

[OFFICIAL COPY REPRINT]

ASSEMBLY, No. 2098

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 1, 1971

By Assemblymen COLEMAN, HORN, FAY, GARIBALDI, FLORIO, HIGGINS, LeFANTE, ESPOSITO, CONWELL, JACKMAN, PARKER, HEALEY, IRWIN, LITTELL, FORAN, BROWN, MABIE, SHUSTED, TURNER and AZZOLINA

Referred to Committee on Municipal Government

AN ACT providing that any condition or impairment of health to a uniformed full time employed member of a paid or part-paid*[, or municipal controlled]* volunteer fire department, or permanent member of a police department, caused by hypertension, heart disease or tuberculosis of the respiratory system resulting in total or partial disability shall be deemed to be an occupational disease.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Any condition or impairment of health of members of a paid*[,]* *or* part-paid*[, or municipal controlled]* volunteer fire department or of permanent members of a police department caused by hypertension, heart disease or tuberculosis of the respiratory system, including coronary thrombosis, coronary occlusion and angina pectoris or acute coronary insufficiency, shall be an occupational disease provided:

a. Such disease develops or first manifests itself during a period while such member is an active member of such department, and

b. Said member, upon entering said fire or police service shall have undergone a medical examination, which examination failed to disclose the presence of such disease or diseases.

2. For the purposes herein expressed, the time of development or first manifestation of such diseases shall only be determined by and run from the date of first notice of the existence of such diseases to such member by a physician, or the date of death as a result of such disease.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

3. In the event that the provisions of section 1 a. hereof should not be satisfied, this shall not deprive the individual of the right to establish by other probative means that the disease is occupational and arose due to his exposure to the cause thereof during his employment aforesaid.

4. This act shall take effect immediately.

and the tenseness of going through congested traffic. This together with the lugging of heavy hose, climbing 65- or 100-foot ladders undoubtedly places a severe strain on the heart.

There are other features which make heart disease prevalent among the members of a police department. They, too, are frequently subjected to violent physical strain, chasing, wrestling with and apprehending prisoners and battling bandits, the pursuit of stolen cars, directing modern traffic—all of which certainly predisposes to an unusual amount of strain on the heart.

With regard to the diseases of the lungs or upper respiratory tract, the members of the fire department are subjected to work in the heat of summer, as well as the cold, ice and snow of winter. Their lungs are irritated by smoke and smoke impregnated with different gases and fumes of acids coincidental to modern electrical apparatus.

Policement are also subjected to inclement weather, the heat, cold, rain and snow; provocative of colds, bronchitis and pneumonia.

Tuberculosis of the lungs is caused by a germ, but with frequent attacks of bronchitis and other respiratory infections resistance against tuberculosis, especially if it be latent, is lessened; and active pulmonary tuberculosis may follow such attacks.

It is, therefore, only reasonable to assume that such afflictions are acquired by firemen and policemen in the line of duty.

ASSEMBLY, No. 2099

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 1, 1971

By Assemblymen COLEMAN, HORN, FAY, GARIBALDI, FLORIO, HIGGINS, LeFANTE, ESPOSITO, CONWELL, JACKMAN, HEALEY, IRWIN, PARKER, LITTELL, FORAN, MARIE, BROWN, SHUSTED, TURNER and AZZOLINA

Referred to Committee on Labor Relations

A SUPPLEMENT to "An act for establishment of a police and firemen's retirement system for the police and firemen of a municipality, county or political subdivision thereof," approved May 23, 1944 (P. L. 1944, c. 255).

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Notwithstanding the provisions of any law to the contrary, any condition or impairment of health caused by hypertension, heart disease or tuberculosis of the respiratory system resulting in total or partial disability to a full time employed uniformed member of a paid or part-paid fire department, or the permanant members of a police department, who successfully passed a physical examination on entry into such service, which examination failed to reveal any evidence of such condition, shall be presumed to have been suffered in the line of duty unless the contrary be shown by competent evidence.

2. This act shall take effect immediately.

STATEMENT

Instances of upper respiratory infections and heart disease are high among firemen and policemen.

The firemen and policemen have a thorough preemployment physical examination, including X-ray of the chest. Therefore, it must be assumed that when a man enters either department he is as free of heart and lung disease as is humanly possible to ascertain.

Undoubtly the high instance of heart disease, among firemen is due, in part, to the startling effect of each alarm of fire sounded over the joker, the speed with which they must drive the apparatus

LAW L...
DO NOT REMO...

ASSEMBLY, No. 2100

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 1, 1971

By Assemblymen COLEMAN, HORN, FAY, GARIBALDI, FLORIO, HIGGINS, LaFANTE, ESPOSITO, CONWELL, JACKMAN, LEWIN, PARKER, LITTELL, FORAN, BROWN, MABIE, SHUSTED, TURNER and AZZOLINA

Referred to Committee on Labor Relations

A SUPPLEMENT to "An act providing for the retirement of policemen and firemen of the police and fire departments in municipalities of this State, including members of the fire departments of any fire district located in any township and including all police officers having supervision or regulation of traffic upon county roads, and providing a pension for such retired policemen and firemen and members of the police and fire departments, and the widows, children, and sole dependent parents of deceased members of said departments, and supplementing Title 43 and amending R. S. 43:16-1, 43:16-2, 43:16-3, 43:16-4, 43:16-5, 43:16-6, 43:16-7 and repealing 43:16-11," approved May 23, 1944 (P. L. 1944, c. 253).

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Notwithstanding the provisions of any law to the contrary, any conditions or impairment of health caused by hypertension, heart disease or tuberculosis of the respiratory system resulting in total or partial disability to a full time employed uniformed member of a paid or part-paid fire department, or permanent member of a police department, who successfully passed a physical examination on entry into such service, which examination failed to reveal any evidence of such condition, shall be presumed to have been suffered in the line of duty unless the contrary be shown by competent evidence.

2. This act shall take effect immediately.

STATEMENT

Instances of upper respiratory infections and heart disease are high among firemen and policemen.

The firemen and policemen have a thorough preemployment physical examination, including an X-ray of the chest. Therefore, it must be assumed that when a man enters either department he is as free of heart and lung disease as is humanly possible to ascertain.

Undoubtedly, the high instances of heart disease among firemen is due, in part, to the startling effect of each alarm of fire sounded over the joker, the speed with which they must drive the apparatus and the tenseness of going through congested traffic. This together with the lugging of hose, climbing 65-or 100-foot ladders undoubtedly places a servere strain on the heart.

There are other features which make heart disease prevalent among the members of a police department. They too, are frequently subjected to violent physical strain, chasing, wrestling with and apprehending prisoners and battling bandits, the pursuit of stolen cars, directing modern traffic—all of which certainly predisposes to an unusual amount of strain on the heart.

With regard to the diseases of the lungs or upper respiratory tract, the members of the fire departments are subjected to work in the heat of summer, as well as the cold, rain and snow; provocative of colds, bronchitis and pneumonia.

Tuberculosis of the lungs is caused by a germ, but with frequent attacks of bronchitis and other respiratory infections resistance against tuberculosis especially if it be latent is lessened and active pulmonary tuberculosis may follow such attacks.

It is, therefore, only reasonable to assume that such afflictions are acquired by firemen and policemen in the line of duty.

40A:14-27 Special compensation for permanently disabled members or officers.

If a member or officer of the paid or part-paid fire department or force is permanently disabled from injuries received while in the performance of his duties and the chief or official in charge of such fire department or force shall recommend that special compensation be granted and a physician appointed by the governing body of said municipality shall certify as to the probable permanency of such disability, the governing body of the municipality in their discretion, by ordinance, may provide for special compensation to said disabled member or officer designating the amount thereof and manner of payment, either in a lump sum or by an annual allowance, but such special compensation plus any pension paid and any award for workmen's compensation shall not exceed the salary payable at the time of the sustaining of the injuries. The governing body of said municipality shall include appropriate budget items and provide for the payment of such special compensation.

Source: C.40:47-12.10 (1948, c.304, s. 1); C.40:47-12.11 (1948, c. 304, s. 2); R.S. 40:174-201.

STATE OF NEW YORK

IN SENATE

January 21, 1969

Introduced by Messrs. DONOVAN, FLYNN--read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions--reported favorably from said committee, committed to the committee of the whole, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT

To amend the retirement and social security law, in relation to benefits payable to, or in behalf of certain firemen and policemen injured or killed in the performance of duty

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The retirement and social security law is hereby amended by inserting therein a new section, to be section three hundred sixty-three-a, to read as follows:

Section 363-a. Firemen and policemen; certain disabilities. 1. Notwithstanding any provision of this chapter or of any general, special or local law to the contrary, any disability or death resulting from an injury to or impairment of the heart, caused by reason of and in the performance of duty as a fireman or policeman and not caused by the wilful negligence of such fireman or policeman, presumptively shall be deemed to be the natural and proximate result of an accident, in the absence of substantial evidence to the contrary for the purposes of this article, or any general, special or local law relating to the operation and qualification for benefits under any municipal pension or retirement plan or system.

2. As used in this section, the term "fireman" and "policeman" means any member who is performing police or fire service, as the

phrase police or fire service is defined in paragraphs a, b, c and d of subdivision eleven of section three hundred two of this article, and who, prior to entry into service as a fireman or policeman, successfully passed a physical examination which failed to disclose evidence of any disease or other impairment of the heart.

Section 2. This act shall take effect on the first day of September next succeeding the date on which it shall have become a law and shall remain in force and effect to and including the thirty-first day of August in the year next succeeding the year in which it shall have become a law.

NORTH CAROLINA

§ 97-52. Occupational disease made compensable; "accident" defined.—Disablement or death of an employee resulting from an occupational disease described in § 97-53 shall be treated as the happening of an injury by accident within the meaning of the North Carolina Workmen's Compensation Act and the procedure and practice and compensation and other benefits provided by said act shall apply in all such cases except as hereinafter otherwise provided. The word "accident," as used in the Workmen's Compensation Act, shall not be construed to mean a series of events in employment, of a similar or like nature, occurring regularly, continuously or at frequent intervals in the course of such employment, over extended periods of time, whether such events may or may not be attributable to fault of the employer and disease attributable to such causes shall be compensable only if culminating in an occupational disease mentioned in and compensable under this article. Provided, however, no compensation shall be payable for asbestosis and/or silicosis as hereinafter defined if the employee, at the time of entering into the employment of the employer by whom compensation would otherwise be payable, falsely represented himself in writing as not having previously been disabled or laid off because of asbestosis or silicosis. (1935, c. 123.)

§ 97-53. Occupational diseases enumerated; when due to exposure to chemicals.—The following diseases and conditions only shall be deemed to be occupational diseases within the meaning of this article:

(1) Anthrax.
(2) Arsenic poisoning.
(3) Brass poisoning.
(4) Zinc poisoning.
(5) Manganese poisoning.
(6) Lead poisoning. Provided the employee shall have been exposed to the hazard of lead poisoning for at least thirty days in the preceding twelve months' period, and, provided further, only the employer in whose employment such employee was last injuriously exposed shall be liable.
(7) Mercury poisoning.
(8) Phosphorous poisoning.

(9) Poisoning by carbon bisulphide, methanol, naphtha or volatile halogenated hydrocarbons.
(10) Chrome ulceration.
(11) Compressed-air illness.
(12) Poisoning by benzol, or by nitro and amido derivatives of benzol (dinitrolbenzol, anilin, and others).
(13) Infection or inflammation of the skin, eyes, or other external contact surfaces or oral or nasal cavities or any other internal or external organ or organs of the body due to irritating oils, cutting compounds, chemical dust, liquids, fumes, gases or vapors, and any other materials or substances.

The provisions of this subdivision shall not apply to cases of occupational diseases not included in said subdivision prior to July 1, 1963, unless the last exposure in an occupation subject to the hazards of such disease occurred on or after July 1, 1963.

(14) Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye due to tar, pitch, bitumen, mineral oil, or parafin, or any compound, product, or residue of any of these substances.
(15) Radium poisoning or disability or death due to radioactive properties of substances or to roentgen rays, X-rays or exposure to any other source of ionizing radiation; provided, however, that the disease under this subdivision shall be deemed to have occurred on the date that disability or death shall occur by reason of such disease.
(16) Blisters due to use of tools or appliances in the employment.
(17) Bursitis due to intermittent pressure in the employment.
(18) Miner's nystagmus.
(19) Bone felon due to constant or intermittent pressure in employment.
(20) Synovitis, caused by trauma in employment.
(21) Tenosynovitis, caused by trauma in employment.
(22) Carbon monoxide poisoning.
(23) Poisoning by sulphuric, hydrochloric or hydrofluoric acid.
(24) Asbestosis.
(25) Silicosis.
(26) Psittacosis.
(27) Undulant fever.

Occupational diseases caused by chemicals shall be deemed to be due to exposure of an employee to the chemicals herein mentioned only when as a part of the employment such employee is exposed to such chemicals in such form and quantity, and used with such frequency as to cause the occupational disease mentioned in connection with such chemicals. (1935, c. 123; 1949, c. 1078; 1953, c. 1112; 1955, c. 1026, s. 10; 1957, c. 1396, s. 6; 1963, c. 553, s. 1; c. 965.)

§ 97-54. "Disablement" defined. — The term "disablement" as used in this article as applied to cases of asbestosis and silicosis means the event of becoming actually incapacitated because of asbestosis or silicosis to earn, in the same or any other employment, the wages which the employee was receiving at the time of his last injurious exposure to asbestosis or silicosis; but in all other cases of occupational disease "disablement" shall be equivalent to "disability" as defined in G. S. 97-2 (9). (1935, c. 123; 1955, c. 525, s. 1.)

§ 97-55. "Disability" defined.—The term "disability" as used in this article means the state of being incapacitated as the term is used in defining "disablement" in § 97-54. (1935, c. 123.)

§ 97-56. Limitation on compensable diseases.—The provisions of this article shall apply only to cases of occupational disease in which the last exposure in an occupation subject to the hazards of such diseases occurred on or after March 26, 1935. (1935, c. 123.)

§ 97-57. Employer liable.—In any case where compensation is payable for an occupational disease, the employer in whose employment the employee was last injuriously exposed to the hazards of such disease, and the insurance carrier, if any, which was on the risk when the employee was so last exposed under such employer, shall be liable.

For the purpose of this section when an employee has been exposed to the hazards of asbestosis or silicosis for as much as thirty working days, or parts thereof, within seven consecutive calendar months, such exposure shall be deemed injurious but any less exposure shall not be deemed injurious; provided, however, that in the event an insurance carrier has been on the risk for a period of time during which an employee has been injuriously exposed to the hazards of asbestosis or silicosis, and if after insurance carrier goes off the risk said employee is further exposed to the hazards of asbestosis or silicosis, although not so exposed for a period of thirty (30) days or parts thereof so as to constitute a further injurious exposure, such carrier shall, nevertheless, be liable. (1935, c. 123; 1945, c. 762; 1957, c. 1396, s. 7.)

§ 97-58. Claims for certain diseases restricted; time limit for filing claims.—(a) Except as otherwise provided in G. S. 97-61.6, an employer shall not be liable for any compensation for asbestosis or silicosis or lead poisoning unless disablement or death results within two years after the last exposure to such disease, or, in case of death, unless death follows continuous disablement from such disease, commencing within the period of two years limited herein, and for which compensation has been paid or awarded or timely claim made as hereinafter provided and results within seven years after such last exposure in the case of lead poisoning, or 350 weeks in the case of asbestosis or silicosis.

(b) The report and notice to the employer as required by § 97-22 shall apply in all cases of occupational disease except in case of asbestosis, silicosis, or lead poisoning. The time of notice of an occupational disease shall run from the date that the employee has been advised by competent medical authority that he has same.

(c) The right to compensation for occupational disease shall be barred unless a claim be filed with the Industrial Commission within one year after death, disability, or disablement as the case may be. Provided, however, that the right to compensation for radiation injury, disability or death shall be barred unless a claim is filed within one (1) year after the date upon which the employee first suffered incapacity from the exposure to radiation and either knew or in the exercise of reasonable diligence should have known that the occupational disease was caused by his present or prior employment. (1935, c. 123; 1945, c. 762; 1955, c. 525, s. 6; 1963, c. 553, s. 2.)

§ 97-59. Employer to provide treatment.—In the event of disability from an occupational disease, the employer shall provide reasonable medical and/or other treatment for such time as in the judgment of the Industrial Commission will tend to lessen the period of disability or provide needed relief; provided, however, medical and/or other treatment for asbestosis and/or silicosis shall not exceed a period of three years nor cost in excess of one thousand ($1,000.00) dollars in any one year; and, provided further, all such treatment shall be first authorized by the Industrial Commission after consulting with the advisory medical committee. (1935, c. 123; 1945, c. 762.)

§ 97-60. Examination of employees by advisory medical committee; designation of industries with dust hazards.—The compulsory examination of employees and prospective employees as herein provided applies only to persons engaged or about to engage in an occupation which has been found by the Industrial Commission to expose them to the hazards of asbestosis and/or silicosis. The Industrial Commission shall designate by order each industry found subject to any such hazard and shall notify the employers therein before such examinations are required. On and after March 26, 1935, it shall be the duty of

every employer, in the conduct of whose business his employees or any of them are subjected to the hazards of asbestosis and/or silicosis, to provide prior to employment necessary examinations of all new employees for the purpose of ascertaining if any of them are in any degree affected by asbestosis and/or silicosis or peculiarly susceptible thereto; and every such employer shall from time to time, as ordered by the Industrial Commission, provide similar examinations for all of his employees whose employment exposes them to the hazards of asbestosis and/or silicosis. At least one member of the advisory medical committee or other physician designated by the Industrial Commission shall make such examinations or be present when any such examination is made. The refusal of an employee to submit to any such examination shall bar such employee from compensation or other benefits provided by this article in the event of disablement and/or death resulting from exposure to the hazards of asbestosis and/or silicosis subsequent to such refusal. It shall be the duty of the Industrial Commission to make and/or order inspections of employments and to keep a record of all employments subjecting employees to the hazards of asbestosis and/or silicosis, and to notify the employer in any case where such hazard shall have been found to exist. The unreasonable failure of an employer to provide for any examination or his unreasonable refusal to permit any inspection herein authorized shall constitute a misdemeanor and shall be punishable as such. (1935, c. 123.)

(W) Cardiovascular and pulmonary diseases incurred by fire fighters or police officers following exposure to smoke, toxic gases, chemical fumes and other toxic vapors: Any cardiovascular and pulmonary disease of a fire fighter or police officer caused by the cumulative effect of the inhalation of smoke, toxic gases, chemical fumes and other toxic vapors in the performance of his duty. For the purpose of this section, "fire fighter" means any regular member of a lawfully constituted fire department of a municipal corporation or township, whether paid or volunteer, and "police officer" means any regular member of a lawfully constituted police department of a municipal corporation, township or county, whether paid or volunteer.

Chapter 4123. of the Revised Code does not entitle a fire fighter, or police officer, or his dependents to compensation, medical treatment, or payment of funeral expenses for disability or death from a cardiovascular and pulmonary disease, unless the fire fighter or police officer has been subject to injurious exposure to smoke, toxic gases, chemical fumes, and other toxic vapors in his employment in this state preceding his disablement, for periods amounting in all to at least three years, some portion of which has been after January 1, 1967, except as provided in the last paragraph of section 4123.57 of the Revised Code.

Compensation and medical, hospital, and nursing expenses on account of cardiovascular and pulmonary diseases of fire fighters and police officers are payable only in the event of temporary total disability, permanent total disability, or death, in accordance with section 4123.56, 4123.58, or 4123.59, of the Revised Code, and only in the event of such disability or death resulting within eight years after the last injurious exposure. In the event of death following continuous total disability commencing within eight years after the last injurious exposure, the requirement of death within eight years after the last injurious exposure does not apply.

Claims of a fire fighter or police officer for compensation and medical, hospital, and nursing expenses on account of a cardiovascular and pulmonary disease are forever barred unless application therefor is made to the commission within one year after total disability began or within such longer period as does not exceed six months after diagnosis of such disease by a licensed physician. Claims of dependents of fire fighters or police officers for benefits on account of death from cardiovascular and pulmonary disease are forever barred unless application therefor is made to the commission within six months after death.

Chapter 4123. of the Revised Code does not entitle a fire fighter or police officer, or his dependents, to compensation, medical, hospital and nursing expenses, or payment of funeral expenses for disability or death due to a cardiovascular and pulmonary disease in the event of failure or omission on the part of the fire fighter or police officer truthfully to state, when seeking employment, the place, duration, and nature of previous employment in answer to an inquiry made by the employer.

Before awarding compensation for disability or death under this division, the commission shall refer the claim to a qualified medical specialist for examination and recommendation with regard to the diagnosis, the extent of disability, the cause of death, and other medical questions connected with the claim. A fire fighter or police officer shall submit to such examinations, including clinical and x-ray examinations, as the commission requires. In the event that a fire fighter or police officer refuses to submit to examinations, including clinical and x-ray examinations, after notice from the commission, or in the event that a claimant for compensation for death under this division fails to produce necessary consents and permits, after notice from the commission, so that such autopsy examination and tests may be performed, then all rights for compensation are forfeited. The reasonable compensation of such specialists and the expenses of examination and tests shall be paid, if the claim is allowed, as part of the expenses of the claim, otherwise they shall be paid from the surplus fund.

OHIO ASSOCIATION OF
PROFESSIONAL FIRE FIGHTERS

(Amended House Bill No. 331)

AN ACT

To amend sections 4123.343, 4123.57, and 4123.68 of the Revised Code, relative to making cardiovascular and pulmonary diseases incurred by fire fighters compensable occupational diseases under the workmen's compensation provisions of the Revised Code.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 4123.343, 4123.57, and 4123.68 of the Revised Code be amended to read as follows:

Sec. 4123.343. This section shall be construed liberally to the end that employers shall be encouraged to employ and retain in their employment handicapped employees as defined in this section.

(A) As used in this section handicapped employee means an employee who is afflicted with or subject to any physical or mental impairment, or both, whether congenital or due to an injury or disease of such character that the impairment constitutes a handicap in obtaining employment or would constitute a handicap in obtaining reemployment if the employee should become unemployed and whose handicap is due to any of the following diseases or conditions:

(1) Epilepsy;
(2) Diabetes;
(3) Cardiac disease;
(4) Arthritis;
(5) Amputated foot, leg, arm or hand;
(6) Loss of sight of one or both eyes or a partial loss of uncorrected vision of more than seventy-five per cent bilaterally;
(7) Residual disability from poliomyelitis;
(8) Cerebral palsy;

(9) Multiple sclerosis;

(10) Parkinson's disease;

(11) Cerebral vascular accident;

(12) Tuberculosis;

(13) Silicosis;

(14) Psycho-neurotic disability following treatment in a recognized medical or mental institution;

(15) Hemophilia;

(16) Chronic osteomyelitis;

(17) Ankylosis of joints;

(18) Hyper insulinism;

(19) Muscular dystrophies;

(20) Arterio-sclerosis;

(21) Thrombo-phlebitis;

(22) Varicose veins;

(23) Cardiovascular and pulmonary diseases of a fire fighter employed by a municipal corporation or township as a regular member of a lawfully constituted fire department.

(B) Under the circumstances set forth in this section all or such portion as the commission shall determine of the compensation and benefits paid in any claim arising hereafter shall be charged to and paid from the statutory surplus fund created under section 4123.34 of the Revised Code and only the portion remaining shall be merit-rated or otherwise treated as part of the accident or occupational disease experience of the employer. If the employer is a self-insurer, the proportion of such costs whether charged to such statutory surplus fund in whole or in part shall be by way of direct payment to such employee or his dependents or by way of reimbursement to the self-insurer as the circumstances shall indicate. The provisions of this section are applicable only in cases of death, total disability, whether temporary or permanent, and all disabilities compensated under division (C) of section 4123.57 of the Revised Code.

(C) Any employer who advises the industrial commission prior to the occurrence of an injury or occupational disease that it has in its employ a handicapped employee as defined in this section shall be entitled, in the event such a person is injured, to a determination hereunder. Any employer who fails to so notify the commission but makes application for a determination hereunder shall be entitled to a determination if the commission finds that the failure to give notice of the employment of such a handicapped employee has not made it impossible for the commission to make the determination required by this section.

Application for such determination shall only be made in cases where a handicapped employee as defined in this section or his dependents claims or is receiving an award of compensation as a result of an injury or occupational disease occurring or contracted after the effective date of this section.

Upon the filing of such an application the industrial commission shall hold a hearing in accordance with rules promulgated by the commission.

(D) The circumstances under and the manner in which such apportionment shall be made are:

(1) Whenever a handicapped employee as defined in this section is injured or disabled or dies as the result of an injury or occupational disease sustained in the course of and arising out of his employment in this state and the industrial commission awards compensation therefor and when it appears to the satisfaction of the industrial commission that the injury or occupational disease or the death resulting therefrom would not have occurred but for the pre-existing physical or mental impairment of such handicapped employee, all compensation and benefits payable on account of such disability or death shall be paid from such surplus fund.

(2) Whenever a handicapped employee as defined in this section is injured or disabled or dies as a result of an injury or occupational disease and the commission finds that said injury or occupational disease would have been sustained or suffered without regard to the employee's pre-existing impairment but that the resulting disability or death was caused at least in part through aggravation of such employee's pre-existing disability, the commission shall determine in a manner which is equitable and reasonable and based upon medical evidence the amount of disability or proportion of the cost of the death award which is attributable to the employee's pre-existing disability and the amount so found shall be charged to such statutory surplus fund.

(E) The benefits and provisions of this section shall apply only to employers who have complied with the workmen's compensation act either through insurance with the state fund or by obtaining permission to pay compensation directly under section 4123.35 of the Revised Code.

Sec. 4123.57. Partial disability compensation shall be paid as follows. provided, that an employee may elect as between divisions (A) and (B) of this section as to the manner of receiving the compensation set forth in this section:

(A) In case of injury or occupational disease resulting in partial disability other than those exclusively provided for under division (C) of this section, the employee shall receive per week sixty-six and two-thirds per cent of the impairment of his earning

capacity which results from the injury or occupational disease during the continuance thereof, not to exceed a maximum of forty-nine dollars per week but not in a greater sum in the aggregate than ten thousand dollars.

An employee is eligible to file an application with the industrial commission for the determination of the percentage of his permanent partial disability resulting from the injury or occupational disease if he:

(1) Has received compensation for temporary total disability; or

(2) Would have been eligible for compensation for temporary total disability had the employer not paid him wages during the period of disability; or

(3) Has received compensation for partial disability under division (A) of this section.

An employee may file such application upon the expiration of forty weeks after:

(a) The date of the termination of the latest period of temporary total disability, if eligible under (1) above;

(b) The latest period of temporary total disability for which he would have been entitled, if eligible under (2) above;

(c) The date of the injury or the contraction of an occupational disease if eligible under (3) above.

Whenever such application is filed, the commission shall set the application for hearing with written notices to all interested persons. After hearing and determination, the employee shall file his election to receive compensation for partial disability under either division (A) or division (B) of this section, and such election may thereafter be changed upon approval of the industrial commission for good cause shown.

(B) The industrial commission, upon such application, shall determine the percentage of the employee's permanent disability, except such as is subject to division (C) of this section, based upon that condition of the employee resulting from the injury or occupational disease and causing permanent impairment evidenced by medical or clinical findings reasonably demonstrable. The employee shall receive sixty-six and two-thirds per cent of his average weekly wage, not to exceed a maximum of forty-nine dollars per week for the number of weeks which equals such percentage of two hundred weeks. Except upon application for reconsideration, review, or modification which is filed within ten days after the date on which notice of such award is mailed to the employee and the employer, in no instance shall the commission modify its former order unless it finds from such medical or clinical findings that the condition of the claimant resulting from the injury has so pro-

gressed as to have increased the percentage of permanent disability. No award shall be made under this division based upon a percentage of disability which, when taken with all other percentages of permanent disability, exceeds one hundred per cent. If the percentage of such permanent disability of the employee equals or exceeds ninety per cent, compensation for permanent partial disability shall be paid for two hundred weeks.

Compensation payable under divisions (A) and (B) of this section shall accrue and be payable to the employee from the date of last payment of compensation, or, in cases where no previous compensation has been paid, from the date of the injury or the date of the diagnosis of the occupational disease.

When an award under this division of this section has been made prior to the death of an employee, all unpaid installments accrued or to accrue under the provisions of the award are payable to the widow, or if there is no widow surviving, to the dependent children of such employee, and if there are no such children surviving, then to such other dependents as the commission may determine.

(C) In cases included in the following schedule the compensation payable per week to the employee shall be sixty-six and two-thirds per cent of his average weekly wage, but not more than forty-nine dollars per week regardless of the average weekly wage, and not less than twenty-five dollars per week unless the average weekly wage is less than twenty-five dollars in which case the compensation shall be equal to the full wages and shall continue during the periods provided in the following schedule:

For the loss of a thumb, sixty weeks.

For the loss of a first finger, commonly called index finger, thirty-five weeks.

For the loss of a second finger, thirty weeks.

For the loss of a third finger, twenty weeks.

For the loss of a fourth finger, commonly known as the little finger, fifteen weeks.

The loss of a second, or distal, phalange of the thumb is considered equal to the loss of one half of such thumb; the loss of more than one half of such thumb is considered equal to the loss of the whole thumb.

The loss of the third, or distal, phalange of any finger is considered equal to the loss of one third of such finger.

The loss of the middle, or second, phalange of any finger is considered equal to the loss of two thirds of such finger.

The loss of more than the middle and distal phalanges of any finger is considered equal to the loss of the whole finger. In no

case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

For the loss of the metacarpal bone (bones of the palm) for the corresponding thumb, or fingers, add ten weeks to the number of weeks under this division.

For ankylosis (total stiffness of) or contractures (due to scars or injuries) which makes any of the fingers, thumbs, or parts of either more than useless, the same number of weeks apply to such members or parts thereof as given for the loss thereof.

If the claimant has suffered the loss of two or more fingers and the nature of his employment in the course of which the claimant was working at the time of the injury or occupational disease is such that the handicap or disability resulting from such loss of fingers exceeds the normal handicap or disability resulting from such loss of fingers, the commission may take that fact into consideration and increase the award of compensation accordingly, but the award made in such cases shall not exceed the amount of compensation for loss of a hand.

For the loss of a hand, one hundred seventy-five weeks.

For the loss of an arm, two hundred twenty-five weeks.

For the loss of a great toe, thirty weeks.

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

The loss of more than two thirds of any toe is considered equal to the loss of the whole toe.

The loss of less than two thirds of any toe is considered no loss, except as to the great toe; the loss of the great toe up to the interphalangeal joint is co-equal to the loss of one half of the great toe; the loss of the great toe beyond the interphalangeal joint is considered equal to the loss of the whole great toe.

For the loss of a foot, one hundred fifty weeks.

For the loss of a leg, two hundred weeks.

For the loss of the sight of an eye, one [illegible]wenty-five weeks.

For the permanent partial loss of sight of an [illegible]h portion of one hundred twenty-five weeks as the commis[illegible]y in each case determine, based upon the percentage of vision actually lost as a result of the injury or occupational disease, but in no case shall an award of compensation be made for less than twenty-five per cent loss of uncorrected vision. "Loss of uncorrected vision" means the percentage of vision actually lost as the result of the injury or occupational disease.

For the permanent and total loss of hearing of one ear, twenty-

five weeks; but in no case shall an award of compensation be made for less than permanent and total loss of hearing of one ear.

For the permanent and total loss of hearing, one hundred twenty-five weeks; but, except pursuant to the next preceding paragraph, in no case shall an award of compensation be made for less than permanent and total loss of hearing.

In case an injury or occupational disease results in serious facial or head disfigurement which either impairs or may in the future impair the opportunities to secure or retain employment, the commission shall make such award of compensation as it deems proper and equitable, in view of the nature of the disfigurement, and not to exceed the sum of five thousand dollars. For the purpose of making such award it shall not be material whether such employee is gainfully employed in any occupation or trade at the time of the commission's determination.

When an award under this division of this section has been made prior to the death of an employee from a cause other than the injury or occupational disease on which the award is based, all unpaid installments accrued or to accrue under the provision of the award shall be payable to the widow, or if there is no widow surviving, to the dependent children of such employee and if there are no such children, then to such dependents as the commission may determine.

When an employee has sustained the loss of a member by severance, but no award has been made on account thereof prior to his death from a cause other than the injury or occupational disease which caused such severance, the commission shall make an award in accordance with this division of this section for such loss which shall be payable to the widow, or if there is no widow surviving, to the dependent children of such employee and if there be no such children, then to such dependents as the commission may determine.

(D) Compensation for partial disability under divisions (A), (B), and (C) of this section shall be in addition to the compensation paid the employee for the periods of temporary total disability resulting from injury or occupational disease, but the amount of compensation paid for partial disability under division (A) of this section is not in addition to the compensation paid for permanent partial disability under division (B) or (C) of this section and the amount of compensation paid for partial disability under division (A) of this section shall be deducted from the amount of compensation payable for permanent partial disability under division (B) or (C) of this section but only one deduction shall be made if payments are made under both divisions (B) and (C) of this section for permanent partial disability involved in the same claim.

On the first day of January and July of each year the commission shall issue its voucher to the treasurer of state for the purpose of transferring the sum of fifteen thousand dollars from the surplus provided by division (B) of section 4123.34 of the Revised Code, to the credit of the vocational rehabilitation fund of the state board for vocational education, department of education, and said amount, together with such matching amounts as may be alloted to the state by the United States under the act of congress entitled "An act to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment," 41 Stat. 735, 29 U.S.C. 32, 1920, as amended, shall be used to furnish living maintenance for injured employees who are entitled to and are receiving rehabilitation pursuant to said act of congress, subject to the following conditions and limitations:

An employee is entitled to receive living maintenance when the bureau of vocational rehabilitation or the state rehabilitation center has certified that vocational rehabilitation for such person is feasible and that he is susceptible of being vocationally rehabilitated and when the commission has approved the payment of such living maintenance by unanimous vote.

Such employee shall undertake the course of instruction within sixty days from the date when he has sufficiently recovered from his injury to permit his so doing, or as soon thereafter as the bureau or the state rehabilitation center provides opportunity for his rehabilitation.

Such employee shall continue in rehabilitation training with such reasonable regularity as his health permits.

Such employee may not have maintenance in excess of forty dollars and twenty-five cents per week during training nor for a maintenance period in excess of fifty-two weeks in all.

The commission shall forthwith refer to the state rehabilitation center or to the bureau of vocational rehabilitation all claimants respecting whom the commission believes that an inquiry into the possibilities of vocational rehabilitation should be made.

In all cases arising under division (C) of this section, if the state rehabilitation center or the bureau determines that an injured or disabled employee is in need of an artificial appliance, or in need of a repair thereof, regardless of whether such appliance or repair thereof will be serviceable in the vocational rehabilitation of the injured employee, and regardless of whether such employee has returned to or can ever again return to any gainful employment, the commission may pay the cost of such artificial appliance or repair thereof out of the surplus created by division (B) of section 4123.34 of the Revised Code.

If an employee makes application for a finding and the commission finds that he has contracted silicosis as defined in division "*** (X) of section 4123.68 of the Revised Code, and that a change of such employee's occupation is medically advisable in order to decrease substantially further exposure to silica dust and if such employee, after such finding, has changed or shall change his occupation to an occupation in which the exposure to silica dust is substantially decreased, the commission shall allow to such employee forty-nine dollars per week for a period of thirty weeks, commencing as of the date of such discontinuance or change, and for a period of seventy-five weeks immediately following the expiration of such period of thirty weeks the commission shall allow such employee sixty-six and two-thirds per cent of the loss of wages resulting directly and solely from such change of occupation but not to exceed a maximum of forty dollars and twenty-five cents per week. No such employee shall be entitled to receive more than one allowance on account of discontinuance of employment or change of occupation and benefits shall cease for any period during which such employee is employed in an occupation in which the exposure to silica dust is not substantially less than the exposure in the occupation in which he was formerly employed or for any period during which such employee may be entitled to receive compensation or benefits under section 4123.68 of the Revised Code on account of disability from silicosis. The commission may accord to such employee medical and other benefits in accordance with section 4123.66 of the Revised Code.

If a fire fighter makes application for a finding and the commission finds that he has contracted a cardiovascular and pulmonary disease as defined in division (W) of section 4123.68 of the Revised Code, and that a change of such fire fighter's occupation is medically advisable in order to decrease substantially further exposure to smoke gases, chemical fumes, and other toxic vapors, and if such fire fighter, after such finding, has changed or changes his occupation to an occupation in which the exposure to smoke, toxic gases, chemical fumes, and other toxic vapors is substantially decreased, the commission shall allow to such fire fighter forty-nine dollars per week for a period of thirty weeks, commencing as of the date of such discontinuance or change, and for a period of seventy-five weeks immediately following the expiration of such period of thirty weeks the commission shall allow such fire fighter sixty-six and two-thirds per cent of the loss of wages resulting directly and solely from such change of occupation but not to exceed a maximum of forty dollars and twenty-five cents per week. No such fire fighter shall be entitled to receive more than one allowance on account of discontinuance of employment or change of occupation and benefits shall cease for any period during which such

fire fighter is employed in an occupation in which the exposure to smoke, toxic gases, chemical fumes, and other toxic vapors is not substantially less than the exposure in the occupation in which he was formerly employed or for any period during which such fire fighter may be entitled to receive compensation or benefits under section 4123.68 of the Revised Code on account of disability from a cardiovascular and pulmonary disease. The commission may accord to such fire fighter medical and other benefits in accordance with section 4123.66 of the Revised Code.

Sec. 4123.68. Every employee who is disabled because of the contraction of an occupational disease as defined in this section, or the dependent of an employee whose death is caused by an occupational disease as defined in this section, is entitled to the compensation provided by sections 4123.55 to 4123.59, inclusive, and section 4123.66 of the Revised Code, subject to the modifications relating to occupational diseases contained in sections 4123.01 to 4123.94, inclusive, of the Revised Code.

The following diseases shall be considered occupational diseases and compensable as such when contracted by an employee in the course of his employment in which such employee was engaged at any time within twelve months previous to the date of his disablement and due to the nature of any process described in this section.

SCHEDULE

Description of disease or injury and description of process:

(A) Anthrax: Handling of wool, hair, bristles, hides, and skins.

(B) Glanders: Care of any equine animal suffering from glanders; handling carcass of such animal.

(C) Lead poisoning: Any industrial process involving the use of lead or its preparation or compounds.

(D) Mercury poisoning: Any industrial process involving the use of mercury or its preparations or compounds.

(E) Phosphorous poisoning: Any industrial process involving the use of phosphorous or its preparations or compounds.

(F) Arsenic poisoning: Any industrial process involving the use of arsenic or its preparations or compounds.

(G) Poisoning by benzol or by nitro-derivatives and amido-derivatives of benzol (dinitro-benzol, anilin, and others): Any industrial process involving the use of benzol or nitro-derivatives or amido-derivatives of benzol or its preparations or compounds.

(H) Poisoning by gasoline, benzine, naphtha, or other volatile petroleum products: Any industrial process involving the use of gasoline, benzine, naphtha, or other volatile petroleum products.

(I) Poisoning by carbon bisulphide: Any industrial process involving the use of carbon bisulphide or its preparations or compounds.

(J) Poisoning by wood alcohol: Any industrial process involving the use of wood alcohol or its preparations.

(K) Infection or inflammation of the skin on contact surfaces due to oils, cutting compounds or lubricants, dust, liquids, fumes, gases, or vapors: Any industrial process involving the handling or use of oils, cutting compounds or lubricants, or involving contact with dust, liquids, fumes, gases, or vapors.

(L) Epithelion cancer or ulceration of the skin or of the corneal surface of the eye due to carbon, pitch, tar, or tarry compounds: Handling or industrial use of carbon, pitch, or tarry compounds.

(M) Compressed air illness: Any industrial process carried on in compressed air.

(N) Carbon dioxide poisoning: Any process involving the evolution or resulting in the escape of carbon dioxide.

(O) Brass or zinc poisoning: Any process involving the manufacture, founding, or refining of brass or the melting or smelting of zinc.

(P) Manganese dioxide poisoning: Any process involving the grinding or milling of manganese dioxide or the escape of manganese dioxide dust.

(Q) Radium poisoning: Any industrial process involving the use of radium and other radioactive substances in luminous paint.

(R) Tenosynovitis and prepatellar bursitis: Primary tenosynovitis characterized by a passive effusion or crepitus into the tendon sheath of the flexor or extensor muscles of the hand, due to frequently repetitive motions or vibrations, or prepatellar bursitis due to continued pressure.

(S) Chrome ulceration of the skin or nasal passages: Any industrial process involving the use of or direct contact with chromic acid or bichromates of ammonium, potassium, or sodium or their preparations.

(T) Potassium cyanide poisoning: Any industrial process involving the use of or direct contact with potassium cyanide.

(U) Sulphur dioxide poisoning: Any industrial process in

which sulphur dioxide gas is evolved by the expansion of liquid sulphur dioxide.

(V) Berylliosis: Berylliosis means a disease of the lungs caused by breathing beryllium in the form of dust or fumes, producing characteristic changes in the lungs and demonstrated by x-ray examination, by biopsy or by autopsy.

Sections 4123.01 to 4123.94, inclusive, of the Revised Code, do not entitle an employee or his dependents to compensation, medical treatment, or payment of funeral expenses for disability or death from berylliosis unless the employee has been subject to injurious exposure to beryllium dust or fumes in his employment in this state preceding his disablement and only in the event of such disability or death resulting within eight years after the last injurious exposure. In the event of death following continuous total disability commencing within eight years after the last injurious exposure, the requirement of death within eight years after the last injurious exposure does not apply.

Before awarding compensation for partial or total disability or death due to berylliosis, the industrial commission shall refer the claim to a qualified medical specialist for examination and recommendation with regard to the diagnosis, the extent of the disability, the nature of the disability, whether permanent or temporary, the cause of death, and other medical questions connected with the claim. An employee shall submit to such examinations, including clinical and x-ray examinations, as the commission requires. In the event that an employee refuses to submit to examinations, including clinical and x-ray examinations, after notice from the commission, or in the event that a claimant for compensation for death due to berylliosis fails to produce necessary consents and permits, after notice from the commission, so that such autopsy examination and tests may be performed, then all rights for compensation are forfeited. The reasonable compensation of such specialist and the expenses of examinations and tests shall be paid, if the claim is allowed, as part of the expenses of the claim, otherwise they shall be paid from the surplus fund.

(W) *Cardiovascular and pulmonary diseases incurred by fire fighters following exposure to smoke, toxic gases, chemical fumes and other toxic vapors: Any cardiovascular and pulmonary disease of a fire fighter caused by the cumulative effect of the inhalation of smoke, toxic gases, chemical fumes and other toxic vapors in the performance of his duty. For the purpose of this section, "fire fighter" means any regular member of a lawfully constituted fire department of a municipal corporation or township, whether paid or volunteer.*

Sections 4123.01 to 4123.94, inclusive, of the Revised Code

do not entitle a fire fighter or his dependents to compensation, medical treatment, or payment of funeral expenses for disability or death from a cardiovascular and pulmonary disease, unless the fire fighter has been subject to injurious exposure to smoke, toxic gases, chemical fumes, and other toxic vapors in his employment in this state preceding his disablement, for periods amounting in all to at least three years, some portion of which has been after January 1, 1967, except as provided in the last paragraph of section 4123.57 of the Revised Code.

Compensation and medical, hospital, and nursing expenses on account of cardiovascular and pulmonary diseases of fire fighters are payable only in the event of temporary total disability, permanent total disability, or death, in accordance with section 4123.56, 4123.58, or 4123.59, of the Revised Code, and only in the event of such disability or death resulting within eight years after the last injurious exposure. In the event of death following continuous total disability commencing within eight years after the last injurious exposure, the requirement of death within eight years after the last injurious exposure does not apply.

Claims of a fire fighter for compensation and medical, hospital, and nursing expenses on account of a cardiovascular and pulmonary disease are forever barred unless application therefor is made to the commission within one year after total disability began or within such longer period as does not exceed six months after diagnosis of such disease by a licensed physician. Claims of dependents of fire fighters for benefits on account of death from cardiovascular and pulmonary disease are forever barred unless application therefor is made to the commission within six months after death.

Sections 4123.01 to 4123.94, inclusive, of the Revised Code, do not entitle a fire fighter or his dependents to compensation, medical, hospital, and nursing expenses, or payment of funeral expenses for disability or death due to a cardiovascular and pulmonary disease in the event of failure or omission on the part of the fire fighter truthfully to state, when seeking employment, the place, duration, and nature of previous employment in answer to an inquiry made by the employer.

Before awarding compensation for disability or death under this division, the commission shall refer the claim to a qualified medical specialist for examination and recommendation with regard to the diagnosis, the extent of disability, the cause of death, and other medical questions connected with the claim. A fire fighter shall submit to such examinations, including clinical and x-ray examinations, as the commission requires. In the event that a fire fighter refuses to submit to examinations, including clinical and x-ray examinations, after notice from the commis-

sion, or in the event that a claimant for compensation for death under this division fails to produce necessary consents and permits, after notice from the commission, so that such autopsy examination and tests may be performed, then all rights for compensation are forfeited. The reasonable compensation of such specialists and the expenses of examination and tests shall be paid, if the claim is allowed, as part of the expenses of the claim, otherwise they shall be paid from the surplus fund.

(X) Silicosis: Silicosis means a disease of the lungs caused by breathing silica dust (silicon dioxide) producing fibrous nodules distributed through the lungs and demonstrated by x-ray examination, by biopsy or by autopsy.

Sections 4123.01 to 4123.94, inclusive, of the Revised Code do not entitle an employee or his dependents to compensation, medical treatment, or payment of funeral expenses for disability or death from silicosis, unless the employee has been subject to injurious exposure to silica dust (silicon dioxide) in his employment in this state preceding his disablement, for periods amounting in all to at least three years, some portion of which has been after October 12, 1945, except as provided in the *second to* last paragraph of section 4123.57 of the Revised Code.

Compensation and medical, hospital, and nursing expenses on account of silicosis are payable only in the event of temporary total disability, permanent total disability, or death, in accordance with sections 4123.56, 4123.58, and 4123.59, of the Revised Code, and only in the event of such disability or death resulting within eight years after the last injurious exposure. In the event of death following continuous total disability commencing within eight years after the last injurious exposure, the requirement of death within eight years after the last injurious exposure does not apply.

Claims of an employee for compensation and medical, hospital, and nursing expenses on account of silicosis are forever barred unless application therefor is made to the commission within one year after total disability began or within such longer period as does not exceed six months after diagnosis of silicosis by a licensed physician. Claims of dependents for benefits on account of death from silicosis are forever barred unless application therefor is made to the commission within six months after death.

Sections 4123.01 to 4123.94, inclusive, of the Revised Code, do not entitle an employee or his dependents to compensation, medical, hospital, and nursing expenses, or payment of funeral expenses for disability or death due to silicosis in the event of the failure or omission on the part of the employee truthfully to state, when seeking employment, the place, duration, and nature of previous employment in answer to an inquiry made by the employer.

Before awarding compensation for disability or death due to silicosis, the commission shall refer the claim to a qualified medical specialist for examination and recommendation with regard to the diagnosis, the extent of disability, the cause of death, and other medical questions connected with the claim. An employee shall submit to such examinations, including clinical and x-ray examinations, as the commission requires. In the event that an employee refuses to submit to examinations, including clinical and x-ray examinations, after notice from the commission, or in the event that a claimant for compensation for death due to silicosis fails to produce necessary consents and permits, after notice from the commission, so that such autopsy examination and tests may be performed, then all rights for compensation are forfeited. The reasonable compensation of such specialist and the expenses of examinations and tests shall be paid, if the claim is allowed, as part of the expenses of the claim, otherwise they shall be paid from the surplus fund.

*** *(Y)* Radiation illness: Any industrial process involving the use of radioactive materials.

Claims for compensation and benefits due to radiation illness are payable only in the event death or disability occurred within eight years after the last injurious exposure provided, however, that if the death followed continuous disability which commenced within eight years of the last injurious exposure the requirement of death within eight years after the last injurious exposure does not apply.

Claims of an employee for compensation and medical, hospital, and nursing expenses on account of radiation illness are forever barred unless application therefor is made to the commission within one year after disability began or within such longer period as does not exceed six months after diagnosis of radiation illness by a licensed physician. Claims of dependents for benefits on account of death from radiation illness are forever barred unless application therefor is made to the commission within six months after death.

*** *(Z)* All other occupational diseases: A disease peculiar to a particular industrial process, trade, or occupation and to which an employee is not ordinarily subjected or exposed outside of or away from his employment.

All conditions, restrictions, limitations, and other provisions of this section, with reference to the payment of compensation or benefits on account of silicosis, shall be applicable to the payment of compensation or benefits on account of any other occupational disease of the respiratory tract resulting from injurious exposures to dusts, except berylliosis.

SECTION 2. That existing sections 4123.343, 4123.57, and 4123.68 of the Revised Code are hereby repealed.

CHARLES F. KURFESS,
Speaker of the House of Representatives.

JOHN W. BROWN,
President of the Senate.

Passed July 24, 1967.

Approved August 1, 1967.

JAMES A. RHODES,
Governor.

The sectional numbers herein are in conformity with the Revised Code.

OHIO LEGISLATIVE SERVICE COMMISSION
DAVID A. JOHNSTON, *Director*

Filed in the office of the Secretary of State at Columbus, Ohio, on the 1st day of August, A. D. 1967.

I hereby certify that the foregoing is a true copy of the enrolled bill.

Ted W. Brown

TED W. BROWN,
Secretary of State.

File No. 162.

Effective October 31, 1967.

PENNSYLVANIA

No. 435

AN ACT

HB 505

Amending the act of June 21, 1939 (P. L. 566), entitled "An act defining the liability of an employer to pay damages for occupational disease contracted by an employe arising out of and in the course of employment; establishing an elective schedule of compensation; providing procedure for the determination of liability and compensation thereunder; imposing duties on the Department of Labor and Industry, the Workmen's Compensation Board, Workmen's Compensation Referees, and deans of medical schools; creating a medical board to determine controverted medical issues; establishing an Occupational Disease Fund in custody of the State Workmen's Insurance Board; imposing upon the Commonwealth a part of the compensation payable for certain occupational diseases; making an appropriation; and prescribing penalties," further defining diseases of fire fighters within the act, and fixing liability for compensation thereunder on the Commonwealth.

The General Assembly of the Commonwealth of [redacted] hereby enacts as follows:

Section 1. Clause (o) of section 108, act of June 21, 1939 (P. L. 566), known as "The Pennsylvania Occupational Disease Act," added December 10, 1959 (P. L. 1746), is amended to read:

Section 108. The term "occupational disease," as used in this act, shall mean only the following diseases:

* * *

(o) Diseases of the [redacted] resulting in either temporary or permanent total or partial disability or death, after four years or more of service in [the full time salaried occupation of] fire fighting for the benefit or safety of the public, caused by extreme over-exertion in times of stress or danger or by exposure to heat, smoke, fumes or gases, arising directly out of the employment of any such firemen. The Commonwealth shall pay the full amount of compensation for disability under this clause.

APPROVED—The 17th day of December A. D. 1965.

WILLIAM W. SCRANTON

The foregoing is a true and correct copy of Act of the General Assembly No. 435.

W. Stewart Lee

Secretary of the Commonwealth.

7450275

State of Rhode Island, &c.

IN GENERAL ASSEMBLY

JANUARY SESSION, A. D. 19 74

AN ACT

RELATING TO ANNUITIES TO DEPENDENTS OF DECEASED FIREMEN.

It is enacted by the General Assembly as follows:

SECTION 1. Section 45-19-12 of the general laws in chapter 45-19 entitled "Relief of firemen and policemen", is hereby amended to read as follows:

"45-19-12. Annuities to dependents of deceased firemen.- If an active or retired member of the fire force of a city or town or crash rescue crewman of the state of Rhode Island is killed or dies from injuries received while in the performance of his duty as such member; or dies of a heart condition; or dies of respiratory ailments; or dies of any conditions derived from hypertension ~~while still a~~ member there shall be paid out of the firemen's relief fund of Rhode Island, to the following dependents of such deceased person the following sums of money;

"* * *"

SEC. 2. This act shall take effect upon its passage.

Heart Hearing

SC

Senate: Bristow and Rubin
Attorney: Hoffman
Stenographer: Hall
Date: 2-1-67
No.: 157

RECEIVED
OCT 26 1971
INT'L ASSOC. OF FIRE FIGHTERS

SOUTH CAROLINA

S. 157
Gen. Com.

A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1962, BY ADDING NEW SECTION 72-251.1, SO AS TO CREATE A PRESUMPTION IN FAVOR OF FIRE FIGHTERS THAT CERTAIN CONDITIONS OF HEALTH ARISE OUT OF AND IN THE COURSE OF THEIR EMPLOYMENT FOR THE PURPOSES OF THE SOUTH CAROLINA WORKMEN'S COMPENSATION LAW.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. The Code of Laws of South Carolina, 1962, is amended by adding new Section 72-251.1, so as to create a presumption in favor of fire fighters that certain conditions of health arise out of and in the course of their employment, as follows:

"Section 72-251.1. Notwithstanding the provisions of Chapter 5 of Title 72, for purposes of the South Carolina Workmen's Compensation Law, any impairment or injury to the health of a fire fighter caused by tuberculosis, hypertension, heart disease or respiratory disease resulting in total or partial disability, or death, shall be presumed to have arisen out of and in the course of employment, unless the contrary is shown by

competent evidence, if such fire fighter is at the time of such impairment or injury a bona fide member of a fire department in this State. In order to be entitled to the presumption provided for herein, any person becoming a member of a fire department after the effective date of this act must be under the age of thirty-seven years and must have successfully passed a physical examination by a competent physician upon entering into such service, which examination failed to reveal any evidence of such condition or conditions."

SECTION 2. This act shall take effect upon approval by the Governor.

SOUTH DAKOTA

Circulatory or respiratory disease presumed occupational in firemen. Notwithstanding the provisions of any general or special law to the contrary, any condition of impairment of health caused by hypertension, heart disease, or respiratory disease resulting in total or partial disability to an officer or member of a fire department who successfully passed physical examination on entering into such service, which examination failed to reveal any evidence of such condition, shall be presumed to have been suffered in line of duty, unless the contrary be shown by competent evidence.

TENNESSEE

HOUSE BILL NO. 790

BY

Atkinson
Galbreath
Allen
Bradley
Agee
Mrs. Anderson
Cook
Pride

AN ACT to provide for a presumption that the impairment of health by lung disease, hypertension or heart disease of Firemen or Fire Fighters regularly employed by the State of Tennessee, any county, city, municipal or other governmental agency in the State of Tennessee, shall be presumed to have occurred, suffered or arose out of and in the course of duty of such employee.

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, That the State of Tennessee, or any municipal corporation or other political subdivision thereof that maintains a regular Fire Department manned by regular and full-time employees and has established or hereafter establishes any form of compensation, other than workman's compensation, to be paid to such Firemen or Fire Fighters for any condition or impairment of health which shall result in loss of life or personal injury in the line of duty or course of employment, there shall be and there is hereby established a presumption that any impairment of health of such Firemen caused by disease of the lungs hypertension or heart disease resulting in hospitalization, medical treatment or any disability, shall be presumed (unless the contrary be shown by competent medical evidence) to have occurred or to be due to accidental injury suffered in the course of employment. Any such condition or impairment of health which results in death shall be presumed (unless the contrary be shown by competent medical evidence) to be a loss of life in line of duty, and to have been in the line and course of employment, and in the actual discharge of the duties of his position, or the sustaining of personal injuries by external and violent means or by accident in the course of employment and in the line of duty. Provided, however, that such firemen shall have successfully passed a physical examination prior to such claimed disability, or upon entering upon his governmental employment and such examination fails to reveal any evidence of the condition or disease of the lungs, hypertension or heart disease.

It is hereby declared to be the legislative intent that this Act is to be remedial in character and to permit and require any municipal corporation maintaining any permanent Fire Department heretofore created or created after the effective date of this Act, to be covered by its provisions.

SECTION 2. BE IT FURTHER ENACTED, That all Acts or parts of Acts in conflict with the provisions of this Act be and the same are hereby repealed, and the provisions of this Act are declared to be severable; and, if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this Act shall continue in full force and effect, it being the legislative intent, now hereby declared, that this Act would have passed even if such unconstitutional or void matter had not been included therein.

SECTION 3. BE IT FURTHER ENACTED, That this Act take effect from and after its passage, the public welfare requiring it.

PASSED: March 19, 1965

SPEAKER OF THE HOUSE OF REPRESENTATIVES

SPEAKER OF THE SENATE

GOVERNOR

APPROVED:

TEXAS

HEART AND LUNG ADOPTION PENDING

The Fireman's Heart and Lung Bill, which was effective August 30, 1971, caught the Beaumont Pension Fund in an untimely predicament. The Bill provides that before it can be adopted locally, the fund must obtain an actuarial study showing what effect this will have on the financial condition of the fund. The State Pension Law provides that a pension fund can only pay for an actuarial study every three (3) years. We had an actuary study made in January, 1970, so are therefore unable to pay for another until 1973. The Board of Trustees are presently working to get an estimate of cost from the actuarial firm. When this cost is determined, the only way we will be able to adopt the Heart and Lung provisions at this time is to obtain funds for an actuary study from some other source.

Basically what the Bill provides is "any Fireman who has been employed for as long as six years, and thereafter becomes disabled or dies from Heart or Lung disease, is presumed to have dies as a consequence of his duties as a Fireman, if he has previously, at anytime, successfully passed a physical examination without any evidence of Heart or Lung disease."

35-2-15. Benefits for occupational diseases—Computation of benefits—Vocational rehabilitation.

The benefits to which a disabled employee or his dependents shall be entitled under this act shall be based upon his average weekly wage computed under the formula set forth in section 35-1-75, Utah Code Annotated 1953, as amended, and are to be limited as follows:

(2) In cases of permanent total disability the award shall be sixty per cent of the average weekly wages for a period of not to exceed five years, beginning with the date total disability began, and thereafter forty-five per cent of such average weekly wages, but not to exceed a maximum of $54 per week and not less than $29 per week, plus $5.00 for a dependent wife and $5.00 for each dependent minor child under the age of eighteen years up to a maximum of four such dependent minor children; provided, however, that in no case of permanent total disability shall the employer or its insurance carrier be required to pay more than $24,648; and provided, further, that a finding by the commission of permanent total disability shall in all cases be tentative and not final until such time as the following proceedings have been had:

Where the employee has tentatively been found to be permanently and totally disabled, as in this section provided, it shall be mandatory that the industrial commission of Utah refer such employee to the division of vocational rehabilitation under the state board of education for rehabilitation training and it shall be the duty of the commission to order paid to such vocational rehabilitation division, out of that special fund provided for by section 35-1-68, Utah Code Annotated 1953, as amended, subdivision 1, not to exceed $830 for use in the rehabilitation and training of such employee; the rehabilitation and training of such employee shall generally follow the practice applicable under section 35-1-69, Utah Code Annotated 1953, as amended, and relating to the rehabilitation of employees having combined injuries. If and when the division of vocational rehabilitation under the state board of education certifies to the industrial commission of Utah in writing that such employee has fully co-operated with the division of vocational rehabilitation in its efforts to rehabilitate him, and in the opinion of the division the employee may not be rehabilitated, then the commission shall order that there be paid to such employee weekly benefits at the rate of forty-five per cent of his average weekly earnings, but not to exceed $54 per week out of that special fund provided for by section 35-1-68, Utah Code Anno-

tated 1953, as amended, for such period of time beginning with the time that the payments (as in this section provided) to be made by the employer or its insurance carrier terminate and ending with the death of the employee. No employee, however, shall be entitled to any such payments if he fails or refuses to co-operate with the division of vocational rehabilitation as set forth herein.

The division of vocational rehabilitation shall, at the termination of the vocational training of the employee, certify to the industrial commission of Utah the work the employee is qualified to perform, and thereupon the commission shall, after notice to the employer and an opportunity to be heard, determine whether the employee has notwithstanding such rehabilitation, sustained a loss of bodily function.

In no case shall the employer be required to pay compensation for any combination of disabilities of any kind including loss of function, in excess of $24,648.

(b) In cases of temporary total disability the award shall be sixty per cent of the average weekly wages as determined under section 35-1-75, Utah Code Annotated 1953, as amended, but not to exceed a maximum of $54 per week and not less than $29 per week, plus $5 for a dependent wife, and $5 for each dependent minor child under the age of eighteen years up to a maximum of four such dependent minor children, such payment to be made for a period not exceeding 52 weeks; in the event total disability continue in excess of 52 weeks, then the commission shall apply the rehabilitation provisions of this section hereinabove set forth.

(c) In case of death those persons who were wholly dependent upon the employee at the time of death shall be entitled to and shall receive the difference, if any, between $16,848 and the amounts the employer may have paid to the employee on account of permanent total, total temporary and partial permanent disability provided that if the deceased had a dependent wife or monor [minor] children wholly dependent upon him at the time of death, then said limit of $16,848 shall be increased by $1,560 for a dependent wife and $1,560 for each such dependent minor child up to four wholly dependent minor children or a maximum of $24,648, in case of a dependent wife and four wholly dependent minor children; the payments to the dependents to be made at the same weekly rate as the payments made to the deceased employee immediately preceding his daeth. If the dependents of the deceased were but partially dependent upon him at the time of death, then the compensation payable shall be in such amount and at such times as the commission may determine but shall not exceed two-thirds of the amount that would have been payable (as in this paragraph provided) if the dependents had been wholly dependent at the time of death.

(d) In the event the employee becomes totally disabled from an occupational disease, the employer shall furnish and pay for such medical service, hospitalization and medicines as may be reasonable and necessary expenses.

(e) In case death results from such occupational disease the employer shall pay not to exceed $1,000 burial expenses.

Section 2. Section amended.

Section 35-2-27, Utah Code Annotated 1953, is amended to read:

35-2-27. Diseases considered occupational diseases — Circumstances necessary to claim compensation—Pneumoconiosis.

For the purpose of this act only the diseases enumerated in this section shall be deemed to be occupational diseases:

(1) Anthrax.
(2) Glanders.
(3) Poisoning by acetaldehyde or its compounds.
(4) Poisoning by acetanilide or its compounds.
(5) Poisoning by cyanogen and its compounds.
(6) Poisoning by chlorine and its compounds.
(7) Poisoning by arsenic or its compounds.
(8) Poisoning by antimony or its compounds.
(9) Poisoning by cadmium or its compounds.
(10) Poisoning by lead or its compounds.
(11) Poisoning by manganese or its compounds.
(12) Poisoning by mercury or its compounds.
(13) Poisoning by selenium or its compounds.
(14) Poisoning by tellurium or its compounds.
(15) Poisoning by vanadium or its compounds.
(16) Poisoning by phosphorous or its compounds.
(17) Poisoning by hydrogen sulphide or carbon by-sulphide.
(18) Chrome ulceration and poisoning.
(19) Poisoning by toxic halogenated hydro-carbons.
(20) Poisoning by benzol or its derivatives, including toluol, xylol, and the nitro, nitroso, and amino derivatives of these substances.
(21) Methanol poisoning.
(22) Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye, due to tar, pitch, bitumen, mineral oil or paraffin, or any compound, product or residue of any of these substances.
(23) Gastrointestinal disorders due to contact with pertoleum products and their fumes.
(24) Dermatitis (Venenata) excluding any dermatitis of which the primary cause is infectious or parasitic in nature.
(25) Synovitis, or tenosynovitis, or bursitis, or cellulitis, of the wrist, elbow, knee, or hand, due to continual pressure or friction or to repeated trauma or vibration of tools.
(26) Ulceration of the skin or destruction of tissue due to the prolonged exposure to roentgen rays or radium emanations.
(27) Silicosis.
(28) Such other diseases or injuries to health which directly arise as a natural incident of the exposure occasioned by the employment, provided however, that such a disease or injury to health shall be compensable only in those instances where it is shown by the employee or his dependents that all of the following named circumstances were present:

(1) a direct causal connection between the conditions under which the work is performed and the disease or injury to health; (2) the disease or injury to health can be seen to have followed as a natural incident

of the work as a result of the exposure occasioned by the employment; (3) the disease or injury to health can be fairly traced to the employment as to the proximate cause; (4) the disease or injury to health is not of a character to which the employee may have had substantial exposure outside of the employment; (5) the disease or injury to health is incidental to the character of the business and not independent of the relation of the employer and employee; and (6) the disease or injury to health must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a natural consequence, though it need not have been foreseen or expected before discovery. No disease or injury to health shall be found compensable where it is of a character to which the general public is commonly exposed.

(29) Pneumoconiosis as defined by Title IV of the Federal Coal Mine Health and Safety Act of 1969 (Public Law 91-173) and all regulations pertaining thereto causing total disability as determined by the medical panel shall be paid benefits as provided by this act. This subparagraph shall become effective and apply to all persons who become totally disabled after January 1, 1973.

Section 3. Section amended.

Section 35-2-48, Utah Code Annotated 1953, is amended to read:

35-2-48. Requirements and procedure for filing a written claim.

The right to compensation under this act for disability or death from an occupational disease shall be forever barred unless written claim is filed with the commission within the time as in this section hereinafter provided:

(a) If the claim is made by an employee and based upon silicosis it must be filed within one year after the cause of action arises.

(b) If the claim is made by an employee and based upon a disease other than silicosis it must be filed within six months after the cause of action arises.

(c) If the claim is made by a dependent of an employee and based upon death resulting from silicosis or any other occupational disease it must be filed within six months after the cause of action arises.

Section 4. Section amended.

Section 35-2-56, Utah Code Annotated 1953, as amended by Chapter 59, Laws of Utah 1955, as amended by Chapter 63, Laws of Utah 1957, as amended by Chapter 56, Laws of Utah 1959, as amended by Chapter 72, Laws of Utah 1961, as amended by Chapter 50, Laws of Utah 1963, as amended by Chapter 70, Laws of Utah 1965, as amended by Chapter 67, Laws of Utah 1967, as amended by Chapter 87, Laws of Utah 1969, is amended to read:

35-2-56. Conditions for employer's liability for payment of benefits due to partial or permanent disability—Form for report of medical panel—Computation of benefits.

(1) There is imposed upon the employer a liability for the payment of benefits, as hereinafter provided, to every employee who becomes partially and permanently disabled and such disability is pri-

caused or contributed to by a disease or injury to health arising out of or in the course of employment, subject however to the following conditions:

(a) No compensation shall be paid when the last day of injurious exposure of the employee to the hazards of the occupational disease shall have occurred prior to July 1, 1941.

(b) No compensation shall be paid unless such partial disability results within two years prior to the day upon which claim for such compensation was filed with the industrial commission of Utah.

(c) No compensation shall be paid unless the partial disability results within two years of the last day in which the employee was exposed to the occupational disease.

(d) The time limit prescribed by paragraphs (b) and (c) shall not apply in the case of an employee whose disablement was due to occupational exposure to ionizing radiation; provided, that a claim for such compensation shall be filed within one year after the date upon which the employee first suffered incapacity from the exposure to radiation and either knew or in the exercise of reasonable diligence should have known that the occupational disease was caused by his present or prior employment.

(2) It is recognized that the measurement of partial permanent disability is a highly technical and difficult task and should be placed in the hands of physicians specially trained for the care and treament of the occupational disease involved, and that particularly in cases of silicosis such determination should be by physicians limiting largely their practice to diseases of the chest; that the measurement of the extent of such disability should not be determined by physicians in general practice nor by laymen. Where a claim for compensation based upon partial permanent disabiilty due to an occupational disease is filed with the commission, the commission shall appoint an impartial medical panel to consist of not less than three physicians specializing in the treatment of the disease or condition involved in the claim, and such medical panel shall make such study, take such X-rays and perform such tests as the panel may determine and certify to the commision the extent, if any, of the permanent disability of the claimant from performing work for remuneration or profit, and whether the sole cause of such partial permanent disability, in the opinion of the panel, results from the occupational disease and whether any other cause or causes have aggravated, prolonged, accelerated or in anywise contributed to the disability, and if so, the extent (in percentage) to which such other cause or causes has so contributed to the disability. The report of the panel shall be made to the commission in writing and shall be in substantially the following form:

REPORT OF MEDICAL PANEL

Partial Permanent Disability Cases

To the Industrial Commission of Utah
State Capitol Building
Salt Lake City, Utah

Re: _____, Claimant

Claim No. _____

The medical panel, composed of the undersigned physicians, has completed its study and examination of the above named claimant with respect to the measurement of the ability of the claimant to perform physical labor* (but without regard to the education, experience or training of the claimant) and on the assumption that the normal person functions at 100%, finds as follows:

		Percentage	Percentage
(1)	Extent of Permanent Partial Disability from all causes (if any)		_____
**(2)	Specific causes of such disability:		
	a. Occupational Disease (if any Name of Occupational disease_____	_____	
	b. Other diseases or injuries Names of such diseases or injuries_____	_____	
	c. Other contributing factors		
	TOTAL	_____	_____

Dated _____, 19____

_____

_____

_____

(Medical Panel)

*Section 35-2-12(e), defines partial permanent disability as: "Partial permanent disability," as herein used, is defined as that pathological condition directly resulting from an occupational disease and causing substantial physical impairment, evidenced by objective medical and clinical findings readily demonstrable, and which has reduced the earning capacity of the employee, excluding, however, total disability cases.

"The sum of the percentage under (2) a, b, and c should equal the percentage of (1) and the commission shall promptly distribute by mail full copies of such report to the claimant, employer against whom compensation is claimed and the insurance carrier. Thereafter any such party shall have ten days to object, in writing, to such report, and if no objections are filed with the commission within such period, the percentage of partial disability caused solely by the occupational disease and so certified by the medical panel shall be deemed accepted. The expense of such study and certification shall be paid out of the fund provided for by 35-1-68, Utah Code Annotated 1953, as amended and such study and certification shall be a part of the record. If objections to such report are filed, then it shall be the duty of the commission to determine the percentage of such partial permanent disability after formal hearing, and at such formal hearing the party objecting must show by the weight of the evidence the extent of such claimed partial permanent disability and on appeal the evidence shall be reviewed as in equity cases, notwithstanding section 35-2-38, Utah Code Annotated 1953.

(3) Where an employee has been found to be partially and permanently disabled by reason of an occupational disease, as in subsections (1) (2) (3) and (4) provided, and the commission further finds that the employee is unable to obtain employment in his usual trade or occupation, or on application of either the employee or employer the commission finds that it is to the best interest of the employee so partially and permanently disabled by reason of an occupational disease that he no longer works at his usual trade or occupation, then it shall be the duty of the commission to order that there be paid to the division of vocational rehabilitation of the state board of education out of that special fund provided for by section 35-1-68, Utah Code Annotated 1953, as amended, subdivision 1, not to exceed $390 for use in the rehabilitation and training of such employee, such rehabilitation to be directed and controlled by such division of rehabilitation acting in conjunction with the industrial commission of Utah and shall generally follow the practice applicable under section 35-1-69, Utah Code Annotated 1953, as amended, and relating to the rehabilitation of employees having combined injuries.

(4) The benefits imposed upon the employer and to which an employee found, as in this section above provided, to be partially permanently disabled, shall be entitled under this act, are limited to the following:

During those weeks in which the employee is actively in training under the division of rehabilitation, as in this section above referred to, the employee shall receive $54 per week for not to exceed 20 weeks, or a total of $1,000 such payment to be made at four-week intervals and upon the filing with the commission at two-week intervals of a certificate by the division of rehabilitation that the employee is co-operating with such division in his rehabilitation training.

At the termination of such training in rehabilitation, the employee shall be paid $27 a week at four-week intervals until such time as the total payments so made, plus the weekly payments received by the employee during the rehabilitation training, equals a sum equivalent to that amount determined under the following formula:

By applying the percentage of partial permanent disability resulting

from the occupational disease and determined by the medical panel (or in case of formal hearing, then by the commission) to the amount of $7,000. For example: Assume a finding by the medical panel that the employee has sustained partial permanent disability from an occupational disease to the extent of twenty per cent loss of bodily function. Twenty per cent of $7,000 equal $1,400. The amount payable would therefore be:

20 weeks rehabilitation	$1,000
Balance at intervals of 4 weeks	400
TOTAL	1,400

Notwithstanding anything hereinabove provided, payments for partial permanent disability shall not exceed in any one case an aggregate of $7,000 and all payments so made shall be credited to the employer and deducted from any award which might ultimately be made should the employee subsequently become totally and permanently disabled.

Section 5. Section repealed.

Section 35-2-20, Utah Code Annotated 1953, is hereby repealed.

Section 6. Effective date.

This act shall take effect on July 1, 197.

Approved March 22, 1971.

VERMONT WORKMEN'S COMPENSATION LAW

DEFINITION: "Personal injury by accident arising out of and in the course of such employment" includes an injury caused by the wilful act of a third person directed against an employee because of his employment; it also includes, in the case of a fire fighter, disability or death from a heart injury or disease incurred or aggravated and proximately caused by service in the line of duty but does not include other disease unless it results from the injury;

(1) "Line of duty", as applied to fire fighters shall mean:
Service as a fireman in his town or district, in answer to a call of his department, including but not limited to going to and returning from a fire or participating in a fire drill, parade, test or trial of any fire-fighting equipment.
Similar service as a fireman in another town or district to which his department has been called for fire-fighting purposes, and
Service under orders of any fire department, officer in any other emergency to which his department is called in the town or district where his department is established;
A heart injury or disease symptomatic within twenty-four hours from the date of last service in the line of duty at a fire shall be presumed to be incurred in the line of duty.

VIRGINIA

CHAPTER 28

An Act to amend and reenact § 15.1-136.2, as amended, of the Code of Virginia, relating to definitions under the Line of Duty Act.

[S 31]

Approved MAR 7 1974

Be it enacted by the General Assembly of Virginia:

1. That § 15.1-136.2, as amended, of the Code of Virginia is amended and reenacted as follows:

§ 15.1-136.2. Definitions.—For the purposes of this article the following words shall have the meanings herein ascribed to them:

(a) *"Deceased"* shall mean any person whose death occurs *on or after April eight, nineteen hundred seventy-two,* as the direct or proximate result of the performance of his duty as a law-enforcement officer of this State or any of its political subdivisions, or as sheriff, deputy sheriff, or as a member of any fire company or department or rescue squad which shall have been recognized by an ordinance or a resolution of the governing body of any county, city or town of this State as an integral part of the official safety program of such county, city or town.

(b) *"Beneficiary"* shall mean the spouse of the deceased and such person or persons as are entitled to take under the will of the deceased if testate, or as his heir at law if intestate ~~, and was a dependent of the deceased for tax purposes~~ .

2. That an emergency exists and this act is in force from its passage.

.....
President of the Senate

.....
Speaker of the House of Delegates

Approved:

.....
Governor

CHAPTER 442

An Act to amend and reenact § 15.1-136.6 of the Code of Virginia, relating to the order of court directing payment of benefits under Line of Duty Act.

[S 420]

Approved APR 5 1974

Be it enacted by the General Assembly of Virginia:

1. That § 15.1-136.6 of the Code of Virginia is amended and reenacted as follows:

§ 15.1-136.6. Order of court.—If it shall appear to the court that the requirements of this article shall have been satisfied, the judge thereof shall enter a proper order to that effect, which order also shall direct the Comptroller to issue his warrant for the payment out of the General Fund of the State treasury of such sums, not to exceed ten thousand dollars in the aggregate, to such persons and subject to such conditions as may be proper *and in the event there is no beneficiary, the judge shall direct such payment to the estate of the deceased.*

.....
President of the Senate

.....
Speaker of the House of Delegates

Approved:

.....
Governor

CHAPTER 543

An Act to amend and reenact §§ 27-39, 27-40.1 and 27-40.2, as amended, of the Code of Virginia and to further amend the Code of Virginia by adding a section numbered 27-40.1:1 the amended and new sections relating to certain benefits for firemen.

[S 884]

RECEIVED JUN 26 1975 VA. ASSOC. OF FIRE FIGHTERS

Approved MAR 20 1973

Be it enacted by the General Assembly of Virginia:

1. That §§ 27-39, 27-40.1 and 27-40.2, as amended, of the Code of Virginia be amended and reenacted and to further amend the Code of Virginia by adding a section numbered 27-40.1:1 as follows:

§ 27-39. Counties, cities and towns authorized to provide relief.—Any county, city or town which operates fire-fighting equipment may provide for the relief of *(1)* any *children and widow of any* fireman ~~injured~~ *who* dies *(2) and for the relief of any fireman who is disabled by injury or illness* while in the service of the county, city or town or any political subdivision with which it contracts or has contracted for fire protection, whether such fireman be a member of a fire company of the county in which the injury occurred or of a political subdivision with which it contracts for fire protection.

§ 27-40.1. *The death of, or* any condition or impairment of health of salaried or volunteer firemen caused by respiratory diseases, hypertension or heart disease resulting in total or partial disability shall be presumed to have been suffered in the line of duty unless the contrary be shown by competent evidence; provided that prior to making any claim based upon such presumption for retirement, sickness or other benefits on account of such *death or* total or partial disability, such salaried or volunteer firemen shall have been found free from ~~cardiovascular or respiratory disease~~ respiratory diseases, hypertension or heart disease, as the case may be, by a physical examination which shall include such appropriate laboratory and other diagnostic studies as such governing body ~~may~~ *shall* prescribe and which shall have been conducted by physicians whose qualifications shall have been prescribed by such governing body; and provided, further, that any such fireman *or, in the case of his death, any person entitled to make a claim for such benefits,* claiming that his *death or* disability was suffered in the line of duty shall, if requested by such governing body or its authorized representative submit himself, *in the case of a claim for disability benefits,* to physical examination by any physician designated by such governing body which examination may include such tests or studies as may reasonably be prescribed by the physician so designated *or, in the case of a claim for death benefits, submit the body of the deceased fireman to a post-mortem examination to be performed by the medical examiner for the county, city or town appointed under § 19.1-40.* Such fireman *or claimant* shall have the right to have present at such examination, at his own expense, any qualified physician he may designate. Nothing herein shall be construed to extend or otherwise affect the provisions of Title 65.1, Code of Virginia, relating to workmen's compensation.

§ 27-40.1:1. Any county, city or town providing death, retirement, sickness or other benefits pursuant to the authority granted by § 27-39, or pursuant to any other provision of law or the charter of any city or town, or otherwise, shall by ordinance make provision for the employment of physicians and the performance of the physical examination required by § 27-40.1 and shall cause such examination to be made within ninety days after the effective date of this act of every fireman in its service or

the service of a political subdivision with which it has contracted for fire protection and of every fireman entering upon such service thereafter at the time of such entry.

§ 27-40.2. Employing such presumption in determining eligibility for benefits.—Such presumption, subject to the provisions of § 27-40.1, shall be employed in determining eligibility for *death*, retirement, sickness and other benefits provided pursuant to the authority granted by §§ 27-39, *27-40, or pursuant to any other provision of law or the charter of any city or town, or otherwise* for persons *who die or become* totally or partially disabled.

President of the Senate

Speaker of the House of Delegates

Approved:

Governor

WISCONSIN

WORKMEN'S COMPENSATION

66.191 Special death and disability benefits for certain ublic employes subject to Wisconsin retirement act and onservation warden fund. (1) Whenever a policeman, reman, county undersheriff, deputy sheriff, county traffic oliceman, conservation warden, state forest ranger, field onservation employe of the department of natural resources ho is subject to call for forest fire control or warden duty, ember of the state traffic patrol, university of Wisconsin full-me policeman, guard or any other employe whose principal uties are supervision and discipline of inmates at a state enal institution including central state hospital, investigator mployed by the division of criminal investigation of the epartment of justice who is a participating employe under ubch. I of ch. 41 shall, while engaged in the performance of uty, be injured or contract a disease due to his occupation, nd be found upon examination to be so disabled by a isability which is likely to be permanent, as to render ecessary his retirement from a. y of the aforesaid services, the epartment of industry, labor and human relations shall order ayment to him monthly, under s. 20.865 (1) (d) or 102.21, of a um equal to one-half his monthly salary in such service at the ime that he became so disabled. A disability of such a nature s to[illegible]ire reduction in pay or position or assignment to light luty[illegible] adversely affect promotional opportunities within he service shall be deemed sufficient to permit the employe he option of retirement.

(2) If such injury or disease shall cause the death of such erson, or the death of a conservation warden who is a member f the conservation warden pension fund under subch. II of ch. 1, and he dies leaving surviving a widow or an unmarried child under the age of 18 years, the department shall order monthly payments as follows:

(a) To the widow, unless she shall have married the deceased after he sustained such injury or contracted such disease, one-third of the monthly salary being paid to the deceased in such service at the time of his disability or death, until she marries again.

(b) To the guardian of each such child, $15 until he becomes 18 years of age; provided that the total monthly payments ordered under this subsection shall not exceed 65 per cent of the monthly salary being paid to the deceased in such service at the time of his disability or death, and there shall be a pro rata reduction in the benefits paid hereunder, if necessary, in order to comply with such limitation. On or before January 15 in each year any widow entitled to a benefit under this subsection shall file with the municipality which makes payments hereunder an affidavit stating that she has not married again. The monthly payment ordered to any widow under this subsection shall begin in each calendar year only after such affidavit shall have been filed with the clerk of such municipality, and no payment shall be made for any month in such year prior to the one in which such affidavit was filed.

(c) If any person entitled to death benefit payments under this subsection is also entitled to death benefits under ch. 102 because of the death of such participating employe, the death benefit payments due under this subsection shall be reduced by an amount equal to the total weekly death benefits payable under ch. 102.

(3) Any policeman, fireman or conservation warden who has fulfilled all other requirements for inclusion as a participating employe under the Wisconsin retirement fund shall be eligible to the benefits payable under this section during the qualifying period established pursuant to s. 41.02 (6) (c).

(4) This section shall be administered by the department of industry, labor and human relations, which may adopt necessary rules relating to """ investigations and other matters in connection with applications for benefits under this section. *In case of dispute the procedure for hearing, award and appeal shall be as set forth in ss. 102.16 to 102.26.*

(5) Any person entitled to disability benefit payments under this section may file with the department of industry, labor and human relations and the board of trustees of the Wisconsin retirement fund a written election to waive such payments and accept in lieu thereof such payments as may otherwise be due under s. 41.13; but no person shall receive disability benefit payments under both s. 41.13 and this section.

(6) Any city, village, town or county liable to pay special death and disability benefits provided for by this section may insure payment of such benefits in any insurance company authorized to transact business in this state.

891.45 Presumption of employment connected disease. in any proceeding involving the application by a municipal fireman or his beneficiary for disability or death benefits under s. 66.191 or any pension or retirement system applicable to firemen, where at the time of death or filing of application for disability benefits the deceased or disabled fireman had served a total of 5 years as a fireman and a qualifying medical examination given prior to the time of his joining the department showed no evidence of heart or respiratory defect or disease, and where the disability or death is found to be caused by heart or respiratory defect or disease, such finding shall be presumptive evidence that such defect or disease was caused by such employment.

Occupational Disease Law.

Sec.
27-288. Citation.
27-289. Definitions.
27-290. Authorized compensable occupational diseases.
27-291. Occupational disease fund created; division thereof into occupational disease general fund and occupational disease reserve fund.
27-292. Allocations into industrial accident fund and occupational disease fund.
27-293. Liability of employer's account.
27-294. Notice to employer; employee's report.
27-295. Employer's report.
27-296. Limitations.
27-297. Burden of proof; evidence.
27-298. Reduction of compensation.
27-299. Willful misconduct or self-exposure.
27-300. Effect of compensation from industrial accident fund.
27-301. Employer not liable for payment to subsequent injury fund.
27-302. Benefits for cardiac conditions.
27-303. Autopsy.
27-304. Medical advisory panel.
27-305. Appointment of impartial and expert physicians; fees and expenses.
27-306. Medical and hospital expenses.
27-307. Amounts of compensation; administration thereof.
27-308. Injurious exposure prior to effective date of act.
27-309. Applicability of Workmen's Compensation Act.

§ 27-288. Citation.—This act [§§ 27-288 to 27-309] shall be known as the Wyoming Occupational Disease Law. (Laws 1969, ch. 200, § 1.)

§ 27-289. Definitions.—(a) *"Occupational disease"* means a disease contracted secondary to injurious exposure to environmental factors or hazards that are part of the employee's working conditions in extra-hazardous occupations and that due to toxic materials or work conditions which would, independently of any other cause produce the disease for which a claim is sought.

(b) *"Extra-hazardous"* means those occupations heretofore set out in sections 27-56 and 27-57 of the Wyoming Statutes as they have heretofore or may hereinafter be enacted as part of the Workmen's Compensation Law.

(c) *"Compensable occupational disease"* means only those occupational diseases, subject to the requirements and limitations set out elsewhere in the act [§§ 27-288 to 27-309], duly authorized and listed herein.

(d) *"Injurious exposure"* used in this act means an exposure to such disease which is reasonably calculated to bring on the disease in question. (Laws 1969, ch. 200, § 2.)

§ 27-290. Authorized compensable occupational diseases.—(a) The list of authorized compensable occupational diseases shall include:

(i) Poisoning by aldehyde compounds
(ii) Poisoning by cyanogen or its compounds
(iii) Poisoning by chlorine, iodine, fluorine, bromine or their compounds
(iv) Chrome poisoning
(v) Poisoning by arsenic or its compounds
(vi) Poisoning by antimony or its compounds
(vii) Poisoning by cadmium or its compounds
(viii) Poisoning by lead or its compounds
(ix) Poisoning by mercury or its compounds
(x) Poisoning by manganese or its compounds
(xi) Poisoning by selenium or its compounds
(xii) Poisoning by tellurium or its compounds

3. In the event that the provisions of section 1 a. hereof should not be satisfied, this shall not deprive the individual of the right to establish by other probative means that the disease is occupational and arose due to his exposure to the cause thereof during his employment aforesaid.

4. This act shall take effect immediately.

(xiii) Poisoning by vanadium or its compounds
(xiv) Poisoning by phosphorus compounds
(xv) Poisoning by sulphur compounds
(xvi) Poisoning by carbon monoxide
(xvii) Poisoning by oxides of nitrogen, nitric acid and ammonias
(xviii) Poisoning by toxic hydrocarbons and other organic solvents
(xix) Methanol poisoning
(xx) Occupational pneumoconiosis
(xxi) Asbestosis
(xxii) Ionizing radiation, radiation poisoning or malignancy caused thereby
(xxiii) Anthrax
(xxiv) Dermatitis due to oils, cutting compounds, lubricants, solvents, synthetic cleaning compounds and detergents, and chemicals
(xxv) Poisoning by zinc and its compounds
(xxvi) Glanders and tularemia
(xxvii) Squamous cell carcinoma due to tar, pitch, bitumen, mineral oil, paraffin or shale oil or to any product of these substances
(xxviii) Poisoning by nickel or its compounds
(xxix) Poisoning by aluminum or its compounds
(xxx) Poisoning by beryllium or its compounds
(xxxi) Poisoning [by] copper or its compounds
(xxxii) Poisoning by thallium or its compounds
(xxxiii) Poisoning by barium or its compounds
(xxxiv) Poisoning by boron or its compounds
(xxxv) Poisoning by magnesium or its compounds
(xxxvi) Poisoning by osmium or its compounds
(xxxvii) Poisoning by plutonium or its compounds
(xxxviii) Poisoning by titanium or its compounds
(xxxix) Poisoning by zirconium or its compounds
(xl) Pemphigus and erysipeloid (due to handling of meat products)
(xli) Brucellosis (due to handling meat products)
(xlii) Anthracosis
(xliii) Poisoning by sodium or its compounds
(xliv) Peripheral neurovascular disorders resulting from prolonged manual use of tools
(xlv) Poisoning by pesticides
(xlvi) Employment-related coronary diseases.

(b) "Occupational pneumoconiosis" as a compensable occupational disease shall not mean any pulmonary disease with a diagnosis of emphysema that cannot be fairly traced to the employment, but shall mean silicosis, silituberculosis, asbestosis, anthracosis, anthracosilicosis, siderosis and other diseases of the lungs, which are the direct result of the inhalation of dust, fibers or particulates including cement dust, bentonite dust, bituminous coal dust, grain dust, stone or rock dust, wood dust and dust or fibers from gypsum, talc and trona, arising out of the employment. (Laws 1969, ch. 200, § 3; 1971, ch. 195, § 6.)

The 1971 amendment substituted "Occupational pneumoconiosis" for "Silicosis and silicotuberculosis" in subdivision (xx) of subsection (a) and added subsection (b).

Effective date.—Section 8, ch. 195, Laws 1971, makes the act effective from and after April 1, 1971.

§ 27-291. Occupational disease fund created; division thereof into occupational disease general fund and occupational disease reserve fund.—(a) There is hereby created a fund to be known as the "occupational disease fund"; and all monies received by the state treasurer under the provisions

of this act [§§ 27-288 to 27-309] allocable to occupational diseases shall become a part of the occupational disease fund, said fund to be held by the state treasurer and by him deposited in such banks as are authorized to receive deposits of the funds of the state. The treasurer in making such deposits shall divide the said occupational disease fund into two (2) distinct funds, known as the "occupational disease general fund" and the other to be known as the "occupational disease reserve fund."

(b) The occupational disease general fund, created out of the occupational disease fund, as far as possible, shall be used for payment of all awards, claims and items of expense chargeable against the occupational disease fund. All premiums collected and allocated to occupational diseases shall be placed in the occupational disease general fund; and the occupational disease reserve fund shall not be used for any said payments unless the general fund at the time is insufficient to meet the demands upon it, in which case the treasurer shall transfer from the occupational disease reserve fund to the occupational disease general fund a sufficient amount to meet the immediate demands upon said occupational disease general fund.

(c) The purpose of creating said occupational disease reserve fund from the occupational disease fund is to provide a fund within the occupational disease fund sufficiently enlarged to pay great and unusual demands upon the occupational disease fund which might be caused by a large disaster or by several such disasters occurring within a short time, and the occupational disease reserve fund shall be kept apart from the occupational disease general fund and insofar as possible be unused in accordance with said purpose. The state treasurer shall set aside in the occupational disease reserve fund at the end of each month all money in the occupational disease general fund in excess of five hundred thousand dollars ($500,000.00)

(d) The state treasurer shall keep the occupational disease reserve fund invested in any one or more of the following securities;

(i) United States government bonds; state, county, school district and municipal bonds;

(ii) Bonds, notes and debentures, or either of them, which are issued by any one or more of the following United States government corporations: banks for cooperatives, federal home loan banks, federal housing administration, federal intermediate credit banks, federal land banks, and federal national mortgage associations; or

(iii) Said treasurer may invest not to exceed fifteen per centum (15%) in value of the total of such reserve fund in notes, bonds, or debentures which are direct obligations of corporations organized and existing under the laws of any state of the United States, provided, that said obligations must be, at the time of purchase, designated as investment securities as defined by the regulations of the comptroller of the currency of the United States governing purchases for its own account of investment securities by a national bank or a state member bank of the federal reserve system.

(e) There shall initially be borrowed from the industrial accident reserve fund the sum of five hundred thousand dollars ($500,000.00) which shall be placed by the state treasurer into the occupational disease reserve fund. There shall be paid each year from the occupational disease reserve fund interest on the unpaid balance thereof at the rate of two percent (2%) per annum to the industrial accident reserve fund.

(f) If, at the end of any fiscal year beginning July 1 and ending June 30, the occupational disease reserve fund shall exceed five hundred thousand dollars ($500,000.00), and there remains a balance due the industrial accident reserve fund, the amount in excess of five hundred thousand dollars ($500,000.00) in the

occupational disease reserve fund shall be paid to the industrial accident reserve fund, and the balance due from the occupational disease reserve fund to the industrial accident reserve fund shall be reduced by each amount.

(g) If the balance owed to the industrial accident reserve fund by the occupational disease reserve fund is less than five hundred thousand dollars ($500,000.00) and if the balance of the occupational disease reserve fund shall be reduced to the sum of less than two hundred fifty thousand dollars ($250,000.00), the state treasurer may transfer from the industrial accident reserve fund, to the occupational disease reserve fund, as a loan, subject to the same requirements as the initial loan, including payment of interest, any amount the state treasurer finds is necessary to provide the occupational disease reserve fund with an adequate operating balance, which amount, however, shall not exceed an amount which will bring the total balance owed to the industrial accident reserve fund by the occupational disease reserve fund to five hundred thousand dollars ($500,000.00). (Laws 1969, ch. 200, § 4.)

§ 27-292. Allocations into industrial accident fund and occupational disease fund.—Except in those instances where the five percent (5%) provision set out in section 27-63 is applicable it shall be the duty of the state treasurer to allocate and place into the industrial accident fund one percent (1%) of the money earned by each employee and collected as premiums, and to allocate one-quarter of one percent (¼ of 1%) of all monies earned by each employee to the occupational disease fund, in those instances wherein section 27-63 is applicable it shall be the duty of the state treasurer to allocate four and three-fourths percent (4¾%) of the money earned by each employee into the industrial accident fund and one-quarter of one percent (¼ of 1%) to the occupational disease fund. The normal premium for the industrial accident fund where section 27-63 and the provisions relating to exempt accounts contained in section 27-64 do not apply will be one percent (1%) of the monies earned by an employee. The normal premium for the occupational disease fund, except where exempt as set out in section 27-64, shall be one-quarter percent (¼ of 1%) of all monies earned by employees. (Laws 1969, ch. 200, § 5; 1971, ch. 13, § 2.)

The 1971 amendment substituted "one-quarter of one percent (¼ of 1%)" for "one half of one percent (½ of 1%)" in two places in the first sentence and near the end of the third sentence. The amendment also substituted "four and three-fourths percent (4¾%)" for "four and one-half percent (4½%)" in the first sentence.

§ 27-293. Liability of employer's account.—When an employee has suffered a compensable occupational disease covered by this act [§§ 27-288 to 27-309], the employer's account in whose employment said employee was last injuriously exposed to the hazards of the disease at the time of exposure shall alone be liable therefore [therefor], without right to contribution from any prior employer. (Laws 1969, ch. 200, § 6.)

§ 27-294. Notice to employer; employee's report. — Within twenty (20) days after a diagnosis of a compensable occupational disease is first communicated to the employee, he or someone in his behalf, shall give notice thereof to the employer and shall file a report of an occupational disease in the office of the clerk of the district court of the county wherein an employee has reason to believe he was last injuriously exposed and employed. Said reports of disease under the Occupational Disease Law may be made upon printed forms prepared by the state treasurer for that purpose. (Laws 1969, ch. 200, § 7.)

§ 27-295. Employer's report.—Whenever an occupational disease occurs to any workman engaged in any of the extra-hazardous employments as defined by this act [§§ 27-288 to 27-309], it shall be the duty of the employer to file a report

in triplicate with the clerk of the district court of the county wherein the employment and the last injurious exposure occurred, within twenty (20) days after the date of notice by the employee. Said employer's report shall be made on such forms and shall provide such information as shall be provided and requested by the workmen's compensation department. (Laws 1969, ch. 200, § 8.)

§ 27-296. Limitations.—The right of compensation under the occupational disease law shall be forever barred unless a claim for benefits shall be filed with the clerk of the district court within one (1) year after a diagnosis of an occupational disease is first communicated to the employer [employee], or within three (3) years from the date of last injurious exposure to the disease in the employment, whichever first occurs; except that in the cases of a disease alleged to have been caused by ionizing radiation the claim shall be filed within one (1) year after the diagnosis of the occupational disease is first communicated to the employee, and if death results from an occupational disease within either of these periods, a claim therefor must be filed with the clerk of the district court as aforesaid within one (1) year after such date. (Laws 1969, ch. 200, § 9; 1971, ch. 195, § 7.)

The 1971 amendment deleted, following the word "within" in the exception clause relating to disease alleged to have been caused by ionizing radiation, "ten (10) years from the date of last injurious exposure of the disease in the employment, or," deleted "whichever first occurs" following "communicated to the employee" in the same clause, and substituted "a claim therefor must be filed" for "unless a claim therefor be filed" near the end of the section.

Effective date.—Section 8, ch. 195, Laws 1971, makes the act effective from and after April 1, 1971.

§ 27-297. Burden of proof; evidence.—(a) The burden in contested cases shall be upon the employee to make proper proof of his claim by a preponderance of the evidence, and to likewise prove by competent medical authority that this claim arose out of and in the course of his employment by showing by a preponderance of such evidence that:

(i) There is a direct causal connection between the condition under which the work is performed and the occupational disease,

(ii) The disease can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment,

(iii) The disease can be fairly traced to the employment as the proximate cause,

(iv) The disease does not come from a hazard to which workmen would have been equally exposed outside of the employment,

(v) And the disease is incidental to the character of the business and not independent of the relation of employer and employee.

(b) All written reports, claims, and other writings filed with the clerk of the district court shall be considered as evidence in a claim, whether or not the same has been formally introduced into the court in a contested proceeding. (Laws 1969, ch. 200, § 10.)

§ 27-298. Reduction of compensation.—Where a compensable occupational disease is aggravated by any other disease or infirmity not itself compensable, or where disablement or death from any other cause not itself compensable is aggravated, prolonged, accelerated, or in any way contributed to by a compensable occupational disease, the compensation payable under this act [§§ 27-288 to 27-309] shall be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease were the sole cause of disablement or death, as such occupational disease as a causative factor bears to all causes of such disablement or death, such reduction to be effected by reducing the disability payments therefore [therefor]. (Laws 1969, ch. 200, § 11.)

§ 27-299. Willful misconduct or self-exposure.—Notwithstanding anything herein contained, no employee or dependent of any employee, or personal representative of a deceased employee, or other person shall be entitled to receive compensation for disability or death from an occupational disease when such disability or death, wholly or in part, was caused by the willful misconduct or willful self-exposure of such employee or by his disobedience to such reasonable rules and regulations as may be adopted by the employer, and which rules and regulations have been and are kept posted in conspicuous places in and about the premises of the employer, or otherwise brought to the attention of such employee. As used in this section, willful self-exposure shall be conclusively presumed where any of the following occur:

(i) An employee or applicant for employment shall fail to state in writing to the best of his knowledge in answer to any material inquiry made by the employer, the place, duration and nature of his previous employement.

(ii) An applicant for employment shall fail to state in writing to the best of his knowledge in answer to any material inquiry made by the employer, as to whether or not he had been previously disabled, laid off, or compensated in damages or otherwise because of any physical disability.

(iii) Any employee or applicant for employement shall fail to give in writing to the best of his knowledge in answer to any material inquiry made by the employer, full information about the previous status of his health, previous medical and hospital attention, and exposure to tuberculosis.

(iv) An employee or applicant for employment shall fail or refuse to submit to medical or X-ray examination when requested so to do by the employer at the employer's expense.

(v) An employee shall willfully fail to use protective and safety devices provided by the employer. (Laws 1969, ch. 200, § 12.)

§ 27-300. Effect of compensation from industrial accident fund.—The compensation provided under this article [§§ 27-288 to 27-309] is not in addition to compensation which may be payable as an "injury" incurred by industrial accident in cases where injury results by reason of an accident arising out of or in the course of the employment, and wherein compensation is payable therefore [therefor] from the industrial accident fund, in all such cases no compensation under the Occupational Disease Law shall be allowed or payable. (Laws 1969, ch. 200, § 13.)

§ 27-301. Employer not liable for payment to subsequent injury fund.—For the purposes of the Occupational Disease Law, an employer shall not be liable for payment to the subsequent injury fund, so called, as set out in sections 27-149 through 27-155 of the Wyoming Statutes. (Laws 1969, ch. 200, § 14.)

§ 27-302. Benefits for cardiac conditions.—No benefits for cardiac conditions, except those directly and solely caused by a traumatic accident, shall be compensable unless the employee establishes by competent medical authority that there is a direct causal connection between the condition under which the work was performed and the cardiac condition, and then only if the causative exertion occurs during the actual period of employment stress clearly unusual to, or abnormal for, the individual employee in that particular employment, and further that the acute symptoms of such cardiac condition are clearly manifested not later than thirty (30) minutes after the alleged causative exertion. (Laws 1969, ch. 200, § 15.)

§ 27-303. Autopsy.—Upon the filing of a claim for compensation for death from an occupational disease wherein an autopsy is necessary to accurately and scientifically ascertain and determine the cause of death, such autopsy shall be ordered by the court. The court may designate a duly licensed physician, who is a

specialist in such examinations, to perform or amend such autopsy and to certify his findings thereon. Such findings shall be filed with the clerk of the district court wherein the claim for compensation has been filed and shall be a public record. The court may also exercise such authority on its own motion or on an application made to it at any time by any party in interest, upon the presentation of facts showing that a controversy may exist in regard to the cause of death or the existence of any compensable occupational disease. All proceedings for compensation shall be suspended upon refusal of a claimant or claimants, their representative or representatives, to permit such autopsy when so ordered, and no compensation shall be payable during the continuance of such refusal. (Laws 1969, ch. 200, § 16.)

§ 27-304. Medical advisory panel. — There is hereby created a medical advisory panel composed of three (3) physicians licensed to practice medicine in the State of Wyoming which panel shall advise the department on matters pertaining to occupational disease when requested by the department. The panel shall serve from January 1 to December 31 of each consecutive year and said panel shall be appointed annually by the Wyoming medical society in accordance with such society's appointive procedure [procedure]. (Laws 1969, ch. 200, § 17.)

§ 27-305. Appointment of impartial and expert physicians; fees and expenses.—On request of a party, or on its own motion the court, may in an occupational disease case appoint one or more competent and impartial physicians from the specified list of competent and expert physicians, their reasonable fees and expenses to be fixed and paid by the court. The specified list of impartial and expert physicians shall be designated and appointed by the Wyoming medical society in accordance with such society's appointment procedure from licensed physicians within the State of Wyoming, provided however, that where an expert or competent physician in a specific field of medicine is not available within the State of Wyoming, or extraordinary circumstances justify other appointment, the court may on its own motion select a nonresident competent or impartial physician. (Laws 1969, ch. 200, § 18.)

§ 27-306. Medical and hospital expenses.—Medical and hospital expenses, and additional hospitalization and medical expenses shall be paid and administered under the Occupational Disease Law in the same manner as those claims are paid and administered under the industrial accident fund for industrial injuries. (Laws 1969, ch. 200, § 19.)

§ 27-307. Amounts of compensation; administration thereof.—Compensation payable under the Occupational Disease Law for temporary total disability, permanent partial disability, permanent total disability, or death benefit shall be in such amounts, and administered in the same manner, including deferred payment accounting, as is heretofore provided under the industrial accident fund. (Laws 1969, ch. 200, § 20.)

§ 27-308. Injurious exposure prior to effective date of act.—The provisions of the Occupational Disease Law do not apply to cases of incapacity or death resulting from a disease in which the last injurious exposure to the hazards of such disease occurred before the date on which this act [§§ 27-288 to 27-309] takes effect. (Laws 1969, ch. 200, § 21.)

Effective date. — Section 32, ch. 200, Laws 1969, makes the act effective from and after July 1, 1969.

§ 27-309. Applicability of Workmen's Compensation Act.—Except as herein provided in the Occupational Disease Law, all of the provisions of the Workmen's Compensation Act for the State of Wyoming relating to rights, notices,

filings, remedies, proceedings, benefits, awards, penalties, assessments, and all other liabilities and limitations whatsoever, insofar as they may be pertinent and applicable and not inconsistent with the provisions of the Occupational Disease Law, shall apply under said Occupational Disease Law. (Laws 1969, ch. 200, § 22.)

Effective date. — Section 33, ch. 200, Laws 1969, makes the act effective from and after July 1, 1969.

FLORIDA

175.231 Diseases of firemen suffered in line of duty; presumption.--Any condition or impairment of health of a fireman caused by tuberculosis, hypertension, or heart disease resulting in total or partial disability or death shall be presumed to have been accidental and suffered in the line of duty unless the contrary be shown by competent evidence, provided, however, that such fireman shall have successfully passed a physical examination before entering into such service, which examination failed to reveal any evidence of such condition. This section shall be applicable to all firemen employed in Florida only with reference to pension and retirement benefits under this chapter.

In its discussion, the Florida Supreme Court quoted extensively from Volume 20 American Jurisprudence, Evidence, Sections 133 and 136. One final note of caution or clarification is necessary. We realize that the firemen are not lawyers and we have tried to make this memorandum as clear as possible. We do not wish, however, to leave the idea that the "presumption of accident" makes it absolutely impossible for the city to win a case against a fireman or that the "presumption of accident" actually shifts the burden of proof on the city. Lawyers themselves have argued for centuries on the difference between the legal effect of "going forward with the evidence" and "shifting of the burden of proof". It so happens, however, that the "Heart Bill" is drawn in such a way, and the circumstances of the fireman is such that it is very difficult for the city to offer enough evidence to "rebut" the presumption of accident to such an extent that the burden of proof and the burden of going forward with the evidence will shift back to the fireman after he has once introduced evidence of service, clear beginning examination, and present disability from tuberculosis, hypertension, or heart disease. The fact that the fireman is engaged in a type of work creating occupational hazards of smoke asphyxiation, sudden unusual stresses and strains, repeated exposures to excitement, and sudden atmospheric changes, which are all directly contributory to the infirmities set forth in the "Heart Bill", create such a strong evidentiary rationale so as to make it particularly difficult for the city to prove a case against a fireman for the reason outlined above.

Respectfully submitted,

EATON & ACHOR
1125 DuPont Building
Miami, Florida

By s/ Joe Eaton

Note: Mr. Eaton was a former Attorney for the Fire Fighters; Assistant State Attorney, Circuit Court Judge; now a Federal District Court Judge.

Tory

P. S. Mr. Eaton was State Senator for four years.

Became law May 27, 1969 Death Benefit Law
with Governors approval

A bill to be entitled

An act relating to death benefits of firemen; amending section 112.191(1)(b), Florida Statutes, relating to the definition of the term "fireman"; amending section 112.191(2)(a), Florida Statutes, relating to conditions for receiving death benefits; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (1) of section 112.191, Florida Statutes, is amended to read:

112.191 Firemen; death benefits.--

(1) Whenever used in this act:

(b) The term "fireman" means any duly employed uniformed fireman employed by an employer, whose primary duty it is to extinguish the prevention and extinguishing of fires, and to protect the protection of life and property therefrom, the enforcement of municipal, county, and state fire prevention codes, as well as the enforcement of any law pertaining to the prevention and control of fires, as a member of a duly constituted fire department of such employer, and who is not a volunteer fireman.

Section 2. Paragraph (a) of subsection (2) of section 112.191, Florida Statutes, is amended to

read:

112.191 Firemen; death benefits.--

(2)(a) The sum of ten thousand dollars ($10,000) shall be paid as hereinafter provided when a fireman, while under seventy (70) years of age and while engaged in the performance of any of the duties mentioned in paragraph (b) of subsection (1), <u>or in the performance of any other duty that is within the scope of his employment as a fireman,</u> is killed or receives bodily injury which results in the loss of his life within one hundred eighty (180) days after being received, provided that such killing is not the result of suicide and that such bodily injury is not intentionally self-inflicted. Such payment shall be in addition to any workmen's compensation or pension benefits and shall be exempt from the claims and demands of creditors of such fireman.

Section 3. This act shall be effective upon becoming a law.

MEMORANDUM TO CITY OF MIAMI FIREMEN
ON "HEART BILL"

At the request of E. C. (Tony) Wilcox on behalf of the Fire Fighters of Florida, this firm has made a study of Chapter 30684, Laws of Florida 1955 (Senate Bill No. 907, commonly known as the "Heart Bill") we understand that the firemen want to know exactly what their situation now is and exactly what effect the present "presumption of accident" means to them as a matter of law and as a matter of fact. From a complete review of the materials Mr. Wilcox left in our office, it is obvious that Mr. Wilcox and the rest of the firemen are familiar with the problem and its history, since the file reflects letters, memoranda and other data concerning the Gillespie, Seagroves, and DePew cases, among others. For the purpose of this memorandum we also assume that the firemen are generally familiar with past legislation on the "Heart Bill" and their imperfections which have lead to the present law passed by the 1955 session of the Florida Legislature.

WE ARE OF THE DEFINITE OPINION THAT THE PRESENT "HEART BILL" IS OF GREAT ADVANTAGE TO THE FIREMEN AND IN MOST CASES PLACES ANY FIREMAN WITH IMPAIRED HEALTH RESULTING FROM TUBERCULOSIS, HYPERTENSION OR HEART DISEASE WITH TOTAL OR PARTIAL DISABILITY IN A POSITION WHERE THE CITY WILL FIND IT EXTREMELY DIFFICULT UNDER THE LEGAL RULES OF EVIDENCE TO PREVENT PAYMENT OF MAXIMUM BENEFITS.

Basically, the question involved here is one of fact, proof, or evidence, but it is important to keep in mind that these things, although they be matters of fact in themselves, are always controlled by principles of law. In order to find out then where we stand, let us first fully examine the factual situation and then apply to it the appropriate rules of law.

Assume that Jones has begun his service with a physical examination which disclosed no tuberculosis, hypertension or heart disease. Some years later, Jones suffers an attack at his home off duty or while he is in Highlands, North Carolina on his summer vacation. Upon examination, the doctors find that Jones is partially disabled and in due course his matter comes on to be heard before the Retirement Board. Jones walks into the hearing with his lawyer and doctor and a copy of the "Heart Bill". The lawyer introduces evidence of Jones tenure of service, his beginning physical examination showing no tuberculosis or heart disease. Jones' lawyer then introduces evidence through the doctor's testimony that he presently is partially or totally disabled by reason of one of the physical infirmities mentioned in the bill. Jones' lawyer then rests his case.

Because of the statutory presumption and the clear physical examination at the beginning of Jones' service, the burden of proof and burden of going forth with the evidence shifts to the city, who must prove that we in law call the "existence of negative fact", that is, the city must then prove by a preponderance of the evidence that Jones' condition did not result from his prior services as a fireman and we believe they must even go so far as to prove where or from what other source Jones actually contracted tuberculosis, hypertension or heart disease, and this is almost impossible to prove considering the common experiences of an ordinary man and his lack of a daily or yearly record of physical condition, and the inability of the city to obtain such records even if they do exist.

To support our opinion, we have reviewed the laws concerning statutes of this type and evidence generally concerning this situation. From Volume 20 American Jurisprudence, Evidence, "Section 133 - Effect of Presumption of Prima Facie Case."

> "Statutes of the various States contain numerous enactments creating or declaring presumptions or specifying that certain facts shall constitute prima Facie evidence of other facts, the effect of which is to relieve the party in whose favor they operate of the necessity of producing evidence upon an issue and cast upon the other party the burden of going forward with the evidence."

When the burden shifts to the city under the hypothetical Jones case above, they must put forward enough evidence to prove by a preponderance of evidence enough facts to "rebut" the presumption and this for reasons stated above we find it most difficult to believe they could do in most cases.

Under the "Jones case" above and Jones having had a clear physical examination at the beginning of his service, he is aided by another presumption of law not specifically set forth in the "Heart Bill" and that is the presumption of continuance of the condition of good health he was in at the time he entered the service. As set forth in Volume 20 American Jurisprudence Presumption and Inferences, "Section 207 - Continuance of Condition or Fact".

> "It is well established that when the existence of a person, a personal relation, or a state of things is once established by proof, the law presumes that the person, relation, or state of things continues to exist as before, until the contrary is shown, or until a different presumption is raised from the nature of the subject in question."

It appears that the only legal requirement or obstacle against "presumptive statutes" such as the "Heart Bill" is that there be a "natural and rational evidentiary relationship between the facts proved and those presumed, and this requirement is met when Jones introduced evidence of service, a clear examination at the beginning, and medical evidence of the existence of tuberculosis, hypertension, or heart disease resulting in partial or total disability. We have studied extensively and quoted from the law of evidence as set forth in the treatise on evidence in American Jurisprudence. The Supreme Court of Florida has approved of these guiding principles governing the use of presumptions as evidence in the case of Leonetti vs Boone, 74 Southern 2nd 551, decided in August of 1954. In that case the Florida Supreme Court was concerned with a different presumption, the one involving the presumption of liability on behalf of the owners of a vehicle when some person other than the owner is driving the car when it is involved in an accident (there being a presumption of liability of the owner for any negligence on behalf of the driver). The court in its opinion was discussing the effect of the presumption with regard to the shifting of the burden of proof by causing the other party to go forward with the evidence.

MANITOBA REGULATION /77

being a regulation under

The Workers Compensation Act

respecting fire fighters

1. In this regulation "fire fighter" means a full time member of a professional fire fighting department.

2. Where

(a) a fire fighter suffers injury to the heart diagnosed as such by a duly qualified medical practitioner;

(b) the fire fighter has been in continuous service as a fire fighter during the 2 years immediately preceding the injury; and

(c) the fire fighter on or after beginning service as a fire fighter underwent a physical examination, including an examination of the circulatory system, required by the fire fighting department of which he is a member, and was in light of the physical examination approved for service as a fire fighter;

unless the contrary is shown, the injury shall be presumed to have arisen out of and in the course of his employment as a fire fighter.

3. A fire fighter who has had an injury to the heart and who has, thereafter, been medically certified to be fit for service as a fire fighter is, in the case of any subsequent injury to the heart, entitled to the benefit of section 2.

4. Where a fire fighter suffers injury to his lungs, brain or kidneys, unless the contrary is shown, the injury shall be presumed to have arisen out of and in the course of his employment as a fire fighter resulting from the inhalation of smoke, gases and fumes or any of them.

5. Where a fire fighter suffers disability by reason of inhalation of carbon monoxide, unless the contrary is shown, the disability shall be presumed to have been caused by injury arising out of and in the course of his employment as a fire fighter.

6. Where a fire fighter is disabled by reason of injury to his lungs, brain or kidneys resulting from the inhalation of smoke, gases and fumes or any of them, or by reason of inhalation of carbon monoxide, the date of the beginning of the disability shall be deemed to be the date of the accident causing the disability.

7. Manitoba Revised Regulation W200-R2 is repealed.

Manitoba Professional
Firefighters Association

NOTE

PAGE NO. 2 - HEART AND LUNG REGULATION

THE VANGUARD

No. 6 - Special Edition - "Keep for future reference"

RECEIVED
OCT 16 1967

Winnipeg, April 1967

The Manitoba Workmen's Compensation Board has issued a regulation recognizing heart and respiratory disease in firemen as occupational hazards.

This development is the first of its kind in any Canadian province and senior officials of the Manitoba Professional Fire Fighters Association consider it a revolutionary step toward increased professional health protection for the Association's 757 members in Metro Winnipeg and the western part of the province.

M.P.F.F.A. activity regarding the potential long-term hazards of heart and respiratory disease for fire fighters, which has now culminated in the proclamation of the new regulation in the Manitoba Gazette started as early as 1964.

But while the concern of firemen expressed itself mainly in convention resolutions for increased activity toward better regulations for the protection of fire fighters, the first break-through came about one year later, when the provincial government appointed former deputy labor minister Elliott Wilson as full-time chairman of the Workmen's Compensation Board and, among others, former Flin Flon and District Labor Council executive secretary Peter McSheffrey as full-time board commissioner.

The potential atmosphere for the necessary negotiations between the M.P.F.F.A. and the board had improved greatly and talks were promptly started.

After initial contacts with the board and Labor Minister Obie Bainley, supported by preliminary medical survey findings of at least two Winnipeg doctors, the labor minister directed Mr. Wilson and the compensation board to participate in the heart disease and respiratory condition talks with the Association.

It took about 12 meetings and almost seven months before a draft regulation was fully prepared to be sent to the labor minister. Among other difficulties such as the availability of time, the negotiators had made sure that there were no double implications in the wording of the draft. They were aided by similar fire fighters compensation regulations, which the Association obtained from the California State Workmen's Compensation Act authority, Pennsylvania, Michigan, North Dakota and from state fire fighter organizations in the U.S.

Finally, last September, the Manitoba labor minister presented the draft regulation to the provincial cabinet for approval in principle. After final drafting and amending by the Manitoba Legislative Council, under close consultation with the Association, the new regulation was proclaimed in the Manitoba Gazette No. 95/41 of November 1966.

Prior to this final step, the Workmen's Compensation Board informed provincial municipalities in which the M.P.F.F.A. is active of the negotiations and received direct and indirect sanction for working out the occupational disease regulation.

Here is the exact wording of the regulation:

MANITOBA REGULATION
being Manitoba Workmen's Compensation Board Regulation 1/66 made under The Workmen's Compensation Act, R.S.M. 1954, c 297 respecting Full-Time Municipal Fire-Fighters

01.00 In this regulation "fire-fighter" means a full-time member of a professional municipal fire-fighting department.

02.00 Where a fire-fighter suffers a heart attack diagnosed as such by a duly qualified medical practitioner
(1) after he has entered upon, and while he is still engaged in the actual answering of a fire-call and the fighting of a fire; or
(2) while he is actually engaged upon prescribed training phases of his work involving substantial physical, mental or nervous tension or strain; and
(a) the fire-fighter during the two years immediately preceding any occurrence upon which a claim is based has been in continuous service as a member of the department;
(b) at or after the time of entering such service the fire-fighter has undergone a physical examination including an examination of the circulatory system (if such an examination is required by the employing department), following which examination he was duly approved for service as a fire-fighter;
unless the contrary is proved, the injury shall be deemed to have been suffered in the line of duty and to have arisen out of, and in the course of, his employment.

03.00 A fire-fighter who has had a heart attack, whether compensable or not, but who has thereafter been medically certified to be fit for service as a fire-fighter, is entitled to the benefit of section 2 hereof.

04.00 A fire-fighter who becomes disabled by reason of lung injury is, unless the contrary is proved, deemed to have incurred that disability in the course of, and arising out of his employment, if the type of lung injury by which he is disabled is generally accepted in medical opinion as resulting from the inhalation of smoke, or gases, or fumes, or any two or more of these causes.

05.00 Where disability due to inhalation of carbon monoxide is claimed, Section 4 applies only where a medical ruling of inhalation of and disability by reason of the inhalation of carbon monoxide is made within forty-eight hours of the exposure claimed as the cause of the disability.

Commenting on the new regulation, M.P.F.F.A. President Bill Laird had this to say earlier this month.

"This regulation is without doubt the first of its kind in Canada and as such it is quite unique.

"Other provincial fire fighters organizations, notably the British Columbia Fire Fighters Association, which made extensive representation to the Tysoe Commission of Inquiry on Compensation in that province, is no farther ahead today than four years ago despite the expenditure of some $6,000.

"We understand that the Ontario provincial Fire Fighters Association is now in the process of making representation to a Commission of Inquiry on Compensation in that province, citing our success in Manitoba as a precedent.

"In my opinion it was our ability to pursue our concerns and to engage in honest and urgent effort which saw us succeed in the end.

"The Manitoba Professional Fire Fighters Association voices complaints that are a problem and not of a trivial nature that when it has come forward with legitimate concerns it has always found a ready ear with the authorities."

THE VANGUARD contacted an unidentified senior official of the Workmen's Compensation Board for his interpretation of the new regulation and received the following statement:

"So far as heart cases are concerned, the fire fighter is given special recognition in respect of heart attacks which come on while he is actually answering a fire call, fighting a fire, or carrying through prescribed training exercises involving substantial tension or strain.

"The conditions are that the fire fighter shall have at least two years' continuous service prior to any such attack, and that (if an examination is required at time of commencing service) he shall have passed a physical examination including a check-up of the circulatory system.

"A fire fighter who has previously had a heart attack still qualifies for this special coverage if he has been subsequently certified fit for service as a fire fighter.

"Of course, lung injuries are basically different: they tend to be cumulative, due to repeated inhalations of smoke, gas or fumes. This makes it specially important that, if a fire fighter does encounter smoke or gas to an extent sufficient to cause nausea or difficulty in breathing, he should promptly report each such instance, even if he doesn't expect to have to take time off.

"Nature is a wonderful healer, and professional fire fighters will shake off smoke inhalations that would disable others for quite a time. However, it should not be taken for granted that 'no time loss' smoke or gas inhalations are not worth reporting: if the recovery is not quite complete, there may be just enough damage done to make the lungs more susceptible to a later inhalation. This in its turn may add to the damage and eventually there may be major disability.

"Where earlier inhalations have been consistently reported and verified by employer reports also filed, it becomes easier for the compensation board to satisfy itself that later disability is actually due to repeated smoke inhalation. So, take the sensible course and report smoke and gas inhalations even if they don't cause actual loss of time."

Commissioner McSheffrey - also asked for his opinion for this special VANGUARD edition - stressed the importance of informing the compensation board about inhalation episodes as well.

Said Mr. McSheffrey:

"By all means, try to make sure you have reported your condition before leaving your employment for the day. If you find it impossible to file the proper Form No. 3 with the board, at least inform your employer of the inhalation incident."

Mr. McSheffrey said no suspicion can rest on firemen who have protected themselves this way.

He illustrated his point by constructing the case of a worker in an industrial plant who receives a sharp jab in the back accidentally during his shift, which causes an amount of pain but is soon forgotten.

"The man lets it go and doesn't report it. Then he stays away from work Saturday and Sunday and on Monday he is sick because his back hurts him.

"Legally, the compensation board can possibly assume that the worker's condition might be due to the fact that he went to a dance on Saturday, perhaps got into a scuffle, maybe pulled a boat ashore at his cottage on Sunday or worked on his house and injured himself."

Mr. McSheffrey added:

"Your best guarantee for protection of claims is of course to file your Form No. 3 with the board as quickly as possible, even if you don't expect to miss any work time or receive medical attention. The board files all reports and the fireman has the full protection of the compensation act from then on."

One of those who could be involved if it ever came to litigation under the new board regulation is well-known Winnipeg labor lawyer Leon Mitchell - a man who has repeatedly acted on behalf of the M.P.F.F.A. and its members. THE VANGUARD spoke to Mr. Mitchell about his views of the regulation.

"This involves not a legal matter at all but rather a medical one," said Mr. Mitchell.

"I for one am not only concerned with the legal protection of my client in a case arising out of this but I'm just as much concerned with his health and general well-being."

Mr. Mitchell criticised Section 4 of the regulation as being too vague and urged reconsideration of the part "to make it less vague."

"The section says it will recognize injury as arising out of the fireman's employment 'if the type of lung injury by which he is disabled IS GENERALLY ACCEPTED IN MEDICAL OPINION as resulting from the inhalation of smoke, or gases, or fumes, or any two or more of these causes.'

"The most important element in this is that it now becomes the discretion of the board as to what is generally accepted in medical opinion, because for every doctor I can bring to testify in my client's favor, someone can bring another doctor to testify to the contrary until we have crowds of witnesses and counter-witnesses and the board still has to make up its own mind."

Mr. Mitchell added:

"Let's not forget, however, that the compensation board is in operation essentially for the workman and his as well as his family's benefit.

"Any doubt should always be resolved in favor of the claimant."

Mr. Mitchell said generally the new regulation is "a great step forward."

"The Fire Fighters Association has every reason to be proud and pleased with this regulation," he said.

Prior to his interview, Mr. Mitchell, in accordance with his view that the medical aspects of the new regulation are of paramount importance, had asked a well known University of Manitoba medicine professor for an evaluation.

The result of the inquiry was a highly significant letter from the professor, which both Mr. Mitchell and the medical expert have kindly released for reproduction in THE VANGUARD:

The letter reads:

February 6, 1967

"Dear Mr. Mitchell:
"The following comments pertain to the question raised in your letter of February 1 and your request for my opinion on certain aspects of carbon monoxide inhalation.
"1. You point out that Manitoba regulation 98/66 of October 6, 1966 discriminates between carbon monoxide and other noxious smoke gases or fumes. I concur in this discrimination since carbon monoxide poisoning has several features distinct from the others, i.e.
"(a) Carbon monoxide gas is odorless, tasteless, non-irritating and the symptoms of intoxication are such that the victim may be unaware of what is happening until he is unable to do anything about it;
"(b) Carbon monoxide is not itself toxic to tissues: its capacity to disable or kill is secondary to its effective blocking of oxygen transport by the blood;
"(c) If the victim is alive and breathing on removal from the exposure to carbon monoxide the gas is eliminated from the blood within a matter of hours. There may be sequellae or even delayed death but these do not have features which are specific for carbon monoxide intoxication and therefore the relationship between them and carbon monoxide can only be judged on circumstantial evidence if a lapse of a few hours from termination of exposure has occurred before examination.
"2. Any qualified medical practitioner should be competent to relate the acute toxic effects to carbon monoxide poisoning if he has had a specimen of blood, taken within a few hours of exposure, examined for carboxyhemoglobin by a competent laboratory. (The actual duration of time that carbon monoxide may be detected in the blood after a non-lethal exposure will depend on the dose received. Approximately one-half disappears in 2-4 hours on breathing air. Less than 5-10% is usually not detectable by the usual laboratory methods, and this point is reached in a matter of hours.

"The question of whether late sequellae are attributable to carbon monoxide exposure would be difficult for anyone particularly if blood was not examined within a few hours of exposure.

"However, if death occurs during exposure carboxyhemoglobin persists and may be detected in the blood for days or weeks. In this situation the decision that carbon monoxide was the cause of death or a significant contributory factor is again relatively easy if the blood is specifically examined for carboxyhemoglobin.

"3. It will be apparent from the above that I know of no reason why a medical ruling should be made within 48 hours of exposure. If the victim survives for 48 hours the carbon monoxide will have been eliminated before that time although there may be serious sequellae. If the victim died of carbon monoxide poisoning during the exposure, the blood may contain detectable amounts of carboxyhemoglobin for much longer than 48 hours.
"4. I have no way of knowing whether the 'average medical practitioner' is aware of the regulation. I certainly wasn't until you told me.
"5. When blood is exposed to carbon monoxide, as it is in the lungs of a living

person, it combines with the hemoglobin to an extent depending on the concentration of carbon monoxide in the inspired air and the duration of exposure, and so makes that proportion of the blood unavailable to transport oxygen to the tissues. The affinity of carbon monoxide for hemoglobin is about 200 times that of oxygen so that a low concentration over a prolonged period results in a steady state when a percentage of hemoglobin is in the carboxyhemoglobin form.

"City dwelling smokers may have 5% of their hemoglobin as carboxyhemoglobin all the time. Even 10% carboxyhemoglobin is not considered by most authorities to cause any disability. In the range of 10-20% carboxyhemoglobin, as a chronic situation, the question of resulting disability is more uncertain. Some authorities say that this may induce headache, fatigue and perhaps some memory disturbances or even convulsions. However, other authorities doubt that carbon monoxide is responsible for such symptoms.

"In mild or moderate acute exposures, with even 30% carboxyhemoglobin, recovery is usually complete. More severe exposures with survival may lead to delayed death or to long-term sequellae, particularly of the central nervous system. Since these are due to the effects of oxygen lack on the organs (such as the brain) rather than to carbon monoxide 'per se' there are no lesions or sequellae specific for carbon monoxide-induced disabilities. They may only be attributed to carbon monoxide by the circumstances of exposure, and of course, by detection of significant amounts of carboxyhemoglobin in the blood samples soon after the exposure.

"The inhalation of irritant noxious gases such as sulphur dioxide have a primary effect on the lungs, and therefore chronic lung disease may result. This does not happen as a consequence of carbon monoxide inhalation.

"Brain damage resulting from an appropriate exposure to carbon monoxide may be permanent and may be severe. Unless the victim had no signs or symptoms at 48 hours it would be very difficult to predict at that time the final outcome.

"6. In answer to your last question, a victim of acute exposure to carbon monoxide may be unconscious or seriously confused for more than 48 hours or even much longer.

"I trust these answers to your questions are adequate. I have referred to a few standard texts and journal articles which I list below. If you wish expansion of these answers or if you have supplementary questions, I would be prepared to look further into the matter.

"Through the courtesy of the Manitoba Medical Association, an explanatory article dealing with the new occupational disease regulation, which most doctors don't know about, will appear in the May issue of the Manitoba Medical Review."

MANITOBA, CAN.

W-200 WORKMEN'S COMPENSATION ACT, THE

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CHAPTER W200

AN ACT TO PROVIDE FOR COMPENSATION TO WORKMEN FOR INJURIES SUSTAINED IN THE COURSE OF THEIR EMPLOYMENT.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Short title.

This Act may be cited as: "The Workmen's Compensation Act".
R.S.M., c. 297, s. 1.

INTERPRETATION

Definitions.

(1) In this Act,

(a) "accident" means, subject to subsection (10), a chance event occasioned by a physical or natural cause; but also includes
  (i) a wilful and intentional act that is not the act of the workman; and
  (ii) any
    (A) event arising out of, and in the course of, employment; or
    (B) thing that is done and the doing of which arises out of, and in the course of, employment; and
  (iii) conditions in a place where an industrial process, trade, or occupation is carried on, that occasion a disease;
and as a result of which a workman is disabled;

(b) "accident fund" means the fund provided for the payment of compensation, outlays, and expenses, under Part I of this Act;

(c) "board" means The Workmen's Compensation Board as created by this Act;

(d) "child" includes a child of a child and the child of a husband or wife by a former marriage and an illegitimate child, as well as any other child to whom the workman stood in loco parentis;

(e) "common law wife" means a woman who, although not legally married to a man, cohabits with him as his wife or lives with him as such, and has a general reputation as such in the community in which they live;

(f) "construction" includes reconstruction, repair, alteration, and demolition;

(g) "dependants" means such of the members of the family of a workman as were wholly or partly dependent upon his earnings at the time of his death or who, but for the incapacity due to the accident, would have been so dependent;

(h) "employer" includes every person having in his service under a contract for hiring or apprenticeship, written or oral, expressed or implied, any person engaged in any work in or about an industry, including the Crown in right of the province as well as municipal corporations, boards, and commissions, having the management and conduct of any work or service owned by or operated for a municipal corporation, or by or for the Government of Manitoba, and also includes a person whom the board has determined, under subsection (2) of section 51, to be an employer for the purposes of Part I, and any person who

authorizes or permits a learner to be in or about an industry for the purpose mentioned in clause (n) and where the services of a workman are temporarily let or hired to another person by the person with whom the workman has entered into such contract, the latter shall be deemed to continue to be the employer of the workman whilst he is working for that other person;

(i) "employment" includes employment in an industry or any part, branch, or department, of an industry;

(j) "industrial disease" means any disease that is peculiar to, or characteristic of, an industrial process, trade, or occupation to which Part I applies;

(k) "industry" includes establishment, undertaking, trade, and business and the business done or work carried on by or under the Crown or a municipality;

(l) "invalid" means physically or mentally incapable of earning;

(m) "investment committee" means The Workmen's Compensation Board Investment Committee for which provision is made in section 79;

(n) "learner" means any person who, although not under a contract of service or apprenticeship, becomes subject to the hazards of an industry within the scope of Part I for the purpose of undergoing training or probationary work as a preliminary to employment;

(o) "manufacturing" includes altering, repairing, making, preparing, ornamenting, printing, finishing, packing, assembling the parts of, and adapting for use or sale, any article or commodity;

(p) "medical referee" means a medical referee appointed by the board;

(q) "member of the family" means a wife, husband, parent, grandparent, step-parent, child, grandchild, step-child, brother, sister, half-brother, or half-sister, or a person who stood in loco parentis to the workman or to whom the workman stood in loco parentis, whether related to him by consanguinity or not so related and, where the workman is the parent or grandparent of an illegitimate child, includes that child, and, where the workman is an illegitimate child, includes his parents and grandparents;

(r) "out worker" means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired, or adapted for sale, in his own home or on other premises not under the control or management of the person who gave out the articles or materials;

(s) "person" includes females as well as males and any body corporate or politic

(t) "physician" means a duly qualified medical practitioner who is lawfully and regularly engaged in the practice of his profession in Manitoba;

(u) "regulations" means rules and regulations made by the board under this Act;

(v) "workman" includes a person, whether under the age of twenty-one years or not, who has entered into or works under a contract of service or apprenticeship, written or oral, expressed or implied, whether by way of manual labour or otherwise, and also includes

(i) a learner;

(ii) a member of a municipal volunteer fire brigade;

(iii) a person ordered under section 15 of The Fires Prevention Act to assist in extinguishing a forest, brush, or grass fire;

(iv) a person assisting in fighting any fire under the direction of a fire guardian, conservation officer, or the chief or head of a municipal fire department or fire brigade or a municipal volunteer fire brigade; and

(v) a person whom the board has determined, under subsection (2) of section 51, to be a workman for the purposes of Part I;

but when used in Part I does not include an out worker.

Am. S.M., 1956, c. 74, s. 1; S.M., 1959, (2nd Sess.), c. 75, ss. 1, 2; S.M., 1961, (1st Sess.), c. 70, s. 1; S.M., 1963, c. 91, s. 1; S.M., 1966, c. 74, s. 1; S.M., 1969, (2nd Sess.), c. 41, ss. 1 & 2; Am. S.M., 1970, c. 96, s. 44.

Employer of municipal volunteer fire brigade.

2(2) For the purposes of this Act, a municipal corporation shall be deemed to be the employer of a member of a municipal volunteer fire brigade; and the employment shall be deemed to be included in the exercise and performance of the powers and duties of the corporation.

Restriction on definition of "workman".

2(3) The definition of "workman" set out in clause (v) of subsection (1) shall, for the purpose of Part I, be deemed not to include

(a) an executive officer of a corporation unless he is designated by name in the last payroll report submitted to the board, and a request is made by the employer that the executive be included as an employee; or

(b) members of the family of an employer who are employed by him and dwell with him as members of his household, unless application to have them brought within the scope of Part I has been received and approved by the board.

Am. S.M., 1959, (2nd Sess.), c. 72, s. 3; am.

"Member of a municipal volunteer fire brigade", defined.

2(4) The expression "member of a municipal volunteer fire brigade" means a person whose membership in a municipal volunteer fire brigade has been approved either by the chief of the department, or by the municipal corporation or a duly authorized officer thereof; and, for the purposes of this Act, his average earnings shall be deemed to be the same in amount as his average earnings at his regular employment, but, in any case, not less than thirty-five dollars per week or more than six thousand six hundred dollars per year.

Am. S.M., 1959, (2nd Sess.), c. 72, s. 4; S.M., 1963, c. 93, s. 1; S.M., 1965, c. 91; S.M., 1966-67, c. 73, s. 1; S.M., 1969, (2nd Sess.), c. 41, s. 3.

Average earnings of fire fighters.

2(5) For the purposes of this Act, the average earnings of a person ordered under section 15 of The Fires Prevention Act to assist in extinguishing a forest, brush, or grass fire, or a person assisting in fighting a fire under the direction of a fire guardian, conservation officer, or the chief or head of a municipal fire department or fire brigade or a municipal volunteer fire brigade, shall be deemed to be the same in amount as his average earnings at his regular employment; but, in any case, not less than thirty-five dollars per week or more than six thousand six hundred dollars per year.

En. S.M., 1963, c. 91, s. 3; am. S.M., 1966-67, c. 73, s. 2; S.M., 1969, (2nd Sess.), c. 41, s. 4.

Period of employment of member of volunteer fire brigade.

2(6) A member of a municipal volunteer fire brigade shall be deemed to begin each period of employment as such at the time when, pursuant to orders to that effect, he arrives at the place where his duty begins; and he shall be deemed to finish that period of employment when, pursuant to orders, he leaves the place where his duty is completed.

Period of employment of fire fighter.

2(7) A person ordered under section 15 of The Fires Prevention Act to assist in extinguishing a forest, brush, or grass fire, shall be deemed to begin employment with the government in that capacity at the time when he is so ordered, and he shall be deemed to finish that employment in that capacity when pursuant to orders, or without permission, of the fire guardian or conservation officer in charge, he ceases to assist in extinguishing the forest, brush, or grass fire.

En. S.M., 1965, c. 91, s. 4.

Idem.

2(8) A person assisting in fighting a fire under the direction of a fire guardian, conservation officer, or the chief or head of a municipal fire department or fire brigade or a municipal volunteer fire brigade, shall be deemed to begin employment with the government or the municipality, as the case may be, in that capacity at the time when the fire guardian, conservation officer, or the chief or head of the municipal fire department or fire brigade or municipal volunteer fire brigade, as the case may be, first gives direction to the assistance of that person; and he shall be deemed to finish that employment in that capacity when the fire guardian, conservation officer, or the chief or head of the municipal fire department or fire brigade or municipal volunteer fire brigade, as the case may be, ceases to give direction to the assistance, or directs him to cease giving the assistance.

En. S.M., 1965, c. 91, s. 4.

What is trade or business for purposes of Act.

2(9) The exercise and performance of the powers and duties of

(a) a municipal corporation;
(b) The Metropolitan Corporation of Greater Winnipeg;
(c) any commission or board having the management and conduct of any work or service owned or operated by a municipal corporation or by or for the Government of Manitoba;
(d) a school board, school area, or school division;

shall for the purposes of this Act be deemed the trade or business of the corporation, commission, board, or school board.

Am. S.M., 1959, (2nd Sess.), c. 73, s. 5; S.M., 1961, (1st Sess.), c. 71, s. 1.

Date of accident in case of disease.

2(10) Where the disablement of a workman is caused by an industrial disease, the date of the beginning of the disablement shall be deemed to be the date of the accident.

En. S.M., 1959, (2nd Sess.), c. 73, s. 6; R.S.M., c. 297, s. 2; am.; Am. S.M., 1970, c. 96, s. 44.

PART I

COMPENSATION

Application of Part I.

3(1) This Part applies to

(a) the industries that, under section 60, are within the scope of this Part for the purpose of assessment;
(b) industrial processes, trades, and occupations carried on in industries to which reference is made in clause (a);
(c) workmen who are employed in industries to which reference is made in clause (a); and
(d) workmen brought within the application of this Part under subsection (2).

Am. S.M., 1963, c. 98, s. 2.

Application of Part I to farm labourers, etc.

3(2) This Part does not apply to farm labourers, or domestic or menial servants, but the board may, by its order, bring any such employee within the application of this Act upon the application of his employer.

En. S.M., 1963, c. 98, s. 2. En. S.M., 1959, (2nd Sess.), c. 73, s. 7; am.

Compensation payable out of accident fund.

4(1) Where, in any industry within the scope of this Part, personal injury by accident arising out of and in the course of the employment is caused to a workman, compensation as provided by this Part shall be paid by the board out of the accident fund, subject to the following subsections.

Limitation on compensation payable.

4(2) Where an injury does not disable the workman during any period after the day on which the accident occurs, no compensation other than medical aid is payable; but if the injury disables the workman during any working day after the day on which the accident occurs, compensation is payable from and including the working day next following the day on which the accident occurs.

En. S.M., 1959, (2nd Sess.), c. 73, s. 8.

Misconduct.

4(3) Where the injury is attributable solely to the serious and wilful misconduct of the workman, no compensation shall be payable unless the injury results in death or serious or permanent disability.

Am. S.M., 1961, (1st Sess.), c. 71, s. 2.

Proportional compensation in certain cases.

4(4) Where the personal injury consists of a disease, in part due to the employment and in part due to causes other than the employment, the compensation paid shall be the same proportion of the whole of the compensation that would have been payable had the personal injury been wholly due to the employment as the part of the personal injury that is due to the employment is of the whole of the personal injury.

En. S.M., 1959, (2nd Sess.), c. 73, s. 9.

Presumption.

4(5) Where the accident arises out of the employment, unless the contrary is shown, it shall be presumed that it occurred in the course of the employment; and, where the accident occurs in the course of the employment, unless the contrary is shown, it shall be presumed that it arose out of the employment.

Casual employment.

4(6) This section does not apply to a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business.

Extra-provincial employment.

4(7) Subject to any agreement made under subsection (8), and to subsection (9), no compensation is payable under this Part where the accident to the workman happens elsewhere than in Manitoba, except in a case where the accident happens to an employee engaged in connection with the operation of a steamboat, ship, or vessel, or a railway or an aircraft, or a vehicle engaged in trucking or busline operation, or to members of a fire brigade or other municipal employees, and the workman is a resident of Manitoba and the nature of the employment is such that, in the course of the work or service which the workman performs, it is required to be performed both within and without Manitoba and the workman elects to claim compensation hereunder.

Am. S.M., 1966, c. 74, s. 2; S.M., 1969, (2nd Sess.), c. 41, s. 5.

Inter-provincial agreements.

4(3) To avoid duplication of assessment to which an employer may be liable on the earnings of workmen who are employed partly within Manitoba and partly within another province or territory of Canada, the board may enter into agreements with The Workmen's Compensation Authority of that other province or territory respecting equitable adjustments of assessments and may reimburse that authority for any payment of compensation, rehabilitation or medical aid made by it under the agreement, and may, in order to give effect to the agreement, relieve the employer from assessment or reduce the amount thereof; and any agreement made under this subsection supersedes the provisions of this Act to the extent necessary to give full effect to the agreement.

En. S.M., 1969, (2nd Sess.), c. 41, s. 6.

Compensation for certain injuries suffered outside the province.

4(9) Where a workman whose residence and usual place of employment are in the province, and whose employer has an established place of business in the province and is engaged in, or carrying on, an industry to which this Part applies, suffers a personal injury by reason of an accident arising out of, and in the course of, his employment and that occurs while the workman is temporarily engaged outside the province on the business of the employer, if he is not entitled to claim compensation for the injury under the law respecting compensation for injuries to workmen in force in the place where the accident occurs, he may claim compensation under this Part.

R. & S., S.M., 1959, (2nd Sess.), c. 73, s. 10.

Permanent disability.

4(10) The board may award compensation under this Part in respect of the permanent disability suffered by a workman but without temporary total disability.

No compensation for hernia unless certain conditions fulfilled.

4(11) No compensation is payable in respect of hernia, unless

(a) it is clinical hernia of disabling character and of recent primary demonstrability; and

(b) the onset thereof can be shown to have been immediately preceded by a strain or other accident; and

(c) it can be shown that at the time of the occurrence of the strain or other accident the workman immediately reported his condition to his employer or ceased work at the time and reported within seventy-two hours of so ceasing work; and

(d) if an operation to effect a cure is deemed surgically advisable, it is performed within two weeks from the time that the board recommends that such an operation be performed.

Am.

Compensation where operation recommended.

4(12) If the workman does not submit himself to be operated on for radical cure for hernia within a period of two weeks from the time when the board recommends that such an operation be performed, compensation ceases to be payable on the expiry of that period; but, if compensation would otherwise be payable, it shall be paid until the expiry of that period.

Am.

Claim respecting strangulated or aggravated hernia.

4(13) Notwithstanding anything in this section, in the case of a pre-existent hernia that has become strangulated or seriously aggravated by strain or accident arising out of, and in the course of, the employment; or if there has been excusable failure on the part of the workman to make a report respecting the hernia or any strangulation or aggravation thereof caused by strain or accident arising out of and in the course of the employment; the board may order payment of the claim or any part of the claim if it is of the opinion that the claim is a just one and ought to be allowed.

R. & S., S.M., 1955, c. 74, s. 4. R.S.M., c. 297, s. 3; am. S.M., 1959, (2nd Sess.), c. 73, s. 8; am.

Compensation in respect of private employment.

5(1) Where a workman engaged in an industry to which this Part applies is required by his employer, or by an officer of the employer having direction and control of the work of the workman in the industry, to do work or perform services outside the scope of his employment and for the personal benefit of the employer or the officer, if personal injury by accident arising out of and in the course of the doing of the work or performance of the services is caused to the workman, the personal injury shall be deemed to be personal injury to which subsection (1) of section 4 applies, and the workman is entitled to receive compensation from the accident fund accordingly as herein provided.

Am. S.M., 1961, (1st Sess.), c. 71, s. 3.

Apprentices.

5(2) Where an apprentice in an industry to which this Part applies is attending a course of instruction which he is required to take under The Apprenticeship Act or the regulations made thereunder, if personal injury by accident arising out of and in the course of the attendance at the course of instruction is caused to the apprentice,

(a) the personal injury shall be deemed to be personal injury to which subsection (1) of section 4 applies;

(b) the apprentice shall be deemed to be a workman while attending the course of instruction and he is entitled to receive compensation from the accident fund accordingly as herein provided;

(c) the person to whom he is apprenticed under an agreement of apprenticeship shall be deemed to be his employer at the time that the accident occurred; and

(d) the rate of wages that would have been payable to the apprentice under the agreement of apprenticeship if he had been working for his employer at the time that the accident occurred shall be deemed to be the rate of wages of the apprentice at the time the accident occurred.

En. S.M., 1961, (1st Sess.), c. 71, s. 3. am. En. S.M., 1959, (2nd Sess.), c. 73, s. 11; am.

Non-resident when entitled to compensation.

6(1) Where a dependant is not a resident of Manitoba, he is not entitled to compensation unless, by the law of the place or country in which he resides, the dependants of a workman to whom an accident happens in that place or country if the workman in Manitoba would be entitled to compensation; and where the dependants are entitled to compensation under that law, the compensation to which the dependant is entitled under this Part is not greater than the compensation in the like case under that law.

Am.

Award to by board.

6(2) Notwithstanding subsection (1), the board may award such compensation or sum in lieu of compensation to any such non-resident dependant as may be deemed proper and may pay the same out of the accident fund.

R.S.M., c. 297, s. 4; am.

Right of action against person other than employer.

7(1) Where an accident happens to a workman in the course of his employment under such circumstances as entitle him or his dependants to an action against some person other than his employer, the workman or his dependants, if entitled to compensation under this Part, may claim the compensation or may bring such an action.

Disposal of moneys recovered.

7(2) Where an action is brought and less is recovered and collected than the amount of the compensation to which the workman or his dependants are entitled under this Part, the difference between the amount recovered and collected and the amount of the compensation is payable as compensation to the workman or his dependants; but the board has the right to require that any money recovered and collected in the action shall, when it is less than the amount of the compensation to which the workman or his dependants are entitled under this Part, be paid over to, and deposited with, the board, to be kept and applied in or towards payment of the monthly or other periodical sums awarded or to be awarded as compensation under this Part.

Am.

Compromises must be approved by board.

7(3) A compromise settlement of any action or cause of action by the workman or his dependants at an amount less than the compensation provided for herein shall be made only with the written approval of the board.

Commencement of action tantamount to notice of claim.

7(4) For the purpose of this section, the commencement of an action in the Court of Queen's Bench, or a County Court, shall be deemed the filing of a claim for compensation hereunder in the event of a failure by the plaintiff to recover by the action a sum equal to, or greater than, what would have been awarded had the action not been brought and claim made hereunder.

Certain claim vested in board if claim for compensation approved.

7(5) Where a workman or dependant makes application to the board claiming compensation under this Part, which claim is thereafter approved by the board, any right of action for or in respect of a personal injury to, or the death of, the workman which the workman, or his legal personal representative or dependant, may have been entitled to maintain against a person other than his employer under subsection (1), immediately on approval of the claim by the board, becomes vested in the board; and the board may enter action in its name or in the name of the injured person, or his legal personal representative or dependant, or jointly with the injured person, or his legal personal representative or dependant, against the other person for the whole or any outstanding part of the claim of the workman, or his legal personal representative or dependant, against the other person for or in respect of the personal injury to, or the death of, the workman.

Am. S.M., 1959, (2nd Sess.), c. 7, s. 12; am.

Right of action by government, etc.

7(6) Where a workman who is an employee of the government or of an agency of the government as defined in subsection (3) of section 62, or a dependant of such a workman, makes an application that is approved as mentioned in subsection (5), if the government or agency of the government provides, or has provided, to the workman a salary, payment, benefit, gratuity, or other allowance of any of the kinds to which reference is made in section 38, the government or agency of the government, as the case may be, may maintain an action, for the amount or cost of the emolument or perquisite provided, against any person against whom the workman or his legal personal representative or dependant could, or but for this section could, maintain an action for or in respect of personal injury to, or the death of, the workman arising out of the accident in respect to which the claim for compensation is made; and the action may be brought separately by the government or agency of the government or jointly with any action that may be brought by the board in respect of the same accident.

En. S.M., 1959, (2nd Sess.), c. 74, s. 1.

Limitation of right of action.

7(7) In any case within subsection (1), neither the workman, nor his legal personal representative, nor his dependants, nor the employer of the workman, has any right of action in respect of the accident against an employer in any industry within the scope of this Part or against any workman of such an employer (unless the accident occurred otherwise than in the conduct of the operations usual in, or incidental to, the industry carried on by the employer); and in any such case where it appears, to the satisfaction of the board, that a workman of an employer in any class is injured owing to the negligence of an employer or of the workman of an employer in another class within the scope of this Part, the board may direct that the compensation awarded in the case, or such portion of the compensation as the board deems just and equitable, shall be charged against the last mentioned class.

Damages against other employers or workmen.

(8) Where an action is brought by a workman or his dependants in circumstances to which subsection (1) applies, or by the board under subsection (5), and one or more of the persons found to be at fault or negligent is an employer in any industry within the scope of this Part or a workman of such an employer, unless the accident occurred otherwise than in the conduct of the operations usual in, or incidental to, the industry carried on by the employer, no damages, contribution or indemnity are recoverable for that portion of the loss or damage caused by the fault or negligence of the employer or workman, and the portion of the loss or damage so caused by the fault or negligence of the employer or workman shall be determined although the employer or workman is not a party to the action.

En. S.M., 1969, (2nd Sess.), c. 41, s. 7.

Election for minor.

7(9) Where the person required to make an election under this section is under the age of twenty-one years, his guardian may make the election for him without the necessity of applying to any court or judge for directions in respect thereto.

Board may file claim for injured man.

7(10) Where an injured man with right of election hereunder is deemed in need of immediate special care or operation, the board, even though the injured man has not elected or made election, may direct it to be given or done; and the cost thereof is a charge against any sum recovered by the injured man in any action brought

Am. P.S.M., c. 297, s. 5; am.

Principal's duty to see that contractor files statements.

8 Where a person, whether carrying on an industry included within the scope of this Part or not, in this section referred to as the "principal", contracts with any other person for the execution, by or under the contractor, of the whole or any part of any work for the principal, the principal shall see that the contractor files the statements and declarations required by this Part; and, if any principal fails to do so, he is liable to the penalties provided by section 65.

R.S.M., c. 297, s. 6; am.

No action for compensation.

9 No action lies for the recovery of the compensation; but all claims for compensation shall be heard and determined by the board without the intervention of counsel or solicitors on either side except with the express permission of the board.

R.S.M., c. 297, s. 7.

Compensation to be in lieu of other rights.

10(1) The right to compensation provided by this Part is in lieu of all rights and rights of action, statutory or otherwise, to which a workman, or his legal personal representative, or his dependants, are or may be entitled against the employer, for or by reason of personal injury to, or the death of, the workman occasioned by any accident which happens to him arising out of, and in the course of, his employment; and no action in any court of law against the employer in respect thereof thereafter lies.

Am. S.M., 1959, (2nd Sess.), c. 73, s. 13; am.

Minor entitled to compensation.

10(2) A workman under the age of twenty-one years and working at an age, and in an employment, permitted under the laws of the province shall be deemed sui juris for the purpose of this Part; and no other person has any cause of action or right to compensation for an injury to the workman except as expressly provided in this Part.

Am. R.S.M., c. 297, s. 8; am.

Contracting out of Act forbidden.

11 It is not competent for a workman to agree with his employer to waive or forego any of the benefits to which he or his dependants are or may become entitled under this Part; and every agreement to that end is void.

R.S.M., c. 297, s. 9.

No deduction from wages by employer, or contribution by workmen.

12 Except as provided in this Act, an employer shall not, either directly or indirectly, deduct from the wages of his workman any part of any sum that the employer is or may become liable to pay into the accident fund or otherwise under this Part, or require or permit any of his workmen to contribute in any manner towards indemnifying the employer against any liability that he has incurred or may incur under this Part.

R.S.M., c. 297, s. 10.

Penalty.

13 Every person who contravenes any provision of section 12 is guilty of an offence and is liable, on summary conviction, for every such contravention to a fine not exceeding fifty dollars, and is also liable to repay to the workman any sum that has been deducted from his wages or that he has been required or permitted to pay in contravention of section 12.

R.S.M., c. 297, s. 11; am.

Notice of accident.

14(1) In every case of injury to a workman by accident in any industry within the ambit of this Part, the workman, or in the case of his death, a dependant, shall, as soon as practicable, but in any case not later than thirty days after the happening of the accident, give notice thereof to the employer.

Contents of notice.

14(2) The notice shall be in writing and contain the name and address of the workman, and state in ordinary language the nature and cause of the injury and the time when, and place where, the accident occurred, and shall be signed by the injured workman or some person on his behalf, or, in case of death, by any one or more of his dependants or by a person on their behalf.

Notice of industrial disease.

14(3) In the case of an industrial disease, the employer to whom notice of death, disability, or suspension from employment, is to be given is the employer who last employed the workman in the employment to the nature of which the disease was due.

Am.

Manner of giving notice.

14(4) The notice may be served upon the employer, or upon any one employer if there are more employers than one, or upon any officer or agent of the corporation if the employer is a corporation, or upon any agent of the employer in charge of the business in the place where the injury occurred, by delivering it to the person upon whom it is to be served, or leaving it at his residence or place of business, or by sending it by registered mail addressed to him at his last known residence or place of business.

Failure to give notice a bar to any claim.

14(5) Failure to give the notice required by virtue of this section, unless excused by the board, on the ground

(a) that notice for some sufficient reason could not have been given; or
(b) that the employer or his superintendent or agent in charge of the work where the accident happened had knowledge of the injury; or
(c) that the board is of opinion that the claim is a just one and ought to be allowed;

is a bar to any claim for compensation under this Part.

Am. R.S.M., c. 297, s. 12; am.

Employer to report accident.

15(1) In case of accident to a workman in his employment, every employer shall, within three days

(a) from the day upon which the workman reports the occurrence to him; or
(b) from the day when he otherwise learns of it;

whichever day is earlier, report the accident and the injury resulting therefrom to the board, and also to any local representative of the board at the place where the accident occurred.

En. S.M., 1969, (2nd Sess.), c. 41, s. 8.

Contents of report and mailing.

15(2) The report shall be in writing, and state

(a) the name and address of the workman and the nature of the industry in which he was employed;
(b) the time when and place where the accident occurred;
(c) the cause and nature of the accident and injury;
(d) the name and address of the physician by whom the workman was or is being attended for the injury; and
(e) any other particulars required by the board;

and may be made by mailing copies thereof addressed to the board and to the local representative at their usual addresses respectively, postage prepaid.

Further reports.

15(3) The employer shall make such further and other reports respecting the accident and workman as may be required by the board.

Penalty.

15(4) Every employer who fails to make any report required by virtue of this section, unless excused by the board on the ground that the report for some sufficient reason could not have been made, is guilty of an offence and is liable, on summary conviction, to a fine not exceeding five hundred dollars.

Am. R.S.M., c. 297, s. 13; am.

Application for compensation.

16(1) Where a workman or dependant is entitled to compensation under this Part, he shall file with the board an application for the compensation, together with the certificate of the physician, if any, who attended the workman, in the form prescribed by the board for that purpose, and such further or other proofs of his claim as may be required by the regulations or by the board.

Must be filed within one year.

16(2) Subject to section 92, unless application for the compensation is filed

(a) within one year after the day upon which the injury occurred; or
(b) in case the applicant is a dependant, within one year after the death of the workman;

no compensation in respect of any injury is payable under this Part.

Am. S.M., 1959, (2nd Sess.), c. 73, s. 14; am.

Payment of medical aid.

16(3) The board may, on proof of the accident from the employer and medical attendant, pay for the medical aid rendered without formal claim thereto being filed by the workman.

R.S.M., c. 297, s. 14; am.

Duty of attending physician.

17 Every physician attending or consulting upon any case of injury to a workman by accident in any industry within the scope of this Part shall

(a) furnish such reports in respect of the injury in such form as may be required by the regulations or by the board; and

to give all reasonable and necessary information, advice, and assistance, to the injured workman and his dependants in making application for compensation, and in furnishing in connection therewith such certificates and proofs as may be required, without charge to the workman.

R.S.M., c. 297, s. 15.

Workman must submit to medical examination.

18(1) Every workman who applies for, or is in receipt of, compensation under this Part, if required by the board, shall submit himself to medical examination in accordance with the regulations at a place to be fixed by the board, reasonably convenient for the workman.

Failure to be examined.

18(2) Where a workman fails to submit himself to the examination, or obstructs his examination, his right to compensation is suspended until the examination has taken place; and no compensation is payable during the period of the suspension unless the board otherwise orders.

Am. R.S.M., c. 297, s. 16; am.

Practices delaying workman's recovery.

19 Where an injured workman persists in insanitary or injurious practices which tend to imperil or retard his recovery, or refuses to submit to such medical or surgical treatment as in the opinion of the board is reasonably essential to promote his recovery, the board may, in its discretion, reduce the compensation of the workman to such sum, if any, as would in its opinion be payable were such practices not persisted in or if the workman had submitted to the treatment.

R.S.M., c. 297, s. 17.

Compensation moneys exempt from attachment, etc.

20 No sum payable as compensation or by way of commutation of any periodical payment in respect of it is capable of being assigned, charged, or attached, nor does it pass by operation of law except to a personal representative, nor shall any claim be set off against it, except with the consent of the board when the debt is for board and lodging.

R.S.M., c. 297, s. 13; am.

Review of payments by board.

21(1) Any periodical payment to a workman may be reviewed by the board; and, on the review, the board may put an end to or diminish or may increase the payment to a sum not beyond the maximum hereinafter prescribed.

Suspension of payment.

21(2) Where a claimant is confined to a gaol or a hospital as defined in The Mental Health Act, the board may after due investigation, withhold or suspend the payment of compensation to the workman or such other person receiving compensation for him as the board deems proper.

Am.

Payment of suspended compensation.

21(3) Where compensation is so withheld it may be paid to dependants of the claimant or to such other persons as the board deems advisable.

Suspension for immorality.

21(4) Where it is found that the widow to whom compensation has been awarded is a common prostitute, or is openly living with any man in the relation of man and wife without being married to him, the board may discontinue or suspend compensation to the widow and divert the compensation in whole or in part to or for the benefit of any other dependant or dependants of the deceased workman.

Compensation may be diverted.

21(5) Where a workman is entitled to compensation and it is made to appear to the board

(a) that the workman is no longer residing in Manitoba, but that his wife or child or children under sixteen years of age are still residing therein without adequate means of support and are, or are apt to become, a charge upon the municipality where they reside or upon private charity; or

(b) that the workman, although still residing in Manitoba, is not supporting his wife and children as aforesaid and an order has been made against the workman by a court of competent jurisdiction for the support or maintenance of his wife or family, or for alimony;

the board may

(c) divert the compensation in whole or in part from the workman for the benefit of the wife or children of the workman; or

(d) where a municipality is actually partially or wholly supporting the wife or family of the workman, divert the compensation in whole or in part from the workman to the municipality.

R. & S., S.M., 1966, c. 74, s. 5; R.S.M., c. 297, s. 19; am.

Basis of compensation to minor.

22 Where the workman was, at the date of the accident, under twenty-one years of age, the amount of the weekly or other periodical payment may be fixed by the board by its first order, or at any subsequent review, on the basis of the earnings of an average workman aged twenty-one years, employed at a similar class of work, or on any lower basis; but the payment shall not be lower than,

(a) in the case of a first order, his average earnings at the date of the accident; and

(b) in the case of a subsequent review, the average earnings which if he had not been injured, he would probably have been earning at the date of the review.

R.S.M., c. 297, s. 20.

Payments to be made periodically.

23(1) Payments of compensation shall be made periodically at such times, and in such manner and form, as the board may deem advisable; and, in the case of minors or mentally disordered persons within the meaning of The Mental Health Act, payments may be made to such persons as, in the opinion of the board, are best qualified in all the circumstances to administer the payments, whether or not the person to whom the payment is made is the legal guardian of the minor or the committee of the mentally disordered person.

Am.

Lump sum payments.

24(2) The board may, with the consent of the workman or dependant to whom it is due, but not otherwise,

- commute the whole or any part of the periodical payments due or payable to the injured workman or any dependant to one or more lump sum payments to be applied as directed by the board; or
- divide into periodical payments any compensation payable in a lump sum.

R.S.M., c. 287, s. 21; am.

Treatment in addition to compensation.

24(1) In addition to the other compensation provided by this Part, the board may provide for the injured workman such medical, surgical, and hospital treatment, transportation, nursing, medicines, crutches, and apparatus, including artificial members, as it may deem reasonably necessary at the time of the injury, and thereafter during the disability, to cure and relieve from the effects of the injury and the board may adopt rules and regulations with respect to furnishing medical aid to injured workmen entitled thereto, and for the payment thereof.

Clothing allowance in certain cases.

24(2) In addition to the other compensation provided by this Part, the board may allow to an injured workman, who, because of the nature of an injury in respect of which he has received compensation, wears a prosthetic device, an additional clothing allowance to compensate for the additional deterioration of clothes caused by the wearing of the prosthetic device.

En. S.M., 1961, (1st Sess.), c. 71, s. 4.

Compensation for broken dentures.

24(3) Notwithstanding anything herein the board, in addition to the other compensation provided by this Part, may assume the expense of replacement and repair of broken dentures or broken artificial limbs, when the breakage is occasioned by accidental injury arising out of, and in the course of, the employment of the workman.

Am.

Replacement or repair of eye-glasses.

24(4) Where a workman is entitled to compensation under this Part, or to receive medical aid under this section, in respect of a personal injury by accident, if the accident occasions the breakage of the workman's eye-glasses, the board may, in addition to the other compensation provided by this Part, assume the expense of replacement or repair of the eye-glasses.

Emergency.

24(5) Where in a case of emergency, or for other justifiable cause, a physician is called in to treat the injured workman, if the board finds there was justifiable cause and that the charge for the service of the physician is reasonable, it shall be paid by the board.

Special operation.

24(6) Where in any case, in the opinion of the board, the provision of a special artificial operation, or other special medical treatment for a workman, and the furnishing of it by the board, will be a means of avoiding heavy payment for a permanent disability, the amount of the cost thereof is payable as compensation, in addition to the amounts hereinafter mentioned.

Am.

Autopsy.

24(7) Where an autopsy is deemed by the board necessary to enable it to determine the cause of any death, the board may direct that the autopsy be made within a time to be fixed by the board; and, if the dependant or dependants refuse to permit the autopsy, the board may reject any claim for compensation under this Part.

Expenses.

24(8) The expenses of the autopsy shall be paid out of the accident fund.

Medical aid by employers.

24(9) The board may in its discretion authorize employers to furnish or provide medical aid at the expense of the board and upon terms fixed by it.

Group medical aid.

24(10) Any plan for providing medical aid, in force between an employer and his workmen or otherwise, available to the workmen on the first day of January, 1921, or that is put into force or made available to the workmen after that date, and that, in the opinion of the board after investigation of the facts, is found on the whole to be not less efficient in the interests both of the employer and of the general body of his workmen than the provisions for medical aid contained in this section, may, by order of the board, subject to such conditions as the board may require, be declared to be a plan approved by the board.

Am.

Medical aid to be under supervision of board.

24(11) Medical aid furnished or provided under any of the preceding subsections of this section shall at all times be subject to the supervision and control of the board; and the board may contract with doctors, nurses, hospitals, and other institutions, for any medical aid required, and agree on a scale of fees or remuneration for any such medical aid.

Limitation on medical charges.

24(12) The fees or charges for the medical aid shall not be more than would be properly and reasonably charged to the workman if himself paying the bill; and no action for any amount larger than that fixed by the board lies in respect of any medical or dental aid herein provided for.

Workman's personal physician.

24(13) Without in any way limiting the power of the board under this section to supervise and provide medical aid in every case where the board is of the opinion that the exercise of that power is expedient, the board may permit medical aid to be administered, so far as the selection of a physician is concerned, by the physician who may be selected or employed by the injured workman or his employer, to the end that so far as possible any competent physician may be employed and be available to injured workmen.

First-aid appliances.

24(14) Employers in any industries in which it is deemed proper may be required by the board to maintain such first aid appliances and services as the board may direct, and the board may make such order respecting the expense thereof as may be deemed just.

Physician's account to be filed within twelve months.

24(15) No account for medical services shall be recognized by the board unless the account is filed with the board within twelve months from the discharge of the workman by the physician who gave the medical care in the case, or within twelve months of the date upon which the workman returned to work following the accident, whichever period is the shorter.

Vocational training.

24(16) The board may provide for any injured workman, whose earning capacity in his previous occupation has been permanently impaired by the injury, such vocational training as may be deemed advisable for the purpose of preparing the injured workman for another occupation to which he may seem adapted and which is likely to increase his future earning capacity; and to that end the board may contract with an institution or institutions furnishing such vocational training, and may adopt rules and regulations for that purpose and for the payment of the training.

Am. S.M., 1963, c. 98, s. 3; S.M., 1964, (1st Sess.), c. 60, s. 1.

Transportation to hospital.

24(17) Every employer, at his own expense, shall, upon the happening of an accident to one of his workmen, provide immediate transportation to a hospital should that be necessary or to a place where proper and adequate medical care can be given.

Care on journey.

24(18) The employer shall also provide for the giving of such care as may be necessary to the injured workman upon the journey to the hospital or a doctor.

Am.

Treatment by chiropractor or osteopath.

24(19) The board may permit treatment by any person who is a registered osteopathic physician under The Osteopathic Act, or a registered chiropractor under The Chiropractic Act.

Treatment to be subject to the board.

24(20) Any treatment given as provided in subsection (19) is subject to the supervision and control of the board; and subsections (11), (12) and (15), apply as if the treatment were medical aid or medical services.

Am. R.S.M. c. 297, s. 12; am.

Compensation when death follows.

25(1) Where death results from any injury the amount of compensation shall be as follows:

(a) The necessary expenses of the burial of the workman not exceeding three hundred dollars.

(b) A sum as reimbursement for, or on account of, the amount actually paid for a burial plot, but not exceeding fifty dollars.

(c) Where the workman is killed in Manitoba away from his usual place of residence, the necessary expenses of transporting his body from the place of death to his usual place of residence in Manitoba or to any other designated place in Manitoba approved by the board.

(d) Where the workman is killed as the result of a compensable accident

(i) in Manitoba, and his usual place of residence is outside Manitoba; or

(ii) outside Manitoba, and his usual place of residence is in Manitoba;

the board may, in its discretion, pay part of the necessary expense of transporting his body from the place of death to his usual place of residence.

(e) Where the widow or invalid widower is the sole dependant, a monthly payment of one hundred and twenty dollars for life.

(f) Where the dependants are a widow or an invalid widower, and a child or children under the age of sixteen years, a monthly payment to the widow or invalid widower of one hundred and twenty dollars for life and an additional forty-five dollars in respect of each child under the age of ten years and fifty dollars in respect of each child ten years of age or over and under the age of sixteen years.

(g) Where the dependants are orphan children, a monthly payment of fifty-five dollars for each child under the age of ten years and sixty dollars for each child ten years of age or over and under the age of sixteen years.

(h) Where there is a mother wholly dependent, a monthly payment not exceeding one hundred and twenty dollars.

(i) Payments under clause (e) or (f) in respect of a child shall cease when the child attains the age of sixteen years or dies, except that, where the child is an invalid at the time of attaining the age of sixteen years, the payments shall continue until the child ceases to be an invalid.

(j) Payments may be made in respect of an invalid child over the age of sixteen years until the child ceases to be an invalid or dies.

(k) Where, in the opinion of the board, the furnishing of further or better education to a dependent child

(i) who is over sixteen years of age;

(ii) who is applying, himself to the satisfaction of the board in an elementary or secondary school course, or a course leading to a university degree, or a course in technical training acceptable to the board; and

(iii) who has not been granted a university degree or completed a course in technical training;

appears advisable, the board, in its discretion, may pay, in addition to other amounts payable under this Act, monthly amounts not exceeding

(iv) sixty dollars in respect of the child where the child is not an orphan; and

(v) seventy dollars in respect of the child where the child is an orphan;

for the period that he spends in furthering or bettering his education in a manner acceptable to the board up to the time he is granted a university degree for the first time or he completes a course in technical training.

(l) The board, however, shall not make any levy or assessment or order any deposit to be made, in any case to which clause (k) refers until the child is approaching the age of sixteen years, and the board has decided that further and better education should be furnished the child.

(m) Where there are dependants other than those mentioned in the preceding clauses, a sum reasonable and proportionate to the pecuniary loss to the dependants occasioned by the death to be determined by the board and not exceeding to any one dependant thirty dollars a month, and not exceeding in the whole sixty dollars a month.

(j) In any case for which provision is made in this section, compensation payable, exclusive of payments made under clause (a), (b), (c) or (d) or under subsection (2), shall not exceed seventy-five per cent of the average monthly earnings of the workman; except that

(i) where there is a widow or an invalid widower, the monthly payment shall be one hundred and twenty dollars;

(ii) where there is a widow or an invalid widower and, in either case, one child, the monthly payment shall be not less than the total of one hundred and twenty dollars and the amount mentioned in clause (f) payable in respect of that child; and

(iii) where there is a widow or an invalid widower and, in either case, two or more children, the monthly payment shall be not less than the total of one hundred and twenty dollars and the amount mentioned in clause (f) payable in respect of the two eldest of those children.

Am. S.M., 1955, c. 84, s. 1; S.M., 1956, c. 74, ss. 2, 3, 4, 5; S.M., 1958, (1st Sess.), c. 77, ss. 1, 2, 3, 4, 5, 6, 7; S.M., 1959, (2nd Sess.), c. 73, s. 15; S.M., 1960, c. 85, s. 1; S.M., 1963, c. 93, s. 4; S.M., 1964, (1st Sess.), c. 60, s. 2; S.M., 1966, c. 74, ss. 6, 7, 8, 9; S.M., 1966-67, c. 73, s. 3; S.M., 1969, (2nd Sess.), c. 41, ss. 9 & 10; am.

Duration of payments to dependants other than widow and children.

25(2) In the case provided for by clause (h) or (m) of subsection (1), the payments shall continue only so long as in the opinion of the board it might reasonably have been expected, had the workman lived, that he would have continued to contribute to the support of the dependants.

Am. S.M., 1955, c. 74, s. 6; S.M., 1960, c. 85, s. 2; S.M., 1969, (2nd Sess.), c. 41, s. 11.

To whom payment made.

25(3) Where the board is of the opinion that for any reason it is necessary or desirable that a payment in respect of a dependent child shall not be made directly to his parent, the board may direct that the payment may be made to such person, or be applied in such manner, as the board may direct for the advantage of the child.

Medical, burial, and other expenses, when no dependants.

25(4) Where a workman leaves no dependants, such sum, within the limitations of this Act, as the board may deem reasonable, for the expenses of his medical attendance, nursing, care, maintenance, and burial, shall be paid to the persons to whom in the opinion of the board the expenses are due.

Payments to foster-mother.

25(5) Where the workman leaves no widow or the widow subsequently dies, and it seems desirable to continue the existing household, and an aunt, sister, or other suitable person, acts as foster-mother in keeping up the household and maintaining and taking care of the children entitled to compensation in a manner which the board deems satisfactory, the foster-mother while so doing is entitled to receive the same monthly payments of compensation for herself and the children as if she were the widow of the deceased; and in that case the children's part of the payments shall be in lieu of the monthly payments which they would otherwise have been entitled to receive.

Am.

Payment to widow or foster-mother.

25(6) Where the workman leaves a widow or children entitled to compensation who are in the care of a foster-mother as provided in subsection (5), the board shall, in addition to any other compensation provided by this Part, pay to the widow or foster-mother the sum of five hundred dollars.

Am. S.M., 1956, c. 74, s. 7; S.M., 1959, (2nd Sess.), c. 73, s. 16; S.M., 1959, (2nd Sess.), c. 41, s. 13.

Compensation to common law wife.

25(7) Where a workman, during the entire period of the three years immediately preceding his death, has had a dependent common law wife and leaves no dependent widow, the compensation to which a dependent widow would have been entitled under this Act may, in the discretion of the board, be paid to the common law wife until such time as she marries.

R.S.M., c. 297, s. 23; am.

Cessation of payment to one of several dependants.

26 Where a payment to any one of a number of dependants ceases, the board may in its discretion readjust the payments to the remaining dependants so that the remaining dependants shall thereafter be entitled to receive the same compensation as though they had been the only dependants at the time of the death of the workman.

R.S.M., c. 297, s. 24.

Marriage of dependant widow.

27(1) Where a dependent widow marries, the monthly payment to her shall cease, but she is entitled, in lieu of that, to a lump sum equal to the monthly payments for two years.

Am.

Application of subsec. (1).

27(2) Subsection (1) does not apply to payments to a widow in respect of her dependent child or children.

R.S.M., c. 297, s. 25; am.

Proof of condition of dependants.

28 The board may, from time to time, require such proof of the necessities, condition, and existence, of any dependants in receipt of compensation payments as may be deemed necessary by the board, and pending the receipt of such proof may withhold further payments.

R.S.M., c. 297, s. 26.

Compensation for permanent total disability.

29 Where permanent total disability results from the injury, the amount of compensation shall be a periodical payment during the life of the workman equal to seventy-five per cent of his average earnings; but, subject to sections 30 and 31, the compensation shall not be less than one hundred and fifty dollars per month, except where the average earnings of the workman are less than one hundred and fifty dollars per month, in which case he shall receive as monthly compensation an amount equal to his average monthly earnings.

R.S.M., c. 297, s. 27; am. S.M., 1950, c. 74, s. 8; S.M., 1959, (2nd Sess.), c. 73, s. 17; R. & S., S.M., 1954, (1st Sess.), c. 60, s. 3.

Compensation for permanent total disability before Aug. 5th., 1959.

31 Subject to section 31, where, immediately before the coming into force of this section, a person was receiving, in respect of an injury that occurred prior to the fifth day of August, 1959, compensation under section 29 as that section was immediately before the coming into force of this section, the monthly compensation payable to him after the coming into force of this section shall be not less than one hundred and fifty dollars per month.

En. S.M., 1964, (1st Sess.), c. 60, s. 3.

Increase in compensation limited.

31 Where, immediately before the coming into force of this section, a person was receiving compensation under section 29, as that section was immediately before the coming into force of this section, the compensation payable to him after the coming into force of this section shall not be more than one hundred and fifty per cent of the compensation that was being paid to him immediately before the coming into force of this section.

En. S.M., 1964, (1st Sess.), c. 60, s. 3.

Compensation for permanent partial disability.

32(1) Where permanent partial disability results from the injury, the board shall allow compensation in periodical payments during the lifetime of the workman sufficient, in the opinion of the board, to compensate for the physical loss occasioned by the disability, but not exceeding seventy-five per cent of his average earnings.

En. S.M., 1970, c. 47, s. 1.

Special additional compensation.

32(1.1) Where the board is satisfied that an injury in respect of which it has allowed compensation under subsection (1) has occasioned a loss in earning capacity that is proportionately greater than the physical loss on the basis of which the compensation is allowed, it may

(a) during a period when the workman is taking rehabilitation training satisfactory to the board; or

(b) if the board is satisfied that rehabilitation training is not indicated; or

(c) if the board is satisfied that, after a fair and honest effort by the workman, rehabilitation has not produced an earning capacity that is reasonably equivalent to his earning capacity before the injury reduced by the physical loss on the basis of which the compensation is allowed;

increase the compensation allowed under subsection (1) in such amount as it considers fair and just, but the total compensation shall not exceed seventy-five per cent of the average earnings of the workman.

En. S.M., 1970, c. 47, s. 1.

Lump sum or periodical payments for impairment of earning capacity.

32(2) Notwithstanding subsection (1), where, in the circumstances, the amount which the workman was able to earn before accident has not been substantially diminished the board may, in case the workman is seriously and permanently disfigured about the face or head, or otherwise permanently injured, recognize the injury as an impairment of earning capacity and fix an amount to be paid to the workman as full compensation therefor and pay him the amount either in one sum or in periodical instalments as directed by the board, or, after estimate as to the probable cost to the accident fund for the disability, fix a monthly sum to be paid to the workman during the continuance of his disability, in full payment and discharge of all claim in respect of the disability.

Impairment of earning capacity under 10 per cent, lump sum.

32(3) Where the impairment of the earning capacity of the workman does not exceed ten per cent of his earning capacity, instead of the weekly payment, the board may, upon the request of the workman, direct that such lump sum as may be deemed to be the equivalent of the weekly payment shall be paid to the workman in instalments, or in one payment, in settlement of his claim; but the board may refuse to grant a lump sum settlement if it is of the opinion that the granting of it would not be to the advantage of the workman.

R. & S., S.M., 1959, (2nd Sess.), c. 73, s. 18.

32(4) Repealed. S.M., 1970, c. 47, s. 2.

Minimum compensation for permanent partial disability.

32(5) The compensation payable in each month under this section shall not be less than that percentage of one hundred and fifty dollars that is proportionately equal to the percentage of disability that the workman suffers as determined by the board, except where the average earnings of the workman are less than one hundred and fifty dollars per month, in which case he shall receive as monthly compensation an amount that is a percentage of his average monthly earnings that is proportionately equal to the percentage of his disability as determined by the board.

En. S.M., 1964, (1st Sess.), c. 60, s. 4; R.S.M., c. 297, s. 29; am.; Am. S.M., 1970, c. 47, ss. 1-3.

33 and 34 Repealed. S.M., 1970, c. 47, s. 4.

Temporary total disability, compensation, etc.

35(1) Where temporary total disability results from the injury, the compensation shall be a periodical payment during the continuance of the temporary total disability equal to seventy-five per cent of the workman's average earnings; but the compensation shall not be less than thirty-five dollars per week, except in cases where the average earnings of the workman are less than thirty-five dollars per week, when he shall receive as weekly compensation the total amount of his average weekly earnings.

Am. S.M., 1956, c. 74, s. 10; S.M., 1959 (2nd Sess.), c. 73, s. 19; S.M., 1969, (2nd Sess.), c. 41, s. 15.

Increase in compensation for past injuries.

35(2) Where, on the date of coming into force of this subsection, a person is receiving compensation under subsection (1), the compensation paid to him after that date shall not be less than twenty-five dollars per week.

En. S.M., 1959, (2nd Sess.), c. 73, s. 19.

Reduction in compensation in certain cases.

35(2) Where in the opinion of the board the period of disability appears to be unnecessarily prolonged, it may reduce temporarily or permanently the percentage of wages allowed as compensation by this section, with power to restore the full percentage at any time.

R.S.M., c. 297, s. 29; am.

Compensation for temporary partial disability.

36 Where temporary partial disability results from the injury, the compensation shall be the same as that prescribed by section 32, but shall be payable only so long as the disability lasts.

R.S.M., c. 297, s. 30.

Calculation of average earnings and earning capacity of workman.

37 The average earnings and earning capacity of a workman shall be determined with reference to his average earnings and earning capacity at the time of the accident, and may be calculated upon the daily, weekly, or monthly, wages and other regular remuneration which the workman was receiving at the time of the accident, or upon the average yearly earnings of the workman for one or more years prior to the accident, or upon the probable yearly earning capacity of the workman at the time of the accident, as may appear to the board best to represent the actual loss of earnings suffered by the workman by reason of the injury, but not so that his average earnings shall be deemed in any case to exceed the rate of six thousand six hundred dollars per year.

R.S.M., c. 297, s. 31; am. S.M., 1956, c. 74, s. 11; S.M., 1959, (2nd Sess.), c. 72, s. 29; S.M., 1961, (1st Sess.), c. 71, s. 5; S.M., 1965, c. 91, s. 5.

Pension, gratuity, etc., may be deducted.

38 In fixing the amount of a periodical payment of compensation regard shall be had to any payment, allowance, or benefit, which the workman may receive from his employer in respect of the workman's accident including any gratuity, or other allowance provided wholly at the expense of the employer, and any sum so paid by the employer may be paid to the employer out of and deducted from the compensation.

R.S.M., c. 297, s. 32.

Computation of benefits in case of recurrence of injury.

38(1) Notwithstanding anything contained in sections 29, 32, 35, or 37, where a workman whose claim has been approved has returned to employment, but the injury incurred in his approved claim (in this section called the "original injury"), later causes a recurrence of disability, and at the time of such recurrent disability the workman has average earnings higher than his average earnings at the time of the original injury,

(a) if the workman is not in receipt of a permanent disability pension in respect of the original injury, the disability benefits payable in respect of the recurrence shall be calculated on the basis of his average earnings at the time of the recurrence of disability; and

(b) if the workman is in receipt of a permanent disability pension in respect of the original injury, the additional disability benefits payable by reason of the recurrence shall be upon the percentage of disability not covered by the pension and shall be calculated on the basis of his average earnings at the time of the recurrence of disability.

Am.

Idem.

39(2) If the workman, at the time of the recurrence of disability, is in the employment of an employer in a class different from the class to which the employer at the time of the original injury belonged, the board shall, in its absolute discretion, allocate the costs of the recurrent disability to one or other of the classes, or between the two classes, or to any other available funds, as the board considers equitable in the circumstances.

Idem.

39(3) The additional disability benefits shall be calculated on the scale current at the time of the recurrence of disability.

En. S.M., 1966, c. 74, s. 10.

THE WORKMEN'S COMPENSATION BOARD

Board a body corporate.

40(1) There is hereby constituted a commission for the administration of this Part, to be called: "The Workmen's Compensation Board", which consists of a chairman and two or more commissioners to be appointed by the Lieutenant Governor in Council, and is hereby constituted and created a body corporate and politic.

Am. S.M., 1963, c. 98, s. 5; Am. S.M., 1970, c. 47, s. 5.

Administration of Dominion Act.

40(2) The board may administer any Act of the Parliament of Canada or order of the Governor General in Council dealing with the payment of compensation to the persons named in any such Act or order in council or dealing with employment safety.

Am. S.M., 1970, c. 47, s. 5.

Duties, etc., under other Acts.

40(3) The board shall perform such duties and functions, and exercise such rights and powers, as may be imposed on, or given to, it under any other Act of the Legislature.

En. S.M., 1965, c. 91, s. 6; R.S.M., c. 297, s. 33; am.; Am. S.M., 1970, c. 47, ss. 5 - 6.

Absence of chairman.

41(1) By resolution of the board one of the commissioners may act as chairman during the temporary absence of the chairman from any cause.

Am. S.M., 1963, c. 98, s. 6; S.M., 1964, (1st Sess.), c. 60, s. 6.

Acting commissioner.

41(2) The Lieutenant Governor in Council may appoint an acting commissioner during the temporary absence of a commissioner from any cause; and the acting commissioner for the period of his appointment has all the powers and duties which have been, or may be, assigned by law to a commissioner.

Am. S.M., 1963, c. 98, s. 7; am. R.S.M., c. 297, s. 34; am.

Chairman's term of office.

42(1) Subject to subsection (2), the chairman holds office during good behaviour, but may be removed at any time for cause.

Am. S.M., 1963, c. 98, s. 8; am.

Retirement of chairman.

42.(2) Unless otherwise directed by the Lieutenant Governor in Council, the chairman ceases to hold office when he attains the age of seventy-five years.

Am. S.M., 1963, c. 98, s. 9; am. R.S.M., c. 297, s. 35; am.

Term of office and retirement of commissioner.

43 A commissioner shall be appointed for a five year term, and may be re-appointed for a further term or terms; but, unless otherwise directed by the Lieutenant Governor in Council, he ceases to hold office when he attains the age of seventy-five years.

R.S.M., c. 297, s. 36; am. S.M., 1963, c. 98, s. 10; am.

Chairman to devote his full time.

44.(1) The chairman shall devote the whole of his time to the discharge of his duties under this Part, except that he may devote such time as may be necessary to the performance of the duties required of him under subsections (2) and (3) of section 40.

Am. S.M., 1963, c. 98, s. 11; am. S.M., 1965, c. 91, s. 7; Am. S.M., 1970, c. 96, s. 45.

Commissioners.

44.(2) The Lieutenant Governor in Council may require the commissioners or either of them to devote the whole of his or their time, or such part thereof as he may prescribe, to the discharge of his or their duties under this Part, except that either of them may devote such part of their time as may be necessary to the performance of the duties required of them under subsections (2) and (3) of section 40.

Am. S.M., 1963, c. 98, s. 11; S.M., 1965, c. 91, s. 8; R.S.M., c. 297, s. 37; am.; Am. S.M., 1970, c. 96, s. 45.

Salaries.

45.(1) The salary of the chairman and of each of the commissioners shall be such sum per annum as may be fixed by the Lieutenant Governor in Council; and the salaries are payable out of the accident fund.

Am. S.M., 1963, c. 98, s. 12.

Allowance for attending meetings.

45.(2) When the commissioners or any of them devote only a part of his or their time to the discharge of his or their duties under this Part, the Lieutenant Governor in Council may authorize the payment to any commissioner out of the accident fund of an additional allowance of fifteen dollars for each meeting of the board, in excess of fifty, which any commissioner attends in any year.

Am. S.M., 1963, c. 98, s. 12; S.M., 1964, (1st Sess.), c. 60, s. 7; Am. S.M., 1970, c. 47, s. 7.

Salary and allowances for parts of year.

45.(3) Where a commissioner has not held his position as such for a full twelve months in any year, or has been absent or otherwise unable to discharge the duties of his position for such a period in any year that another person has been appointed and has acted, in his stead during his absence or incapacity;

(a) the salary for the period in that year during which he has held the position, or has not been absent or otherwise incapacitated, shall be that amount that is the same proportion of the amount of his salary for a full year that the period during which he has held the position, or has not been absent or otherwise incapacitated as aforesaid, in that year is of a full year; and

(b) the additional allowance to which he may be entitled under subsection (2) shall

be paid for each meeting attended by the commissioner in excess of that number that is the same proportion of fifty that the period during which he has held the position or has not been absent or otherwise incapacitated as aforesaid is of a full year.

En. S.M., 1956, c. 74, s. 12; am. S.M., 1963, c. 93, s. 12; R.S.M., c. 297, s. 39; am.; Am. S.M., 1970, c. 47, s. 7.

Powers of board as to witnesses.

46(1) The board has all the powers that are conferred upon commissioners under Part V of The Manitoba Evidence Act for compelling the attendance of witnesses and of examining them under oath and of compelling them to answer questions and compelling the production of books, papers, documents, and other things.

Am.

Depositions.

46(2) The board may cause depositions of witnesses residing within or without the province to be taken before any person appointed by the board in a similar manner to that prescribed by the rules of the Court of Queen's Bench for the taking of like depositions in that court before a commissioner.

R.S.M., c. 297, s. 39; am.

Members of board to have no interest in industry under Part 1.

47(1) A member of the board who is required to devote the whole of his time to the discharge of his duties as a member of the board, shall not directly or indirectly have, purchase, take, or become interested in, any industry to which this Part applies, or any bond, debenture, or other security, of any person or corporation owning or carrying it on.

Am. S.M., 1970, c. 47, s. 8.

If any, must dispose thereof in three months.

47(2) Where any such industry, or interest therein, or any such share, bond, debenture, security, or thing, comes to or becomes vested in a member of the board by will or by operation of law and he does not within three months thereafter sell and absolutely dispose of it, he ceases to hold office.

Am. R.S.M., c. 297, s. 40; am.; Am. S.M., 1970, c. 47, s. 8.

Board offices.

48 The offices of the board shall be situated in The City of Winnipeg, and its sittings shall be held there, except where it is expedient to hold sittings elsewhere, and in that case sittings may be held in any part of Manitoba.

R.S.M., c. 297, s. 41.

Sittings of board.

49(1) The board shall sit at least once in each week, and at such times as may be necessary, and shall conduct its proceedings in such manner as it may deem most convenient for the proper discharge or speedy dispatch of business.

Quorum.

49(2) The presence of two members of the board is necessary to constitute a quorum of the board.

Am. R.S.M., c. 297, s. 42; am.

Officers, clerks, etc.

50(1) The board shall appoint such officers and other employees as the board may deem necessary for carrying out this Part, and may prescribe their duties and, subject to the approval of the Lieutenant Governor in Council, may fix their salaries, which shall be paid out of the accident fund.

Tenure.

50(2) Every person so appointed shall hold office during the pleasure of the board.

Superannuation fund for employees.

50(3) The board, with the approval of the Lieutenant Governor in Council, may establish and maintain a fund, or enter into arrangements with a duly licensed insurance company or insurance companies or the Annuities Branch of the Department of Labour of the Government of Canada for the payment of superannuation allowances; and may make regulations providing for contributions to the fund by the board and by its employees, and for the terms and conditions upon which any superannuation or other allowance shall be payable, and the persons to whom it may be paid; and the costs of maintaining and administering the fund shall be deemed part of the cost of the administration of the board and shall be chargeable to the accident fund.

Contribution to civil service superannuation fund of the province.

50(4) Where a person who is a member of the civil service of the province becomes a member, officer, or employee, of the board and pursuant to The Civil Service Superannuation Act is classified or designated as being in the civil service for the purposes of that Act, or is a member of a group or class of persons that is so classified or designated, the board may make regulations providing for contributions by the board and that person to the fund established under that Act; and any such contributions are in lieu of any contributions in respect of that person to fund established pursuant to subsection (3).

Am. R.S.N. c. 297, s. 43; am.

General jurisdiction.

51(1) The board has exclusive jurisdiction to examine into, hear, and determine, all matters and questions arising under this Part and as to any matter or thing in respect of which any power, authority, or discretion, is conferred upon the board; and the action or decision of the board thereon is final and conclusive and is not open to question or review in any court; and no proceedings by or before the board shall be restrained by injunction, prohibition, or other process or proceeding in any court, or are removable by certiorari or otherwise into any court.

Am.

Particular jurisdiction.

51(2) Without hereby limiting the generality of subsection (1), it is declared that the exclusive jurisdiction of the board extends to determining

(a) whether any injury or death in respect of which compensation is claimed was caused by an accident within the meaning of this Part;
(b) the question whether any injury has arisen out of or in the course of an employment within the scope of this Part;
(c) the existence and degree of disability by reason of any injury;
(d) the permanence of disability by reason of any injury;
(e) the degree of diminution of earning capacity by reason of any injury;

(f) the amount of average earnings;
(g) the existence, for the purpose of this Part, of the relationship of any member of the family of a workman as defined by this Act;
(h) the existence of dependency;
(i) whether or not any industry or any part, branch, or department, of any industry is within the scope of this Part, and the class to which any industry or any part, branch, or department, of any industry within the scope of this Part should be assigned;
(j) whether or not any workman in any industry is within the scope of this Part and entitled to compensation thereunder;
(k) whether any particular disease is peculiar to, or characteristic of, any particular industrial process, trade, or occupation, to which this Part applies;
(l) that a person who is not otherwise a workman for the purposes of this Act shall be deemed to be a workman for the purposes of this Part and, where the person is not under a contract of service or apprenticeship
  (i) that another person shall be deemed to be his employer, and
  (ii) what his earnings shall be deemed to be,

for the purposes of this Part.

Am. S.M., 1959, (2nd Sess.), c. 73, s. 21; S.M., 1969, (2nd Sess.), c. 41, s. 14.

Review by board.

51(3) Nothing in subsection (1) prevents the board from reconsidering from time to time any matter that has been dealt with by it or from rescinding, altering, or amending, any decision or order previously made, or making any further or supplementary order, all of which the board may do.

Legal precedent.

51(4) The decisions of the board shall always be given upon the real merits and justice of the case; and it is not bound to follow strict legal precedent.

R.S.M., c. 297, s. 44; am.

No action for damages against the board.

52 No action for damages shall be brought in any court of law against the board, or any of its members or persons employed by it in respect of anything done by it or them within or beyond their jurisdiction, as conferred by this Act, if it was in the bona fide belief that it was within their jurisdiction.

R.S.M., c. 297, s. 45; Am. S.M., 1970, c. 47, s. 9.

Members and employees not compellable witnesses.

52.1 No member or employee of the board shall be required to give testimony in any civil suit to which the board is not a party with regard to information obtained by him in the discharge of his official duties in connection with the board.

En. S.M., 1970, c. 47, s. 10.

Compensation for costs.

53 The board may award such sum as it may deem reasonable to the successful party to a contested claim for compensation or to any other contested matter as compensation for the expenses he has been put to by reason of, or incidental to, the contest; and an order of the board for the payment of any sum so awarded, when filed in the manner provided by section 70, becomes a judgment of the court in which it is filed and may be enforced accordingly.

R.S.M., c. 297, s. 46; am.

Reports of officers of board.

54(1) The board may act upon the report of any of its officers, and any inquiry or examination that it shall be deemed necessary to make may be made by any one of

the officers of the board, or by a commissioner, a medical referee, or some other person appointed to make the inquiry or examination; and the board may act upon his report as to the result of the inquiry or examination.

Powers of officers.

54(2) The person appointed to make the inquiry or examination has, for the purposes thereof, all the powers conferred upon the board by section 46.

R.S.M., c. 297, s. 47; am.

Regulations of the board.

55(1) The board may make such regulations as may be deemed expedient or requisite for the due administration and carrying out of this Part and to meet cases not specially provided for by this Part, and may likewise prescribe the form and use of such payrolls, records, reports, certificates, declarations, and documents, as may be requisite, and a certified copy of every regulation so made shall be transmitted forthwith to the Minister of Labour; but any such regulation may, within one month after it has been received by the Minister of Labour, be disallowed by the Lieutenant Governor in Council.

Approval of regulations.

55(2) Subject to The Regulations Act,

(a) every regulation that is approved by the Lieutenant Governor in Council shall, immediately after approval or on the day named by him for that purpose, become effective;

(b) after the period for disallowance has expired, every regulation that has not been disallowed shall become effective; and

(c) every regulation that has become effective shall be forthwith published in The Manitoba Gazette.

Penalty.

55(3) Every person who contravenes any such regulation after it has become effective is guilty of an offence and is liable, on summary conviction, for every contravention, to a fine not exceeding fifty dollars.

Am.

Authority of board to determine right of action.

55(4) Where an action in respect of an injury is brought against an employer by a workman or his legal personal representative or a dependant, the board has jurisdiction upon the application of any party to the action to adjudicate and determine whether the action is one the right to bring, which is taken away by this Act; and the adjudication and determination is final and conclusive, and if the board determines that the action is one the right to bring which is taken away by this Part, the action shall be forever stayed.

Am. R.S.M., c. 297, s. 48; am.

Audit of accounts.

56 The accounts of the board shall be audited by the Provincial Auditor or by an auditor appointed by the Lieutenant Governor in Council for that purpose; and the salary or remuneration of the last mentioned auditor shall be paid by the board.

R.S.M., c. 297, s. 49.

Annual report by board.

57 The board shall, as soon as possible after the close of each calendar year, and not later than the first day of March next following, make a report to the Minister of Labour of its transactions during the last preceding year; and the report shall contain a statement of the accounts required to be kept under section 72 and such particulars as the Lieutenant Governor in Council may prescribe.

R.S.M., c. 297, s. 50; am. S.M., 1959, (2nd Sess.), c. 73, s. 22.

Report to be laid before assembly.

58 The report shall be forthwith laid before the Legislative Assembly if the assembly is then in session, and, if it is not then in session, within fifteen days after the opening of the next session.

R.S.M., c. 297, s. 51.

CONTRIBUTION BY THE PROVINCE

Provincial assistance to defray expenses.

59 To assist in defraying the expenses incurred in the administration of this Part there shall be paid to the board out of the Consolidated Fund such annual sum as the Lieutenant Governor in Council may direct; but the board may, and shall be deemed always to have had the authority to, pay its costs of administration from the accident fund.

R.S.M., c. 297, s. 52; Am. S.M., 1970, c. 47, s. 11.

ACCIDENT FUND

Assessment upon classes of industries.

60 For the purpose of assessment in order to create and maintain a fund to be called the "accident fund" for the payment of the compensation, outlays, and expenses, under this Part, all the following industries shall be within the scope of this Part and shall, subject to sections 64 and 76, and to the regulations, be divided into the following classes:

(a) Class A - The Canadian Pacific Railway Company and its subsidiary companies.
(b) Class C - Canadian National Railway Company and all the companies that comprise Canadian National Railways as that expression is defined in the Canadian National Railways Act (Canada), and the Air Canada Act.
(c) Class D - The Crown in right of the province of Manitoba.
(d) Class D1 - The Metropolitan Corporation of Greater Winnipeg.
(e) Class E - The City of Winnipeg.
(f) Class F - All other municipalities in Manitoba.
(g) Class G - All industries set out in Schedule 1 and not included in the above classes.

R.S.M., c. 297, s. 53; am. S.M., 1961, (1st Sess.), c. 71, s. 6; R. & S., S.M., 1963, c. 93, s. 13; am.; Am. S.M., 1970, c. 98, s. 46.

Admission within scope of Part I.

61(1) Any industry or workman not within the scope of this Part may on the application of the employer be admitted by the board as being within the scope of this Part, subject to such terms and conditions, and for such period, as the board may deem adequate and proper.

Admission of apartment block and office building employees.

61(2) A majority of the permanent and full-time employees engaged in the maintenance and operation of an apartment block or an office building, other than those who are covered elsewhere herein, may apply to have all of such employees, other than those who are covered elsewhere herein, admitted by the board as being within the scope of this Part; and the board may grant the application subject to such terms and conditions, and for such period, as the board deems adequate and proper; and, for the purposes of this subsection, the work of those employees shall be deemed to be an industry.

Employer may be admitted to compensation.

61(3) Any employer in an industry within the scope of this Part may be admitted by the board as being entitled for himself and his dependants to the same compensation as if the employer were a workman within the scope of this Part.

Compensation to employer.

61(4) Compensation is not payable out of the accident fund to an employer or to a member of the family of an employer who is employed by him and dwells with him as a member of his household, unless application to come within the scope of this Part has been received and approved by the board.

Am. S.M., 1965, c. 91, s. 9; am. R.S.M., c. 297, s. 54; am.

Application to Crown employees.

62(1) Subject as in this section provided, this Part applies to any employment by or under the Crown in right of the Province of Manitoba.

Application to agencies of the government.

62(2) In the interpretation and application of this section, the expression "the Crown" or "the government" does not include an agency of the government; but an agency of the government, if it has not done so before the coming into force of this subsection, may apply under section 61 to be admitted by the board as an industry or employer within the scope of this Part.

Meaning of "agency of the government".

62(3) In this section the expression "agency of the government" means

(a) any board, commission, association, or other body, whether incorporated or unincorporated, all the members of which, or all the members of the board of management or board of directors of which,

(i) are appointed by an Act of the Legislature or by order of the Lieutenant Governor in Council; or

(ii) if not so appointed, in the discharge of their duties are public officers or servants of the Crown, or for the proper discharge of their duties are, directly or indirectly, responsible to the Crown; or

(b) any corporation the election of the board of directors of which is controlled by the Crown, directly or indirectly, through ownership of shares of the capital stock thereof by the Crown or by a board, commission, association, or other body to which clause (a) applies.

R.S.M., c. 297, s. 55; R. & S., S.M., 1959, (2nd Sess.), c. 74, s. 2.

Regulations affecting classes of industries.

63(1) The board may, by regulations,

(a) create new classes in addition to those mentioned in section 60;

(b) consolidate or rearrange from time to time any of the existing classes; and

(c) withdraw from a class any industry included therein and transfer it wholly or in part to any other class, or form it into a separate class.

Adjustment of funds, etc.

63(2) In case of any rearrangement of the classes, or the withdrawal of an industry from any class, the board may make such adjustment and disposition of the funds, reserves, and accounts, of the classes affected as may be deemed just and expedient.

R.S.M., c. 297, s. 56.

Board to assign industry to proper class.

64 The board shall assign every industry within the scope of this Part to its proper class; and, where an industry includes several departments assignable to different classes, the board may either assign the industry to the class of its principal or chief department, or may, for the purpose of this Part, divide the industry into two or more departments, assigning each of the departments to its proper class.

R.S.M., c. 297, s. 57.

Employer to make estimate of payroll for year ensuing.

65(1) Every employer shall, whenever he becomes an employer within the meaning of this Part, and at such other times as may be required by regulations or by the board, cause to be furnished to the board an estimate of the probable amount of the payroll of each of his industries within the scope of this Part for the year next following, together with such further and other information as may be required by the board for the purpose of assigning each industry to the proper class and of making the assessments hereunder; and every employer shall, at the close of each calendar year, and at such other times as may be required by the board, furnish certified copies or reports of his payrolls.

Am.

Record of wages.

65(2) Every employer within the scope of this Part shall keep a record of the wages earned by his employees, showing the name of each workman, the dates and time worked, and the wages earned.

Nature of work.

65(3) Any person who, in the opinion of the board, may be an employer under Part I shall, on request of the board at any time, furnish and deliver to the board a statement signed by him giving full particulars of the nature of the different classes of work carried on and such particulars as may be required by the board concerning his payroll.

Am.

Basis of estimated payroll.

65(4) In computing the amount of the payroll of any industry for the purpose of assessment, regard shall be had only to such portion of the payroll as represents workmen and employment within the scope of this Part; and where the wages of any workman exceed six thousand six hundred dollars per year, a deduction shall be made in respect of the excess.

Am. S.M., 1936, c. 74, s. 12; S.M., 1939, (2nd Sess.), c. 73, s. 23; S.M., 1951, (1st Sess.), c. 71, s. 7; S.M., 1965, c. 91, s. 10; S.M., 1966-67, c. 73, s. 5.

Penalty.

65(5) If an employer or other person does not comply with subsection (1), (2), or (3), or if on audit, it is established that an employer wilfully underestimated his probable payroll in his return of it made to the board or if any statement under those subsections is not a true and correct statement of any of the matters required to be set forth in it, the employer or other person for every non-compliance, and for every inaccurate statement, and for every underestimate, is guilty of an offence and is liable, on summary conviction, to a fine not exceeding five hundred dollars.

Am.

Assessment where employer fails to make statement.

65(6) Where an employer does not make and transmit to the board the prescribed statement within the prescribed time, the board may base any assessment or supplementary assessment thereafter made upon him on such sum as in its opinion is the probable amount of the payroll of the employer, and the employer is bound thereby; but if it is afterwards ascertained that the amount is less than the actual amount of the payroll the employer is liable to pay to the board the difference between the amount for which he was assessed and the amount for which he would have been assessed on the basis of his payroll.

Am.

Continuing liability of employer.

65(7) Where, for any reason, an employer liable to assessment is not assessed in any year, he is nevertheless liable to pay to the board the amount for which he should have been assessed; and payment of that amount may be enforced in the same manner as the payment of an assessment may be enforced.

Am.

Information furnished by municipal officers.

65(3) On the written request of the board, the clerk or secretary-treasurer of a municipality other than a city, shall make a return to the board, upon forms provided by the board for the purpose, showing the names, addresses, nature of business, and usual number of employees, of all employers of labour carrying on in that municipality any industry or business other than farming.

Am.

Remuneration.

65(9) The board may give remuneration for the return out of the accident fund.

Notice of building permits granted.

65(10) Within three days after the granting of any building permit in any municipality, written notice thereof shall be given to the board by the person whose duty it is to keep a record of the permits.

R.S.M., c. 297, s. 58; am.

Annual assessment for accident fund.

65(1) For the purpose of creating and maintaining an adequate accident fund, the board shall every year assess and levy upon and collect from, the employers in each class by an assessment or by assessments made from time to time rated upon the payroll, or in such other manner as the board may deem proper, sufficient funds,

according to an estimate to be made by the board,

(a) to meet all amounts payable from the accident fund under this Part during the year including administration costs;

(b) to meet all costs and expenditures incurred under The Employment Safety Act;

(c) to provide in each year capitalized reserves sufficient to meet the periodical payments of compensation accruing in future years in respect of all accidents that occur during the year so as to prevent the employers in future years from being unduly and unfairly burdened with payments that are to be made in those years with respect to accidents that have previously happened; except that in cases where future payments are guaranteed by the Government of Canada or the Government of Manitoba, the board may dispense with the setting-up of reserves;

(d) to provide a surplus or equalization fund to be used to meet the losses arising from any disaster or other circumstance that, in the opinion of the board, would unfairly burden the employers in any class; and

(e) to provide a fund to be used to meet that part of the cost of claims of workmen suffering enhanced disabilities, because of similar or other disabilities previously suffered, as, in the opinion of the board, is due to the previous disabilities.

Am. S.M., 1965, c. 91, s. 11; Am. S.M., 1970, c. 47, s. 12.

Transfer from equalization fund.

66(2) The amount of any assessment and levy made upon employers operating industries in Class (G) for the purpose mentioned in clause (e) of subsection (1) may be transferred to the fund mentioned in that clause from the equalization fund for which provision is made in clause (d) of subsection (1).

Am. S.M., 1955, c. 84, s. 2; S.M., 1964, (1st Sess.), c. 50, s. 8; Am. S.M., 1970, c. 98, s. 47.

How assessment to be made.

66(3) Assessments may be made in such manner and form, and by such procedure, as the board may deem adequate and expedient, and may be general as applicable to any class or sub-class, or special as applicable to any industry or part or department of an industry.

Collection of assessments.

66(4) Assessments may, wherever it is deemed expedient, be collected in half-yearly, quarterly, or monthly, instalments, or otherwise; and, where it appears that the funds in any class are sufficient for the time being, any instalment may be abated or its collection deferred.

Deficiency in assessments.

66(5) Where the estimated assessments in any class prove insufficient, the board may make such further assessments and levies as may be necessary, or the board may temporarily advance the amount of any deficiency out of any fund provided for that purpose and add the amount to any subsequent assessments.

Notice to employer of assessment due.

66(6) The board shall give notice to each employer of the amount of each assessment due from time to time in respect of his industry and the time when it is payable.

Am.

Giving of notice.

55(7) The notice may be sent by post to the employer, and shall be deemed to be given to him on the day on which the notice is posted.

Levies for increases in compensation.

55(8) Notwithstanding any other provision of this Act, where an amendment to this Act is hereafter enacted that results in increases in compensation payable in respect of accidents that happened before the amendment is enacted, any additional moneys required to provide for the increases may be levied and collected by the board, over such period as the board deems advisable, from the employers who, either before or after the coming into force of this subsection, are or were within the scope of this Part.

En. S.M., 1969, (2nd Sess.), c. 42, s. 15; S.M., R.S.M., c. 297, s. 59; am.; Am. S.M., 1970, c. 47, s. 12.

Allocation of rates to kinds of employment in the same class.

57(1) The board shall establish such sub-classifications, differentials, and proportions, in the rates as between the different kinds of employment in the same class as may be deemed just; and, where in the opinion of the board any particular industry is shown to be so circumstanced or conducted that the hazard differs from the average of the class or sub-class to which the industry is assigned, the board may confer or impose upon that industry a special rate, differential, or assessment, to correspond with the relative hazard of that industry; and for that purpose may adopt a system of rating in such a manner as to take account of the peculiar hazard of the individual plant or undertaking of each employer.

Am.

Reduced assessments and refunds.

57(2) Where, in the opinion of the board, the record and experience of accidents among the workmen of an employer is better than the average record and experience of accidents among the workmen of other employers in the same class or sub-class the board may reduce the amount of any assessment made upon that employer, or refund a portion of any assessment paid by that employer.

En. S.M., 1965, c. 91, s. 12.

Increased and additional assessments.

57(3) Where, in the opinion of the board, the record and experience of accidents among the workmen of an employer is worse than the average record and experience of accidents among the workmen of other employers in the same class or sub-class the board may increase the amount of any assessment made upon that employer, or make a special additional assessment upon that employer.

En. S.M., 1965, c. 91, s. 12; R.S.M., c. 297, s. 60; am.

Security by employer in industry, carried on temporarily.

58(1) Where an employer engages in any of the industries within the scope of this Part and has not been assessed in respect of it, the board, if it is of opinion that the industry is to be carried on only temporarily, or that it is for some other reason expedient, may require the employer to pay or to give security for the payment to the board of a sum sufficient to pay the assessment for which the employer would be liable if the industry had been in existence when the last preceding assessment was made.

Penalty.

68(2) Every employer who makes default in complying with any requirement of the board under subsection (1) is guilty of an offence and is liable, on summary conviction, to a fine not exceeding five hundred dollars.

Am. R.S.M., c. 297, s. 61; am.

Costs incurred for special classes, etc.

69 In addition to the assessments made under sections 66, 67, and 68, where the board incurs any cost or expenditure under The Employment Safety Act in respect of any class or sub-class of employer, or in respect of any employer, the board may charge the amount of those costs or expenditures, by way of a special assessment, against that class or sub-class of employers or against that employer.

En. S.M., 1965, c. 91, s. 13.

Collection of assessments by board.

70(1) Where an assessment or part thereof or deficiency is not duly paid in accordance with the terms of the assessment and levy, the board has a right of action against the defaulting employer in respect of the amount unpaid, and any penalties imposed under the provisions of this Act, together with costs of the action.

Am.

Certificate of default filed in County Court.

70(2) Where default is made in the payment of any assessment or any part of it, the board may issue a certificate stating that the assessment was made, the amount remaining unpaid on account of it, and the person by whom it is payable, and the certificate, or a copy of it, certified by the secretary under the seal of the board to be a true copy, may be filed with the clerk of the County Court of the County Court district in which the person resides or carries on business, and when so filed shall become an order of that court, and may be enforced as a judgment of the court against the person for the amount mentioned in the certificate.

R.S.M., c. 297, s. 62; am.

Penalty for failure to make returns.

71(1) Any employer who refuses or neglects to make or transmit any payroll return or other statement required to be furnished by him under subsection (1), (2), and (3) of section 65 shall pay to the board one-half of the full amount or capitalized value, as determined by the board, of the compensation payable with respect to any accident to a workman in his employ which happens during the period of the default, and the payment of the amount may be enforced in the same manner as the payment of any other assessment may be enforced; but the amount payable shall not be less than fifty dollars.

Am. S.M., 1969, (2nd Sess.), c. 41, s. 16.

Penalty for failure to pay assessment.

71(2) An employer who refuses or neglects to pay any assessment, or the provisional amount of any assessment, or any instalment or part thereof, shall pay to the board an amount additional to all other payments equal to two and one-half per cent of the amount in respect of which he is in default for each half month, payable on the first and sixteenth days of the month, for the period of the default, and the payment of the amount may be enforced in the same manner as the payment of any other assessment made by the board.

Relief from penalties.

71(3) Notwithstanding anything in this section, the board, if satisfied that the default was excusable, may in any case relieve the employer in whole or in part from liability under this section.

Orders of board may become judgments of Court of Queen's Bench.

71(4) An order, original or supplementary, of the board for payment of compensation by an employer who is liable to pay the compensation, and any other order of the board for the payment of money made under the authority of this Part, or a copy of any order certified by the secretary to be a true copy, may, upon payment of a fee of one dollar, be filed in the Court of Queen's Bench for Manitoba, and when so filed becomes a judgment of that court and may be enforced accordingly.

Am. R.S.M., c. 297, s. 63; am.

Separate accounts for each class or fund.

72 Separate accounts shall be kept of the amounts collected and expended in respect of every class and of every fund set aside by way of reserve or as a special fund for any purpose, but for the purpose of paying compensation the accident fund shall, nevertheless, be deemed one and indivisible.

R.S.M., c. 297, s. 64.

Annual adjustment of assessment.

73(1) On or before the thirtieth day of April in each year the amount of the assessment for the preceding calendar year shall be adjusted upon the actual requirements of the class and upon the correctly ascertained payroll of each industry; and the employer shall forthwith make up and pay to the board any deficiency, or the board shall refund to the employer any surplus, or credit it upon the succeeding assessments, as the case may require.

Am. S.M., 1953, (2nd Sess.), c. 73, s. 24.

Change in ownership of industry.

73(2) Where in any industry a change of ownership or employership has occurred, the board may levy any part of the deficiency on either or any of the successive owners or employers, or pay or credit to any one or more of those owners the surplus as the case may require; but as between or amongst the successive owners the assessments in respect of the employment shall, in the absence of an agreement between the respective owners or employers determining it, be apportionable, as nearly as may be, in accordance with the proportions of the payroll of the respective periods of ownership or employment.

R.S.M., c. 297, s. 65.

Work done for municipal corporation under contract.

74(1) Where any work within the scope of this Part is performed under contract for any municipal corporation, or for any board or commission having the management of any work or service operated for the municipal corporation, any assessment in respect of the work may be paid by the corporation, board, or commission, as the case may be, and the amount of the assessment deducted from any moneys due the contractor in respect of the work.

Right of principal as against contractor.

74(2) Where a principal is or may become liable for an assessment with respect to work carried on by a contractor, the principal may withhold from any moneys payable to the contractor such amount as the board may estimate as the probable amount for which the principal is or may become liable, and, in any action that the contractor may bring against the principal, the principal may offset the amount, and the contractor is not entitled to recover from the principal any portion thereof; but after final adjustment by the board of the amount due with respect to the work carried on by the contractor, the contractor is entitled to any amount still remaining in the hands of the principal after payment of the amount due to the board.

Am.

Contractor as principal.

74(3) As between contractor and sub-contractor, the contractor shall be deemed a principal.

R.S.M., c. 297, s. 66; am.

Liability of contractor and principal.

75(1) Where any work within the scope of this Part is undertaken for any person by a contractor, both the contractor and the person for whom the work is undertaken are liable for the amount of any assessment made under this Act in respect thereof, and the assessment may be levied upon and collected from either of them, or partly from one and partly from the other; but, in the absence of any term in the contract to the contrary, the contractor is, as between himself and the person for whom the work is performed, primarily liable for the amount of the assessment.

Am.

Liability of sub-contractor and contractor.

75(2) Where any work within the scope of this Part is performed under sub-contract, both the contractor and the sub-contractor are liable for the amount of the assessments in respect of the work; and any such assessments may be levied upon, and collected from either, or partly from one and partly from the other.

Am. R.S.M., c. 297, s. 67; am.

Withdrawing small industries from classes.

76(1) The board may, by regulation, withdraw or exclude from a class an industry in which not more than a stated number of workmen are employed; and, in that case, this Part does not apply to the industry so withdrawn or excluded.

Am.

Employers in industries withdrawn may elect to become members of class.

76(2) Where an industry is excluded from a class, an employer in the class to which, but for the withdrawal or exclusion, he would have belonged may nevertheless elect to become a member of that class; and if he so elects, he is a member of that class and liable to contribute to the accident fund, and this Part applies to his industry.

Am.

Notice of election.

76(3) Notice of the election shall be given to the secretary of the board; and the election shall be deemed to have been made when the notice is received by the secretary.

Application of Part on notice.

76(4) A workman in an industry withdrawn or excluded under subsection (1) may notify the secretary of the board that he desires this Part to apply to the industry; and the notice, upon receipt thereof by the secretary, has the same effect as a notice from the employer.

Am. R.S.M., c. 297, s. 68; am.

Additional industries added.

77(1) The board may by regulation include any industry (including any industry previously withdrawn or excluded under section 76) within the application of this Part.

Exclusion of industries.

77(2) In addition to the power contained in section 76 the board may, by regulation, exclude any industry from the application of this Part; but no industry shall withdraw or be excluded from this Part, except upon such terms and conditions as the board may impose.

R.S.M., c. 297, s. 69.

Minister of Finance the custodian of all moneys.

78(1) Subject to subsections (2) and (3), the Minister of Finance is custodian of all moneys and securities belonging to the accident fund and the government is liable for the safe-keeping thereof.

Am.

Deposit of funds.

78(2) All moneys belonging to the accident fund collected or received by the board shall be delivered to the Minister of Finance, or may be deposited to his credit in such banks throughout the province as he may designate; and all moneys so delivered or deposited shall be credited to the accident fund, and shall be accounted for as part of the Consolidated Fund of the province.

Expenditures.

73(3) No moneys collected or received on account of the accident fund shall be expended or paid out without first passing into the provincial treasury and being drawn therefrom as provided in this Part.

Custody of securities.

78(4) In like manner all securities belonging to the accident fund shall be delivered to the Minister of Finance and held by him until otherwise disposed of for the purpose of this Part.

Monthly statement to Provincial Auditor.

78(5) The board shall submit each month to the Provincial Auditor an estimate of the amount necessary to meet the current disbursements from the accident fund during the succeeding calendar month, and, when the estimate is approved by the Provincial Auditor, the Minister of Finance shall pay the amount thereof to the board.

Accounting.

78(6) At the end of each calendar month the board shall account to the Provincial Auditor for all moneys so received.

Investment of accident fund.

78(7) Subject to subsection (17), the board shall cause all moneys in the accident fund in excess of current requirements to be invested and reinvested in such securities authorized by The Trustee Act as investments for trust funds as are directed by the investment committee.

R. & S., S.M., 1961, (1st Sess.), c. 70, s. 2.

Payment to board of moneys for investment.

78(8) Upon the requisition of the board, bearing thereon the written direction required by subsection (7), the Minister of Finance shall pay to the board out of the moneys credited to the accident fund any moneys required by the board for the purpose of investment and reinvestment.

Accounting.

78(9) At the end of each calendar month the board shall account to the Provincial Auditor for all moneys received by it pursuant to subsection (8)

Power to sell investments.

78(10) The board may, and shall be deemed always to have had the power to, sell any of the securities mentioned in subsection (7); and the moneys that are the proceeds of any sale shall be dealt with in the same manner as if they had not been so invested.

Interest on investments.

78(11) All investments shall be made in the names of the board and the Minister of Finance jointly, and all interest on investments shall be made payable to the board and form part of the accident fund.

Interest on moneys in hands of Minister of Finance.

78(12) Interest on all moneys belonging to the accident fund in the custody of the Minister of Finance in excess of current requirements and not invested shall, subject to the certificate of the Provincial Auditor, be paid by the Minister of Finance to the board at such rate as may be fixed from time to time by the Lieutenant Governor in Council, payable quarterly, and forms part of the accident fund.

Am.

Purchase and sale of real estate and erection of buildings.

73(13) Subject to the approval of the Lieutenant Governor in Council, the board may

(a) purchase or otherwise acquire such real property as it deems necessary for its purposes;

(b) erect thereon such buildings as it considers necessary for those purposes; and

(c) sell or otherwise dispose of any such real estate or the buildings thereon.

Title to real property.

73(14) The title to real property acquired under subsection (13) shall be held in the name of the board and the Minister of Finance.

Expenditures charged to, and repayments credited to, accident fund.

73(15) All expenditures incurred under subsection (13) in connection with the purchase of real property or the erection of buildings shall be paid out of any reserve fund or other special fund that is a part of the accident fund, and the amount thereof shall be repaid in thirty equal annual payments, which shall include principal and interest thereon at rates of interest that, in the opinion of the board, reflect current rates of interest and the moneys so repaid shall be placed to the credit of the reserve fund or special fund out of which the expenditures were paid.

Am. S.M., 1969, (2nd Sess.), c. 41, s. 17.

Principal and interest part of administration expenses.

73(16) Repayments of principal and interest made under subsection (15) shall be deemed to be part of the general administration expenses incidental to the administration of this Act and any other Act that the board may be required to administer.

Real property and buildings an investment.

76(17) Real property acquired or buildings erected under subsection (13) shall, until repayment of the amount expended for the acquisition or erection thereof has been made, be deemed to be an investment made on behalf of the reserve fund or special fund out of which that amount was paid.

R.S.M., c. 207, s. 70; am.

Establishment of investment committee.

79(1) There is hereby established a committee which shall be known as: "The Workmen's Compensation Board Investment Committee".

Membership.

79(2) The investment committee consists of

(a) the chairman of the board, who is the chairman of the committee;

(b) subject to subsection (3), the Deputy Minister of Finance;

and

(c) a person representative of the views of those persons upon whom assessments are levied under this Part, appointed by order of the Lieutenant Governor in Council for such term as may be fixed in the order in council appointing him.

Duties of Assistant Deputy Minister of Finance.

79(3) In the absence of the Deputy Minister of Finance from The City of Winnipeg or in the event of his inability or incapacity, from any cause, to act or at the request of the Minister of Finance or Deputy Minister of Finance, the Assistant Deputy Minister of Finance shall act as a member of the investment committee; and while so acting he has all the powers, rights, and duties of the Deputy Minister of Finance as a member of the investment committee.

Duties of investment committee.

79(4) The investment committee shall regularly review the investments in which the accident fund is invested and, subject to section 78, shall give directions in writing, signed by the chairman, as to the investments in which moneys in the accident fund and available from time to time for investment shall be invested.

En. S.M., 1951, (1st Sess.), c. 70, s. 3.

Advancement out of Consolidated Fund.

80 Where at any time there is not sufficient money in the hands of the board available for payment of the compensation that may become due, the Lieutenant Governor in Council shall direct that it be advanced to the board out of the Consolidated Fund; and in that case the amount advanced shall be repaid by the board to the Minister of Finance out of the accident fund when sufficient funds are available.

R.S.M., c. 297, s. 71.

Returns from industry commenced after prescribed date.

81(1) Where an industry coming within this Part is established or commenced after the date prescribed by the board pursuant to section 65, the employer shall forthwith notify the board of the fact and furnish to the board an estimate of the probable amount of his payroll for the remainder of the year.

Penalty.

81(2) An employer who makes default in complying with subsection (1) is guilty of an offence and is liable, on summary conviction, to a fine not exceeding five hundred dollars.

Am. R.S.M., c. 297, s. 72; am

Examination of books of employer.

82(1) The board, and any officer or person authorized by it for that purpose, may examine the books and accounts of the employer, and make such other inquiry as the board may deem necessary for the purpose of ascertaining whether any statement furnished to the board is an accurate statement of the matters that are required to be stated therein, or of ascertaining the amount of the payroll of any employer, or of ascertaining whether any industry or person is under the operation of this Part; and for the purpose of any such examination and inquiry the board and the person so appointed has, in addition to all the powers conferred by this Act, all the powers that may be conferred on a commissioner under Part V of The Manitoba Evidence Act.

Notice to employer to produce books, etc.

82(2) For the purpose of any such examination or inquiry, the board or person authorized to make the examination or inquiry may give to the employer or his agent notice in writing requiring him to bring or produce before the board or person, at a

place and time to be mentioned in the notice, which time shall be at least ten days after the giving of the notice, all documents, writings, books, deeds, and papers, in the possession, custody, or power, of the employer, touching, or in anyway relating to or concerning, the subject matter of the examination or inquiry referred to in the notice; and every employer and every agent of the employer named in and served with any such notice shall produce, at the time and place required, all such documents, writings, books, deeds, and papers, according to the tenor of the notice.

Penalty.

82(3) Every employer or other person who obstructs or hinders the making of the examination and inquiry mentioned in subsection (1), or refuses to permit it to be made, or fails to comply with the terms of any notice given under subsection (2), is guilty of an offence and is liable, on summary conviction, to a fine not exceeding five hundred dollars.

Am.

Oaths, etc., who may administer.

82(4) The board and every officer or person authorized by it to make any examination or inquiry under this section may require and take affidavits, affirmations, or declarations, as to any matter of the examination or inquiry and take statutory declarations required under this Part, and in all such cases to administer oaths, affirmations, and declarations, and certify to their having been made.

R.S.M., c. 297, s. 73.

Right of entry to establishment of employer.

83(1) The board and any officer or person authorized by it for that purpose may, at all reasonable hours, enter into the establishment of any employer who is liable to contribute to the accident fund under this Part, and the premises connected with it, and every part of them, for any purpose which the board may deem necessary.

Penalty.

83(2) Any employer and every other person who obstructs or hinders the making of any inspection under subsection (1), or refuses to permit it to be made, is guilty of an offence and is liable, on summary conviction, to a fine not exceeding five hundred dollars.

Am. R.S.M., c. 297, s. 74.

Information obtained not to be divulged.

84(1) No officer of the board and no person authorized to make an inspection or inquiry under this Part shall divulge or allow to be divulged, except in the performance of his duties or under the authority of the board, any information obtained by him or which has come to his knowledge in making or in connection with an inspection or inquiry under this Part.

Penalty.

84(2) Every person who contravenes any provision of subsection (1) is guilty of an offence and is liable, on summary conviction, to a fine not exceeding five hundred dollars.

Am. R.S.M., c. 297, s. 75; am.

Penalties recoverable summarily.

85 The penalties imposed by or under the authority of this Part are recoverable under The Summary Convictions Act, and when collected shall be paid over to the Minister of Finance and become part of the Consolidated Fund.

R.S.M., c. 297, s. 76; am.

Mechanics' lien.

86 In the case of a work or service performed by an employer in any of the industries included under this Part for which the employer is entitled to a lien under The Mechanics' Liens Act, the owner, as defined by that Act, shall use all due diligence to see that statements are filed by the employers as required in this Part and an owner who fails to do so is guilty of an offence and is liable, on summary conviction, to a fine not exceeding fifty dollars.

R.S.M., c. 297, s. 78; am.

Priority of assessments over other debts.

87 Subject to any statute of the Parliament of Canada, there shall be included among the debts that, under The Assignments Act, The Trustee Act, and The Companies Act, are, in the distribution of the property in the case of an assignment or death or of the assets of a company being wound up, under those Acts respectively, to be paid in priority to all other debts, the amount of any assessment the liability for which accrued before the date of the assignment or death or the commencement of the winding-up respectively.

R.S.M., c. 297, s. 78.

INDUSTRIAL DISEASES

Definition of "silicosis".

83(1) For the purposes of this Act, and notwithstanding anything to the contrary herein, "silicosis" means a fibrotic condition of the lungs caused by dust containing silica and evidenced by specific X-ray appearances or results of other scientific tests or examinations, and accompanied by a substantially lessened capacity for work.

Am. S.M., 1956, c. 74, s. 14; S.M., 1958, c. 91, s. 14; am.

Time of employment and compensation.

83(2) Subject to subsections (3) and (4), any workman employed in Manitoba for a period of at least five years immediately preceding the first day of May, 1936, who has been exposed during that employment to the inhalation of dust containing silica for at least five years, in any industry within the scope of this Part, and any workman who is or may hereafter come within subsection (9) who becomes disabled from silicosis may be compensated in the same manner and to the same extent as a workman may be compensated under this Act for total or partial disability caused by or arising from any other industrial disease.

Am. S.M., 1956, c. 74, s. 15.

Exception.

83(3) If it can be shown that the workman had silicosis before working for the periods aforesaid he shall not be compensable.

Am. S.M., 1956, c. 74, s. 15.

Further exception.

33(4) If it can be shown that the workman has been exposed to the inhalation of dust containing silica elsewhere than in Manitoba before working for the aforesaid periods, the amount of compensation payable shall be reduced by the proportion that the period he has worked elsewhere than in Manitoba so exposed bears to the total period he has worked so exposed.

Limitation in filing claim.

33(5) Subject to subsection (11), any workman who ceases to be usually and regularly employed, in any industry within the scope of this Part in Manitoba in which he was exposed to dust containing silica, shall make and establish his claim for disability therefrom within one year from the date of leaving that employment, otherwise his claim is completely barred.

Am. S.M., 1959, (2nd Sess.), c. 41, s. 18.

Board of medical examiners authorized.

33(6) The board may appoint a permanent independent medical board of three competent physicians to pass upon all claims for compensation under this section so far as may be necessary to decide whether the claimant has suffered an injury by reason of silicosis and the extent of the injury, and its findings, shall be reported in writing to the board; and the report by the medical board is final as to the diagnosis.

Am. S.M., 1956, c. 74, s. 15; am.

Employees to comply with Act.

33(7) No person shall be employed in any industry within the scope of this Part at an occupation where silicosis may be contracted unless the person has complied with The Public Health Act and regulations thereunder.

Time limit on silicosis claims.

33(8) No person employed in an occupation in which silicosis may be contracted is eligible for compensation unless a claim therefor is made within two years from the time at which his latest examination showed him to be free from silicosis.

Am. S.M., 1956, c. 74, s. 17; R. & S., S.M., 1959, (2nd Sess.), c. 73, s. 28.

Residence qualifications and exposure.

33(9) Subject to subsection (11), nothing in this Act entitles a workman or his dependants to compensation, medical aid, or payment of burial expenses, for disability, or death from silicosis, unless the workman has been a resident of Manitoba for a period of at least five years next preceding his first disablement and has been actually exposed to dust containing silica in employment in any industry within the scope of this Part in Manitoba for periods amounting in all to at least five years preceding his disablement.

Am. S.M., 1959, (2nd Sess.), c. 73, s. 27; S.M., 1969, (2nd Sess.), c. 41, s. 19.

Board may make agreements.

33(10) The board may enter into agreements with Her Majesty or any person for the purpose of carrying out The Public Health Act and regulations made thereunder, with regard to the examination of workmen and applicants for employment in any industry within the scope of this Part at any occupation where silicosis may be contracted.

Exceptions to subsecs. (5) and (9).

88(11) Notwithstanding subsections (5) and (9),

(a) where the board has rejected a claim under this section because

(i) the claim was not made and established within one year from the da the workman left the employment in the industry in which he wa exposed to dust containing silica; or

(ii) the workman had ceased to be resident in Manitoba before he becam disabled from silicosis;

the board, in its discretion, upon written application of the workman, may re-ope the claim and consider it on its merits; or

(b) where a workman who had ceased to be resident in Manitoba before he becam disabled from silicosis makes a claim under this section, the board, in its discretion, upon written application of the workman, may consider the claim o its merits;

and, if, in its opinion the exposure of the workman in Manitoba to dust containing silica was a major factor in bringing about the disablement, the board may award compensation under subsection (2).

En. S.M., 1963, c. 98, s. 14; R.S.M., c. 297, s. 79; am. S.M., 1959, (2nd Sess.), c. 73, ss. 25, 28; am.

Compensation to workman affected by inter-provincial boundary.

89 Subject to the approval of the Lieutenant Governor in Council, the board may make and carry out arrangements with the Workmen's Compensation Board of either the Province of Saskatchewan or the Province of Ontario, or both, with respect to compensation for any industrial diseases of workmen employed in any industry the operations of which extend across, and are intersected by, an inter-provincial boundary line, to the end that all workmen or their dependants intended to be compensated by reason of any such disease shall receive proper compensation either according to the laws of Manitoba or according to the laws of the adjoining province.

R.S.M., c. 297, s. 79(14); am. S.M., 1959, (2nd Sess.), c. 73, s. 28.

Workman suffering from recurring occupational skin lesions deemed unfit.

90(1) Any workman who may become affected by one of the special occupational lesions commonly known as occupational dermatitis or occupational ulcerations and infections of the skin, and who has thereby become disabled for work, or who has required medical or surgical treatment for the cure of any such skin affections on three separate occasions or for three separate periods, shall, after the lapse of twelve months from the date of the beginning of the first of such occasions or periods of disability or treatment, be deemed unfit for the special class of employment in which he is then engaged.

Limitation on further claims.

90(2) No further or subsequent similar claim for disability or medical treatment or other benefit may be made by a workman who under subsection (1), is deemed unfit for any special class of employment while he remains engaged in that employment.

En. S.M., 1939, (2nd Sess.), c. 74, s. 3.

Appointment of assistance officer.

91 An officer of The Department of Labour may be appointed as provided in The Civil Service Act and every person so appointed shall,

(a) when requested by an injured workman, and in accordance with the general directions of the Minister of Labour represent him and assist him in the preparation and presentation of his case in hearings before the board in matters being dealt with under subsection (3) of section 51;

(b) as may be prescribed by the Lieutenant Governor in Council, discharge the duties of, and hold, any office authorized by law; and

(c) be paid a salary or other remuneration as provided by law.

R.S.M., c. 257, s. 80; am. S.M., 1959, (2nd Sess.), c. 73, s. 29.

Enlargement of time limited for applications, etc.

92 Where, in the opinion of the board, an injustice would result unless an enlargement of the time prescribed by any section of this Act or by any regulation for the making of any application, the taking of any proceedings, or the doing of any other act, is granted, the board may enlarge the time so prescribed; and the enlargement may be granted either before or after the expiration of the time prescribed in this Act or any regulation.

En. S.M., 1959, (2nd Sess.), c. 73, s. 30.

PART II

Application of sections 94 and 96.

93 Sections 94 and 96 apply only to the industries to which Part I does not apply and to the workmen employed in those industries; but out workers and persons whose employment is of a casual nature and who are employed otherwise than for the purposes of the employer's trade or business, who are employed in industries under the operation of Part I, but who are excluded from the benefit of Part I, are not by this section excluded from the benefit of section 94.

R.S.M., c. 257, s. 81; am. S.M., 1959, (2nd Sess.), c. 73, s. 31; S.M., 1963, c. 93, s. 25.

Liability of employer for defective ways, works, etc., and for negligence of his employees.

94(1) Where personal injury is caused to a workman by reason of any defect in the condition or arrangement of the ways, works, machinery, plants, buildings, or premises, connected with, intended for, or used in the business of, his employer or by reason of the negligence of his employer or of any person in the service of his employer acting within the scope of his employment, the workman or, if the injury results in death, the legal personal representatives of the workman, and any person entitled in case of death, have an action against the employer; and if the action is brought by the workman he is entitled to recover from the employer the damages sustained by the workman by or in consequence of the injury; and, if the action is brought by the legal personal representatives of the workman or by or on behalf of persons entitled to damages under The Fatal Accidents Act, they are entitled to recover such damages as they are entitled to under The Fatal Accidents Act and The Trustee Act.

Am.

Liability of person supplying defective ways, work, etc.

94(2) Where the execution of any work is being carried into effect under any contract, and the person for whom the work is done owns or supplies any ways, works, machinery, plant, buildings, or premises, and by reason of any defect in the condition or arrangement of them personal injury is caused to a workman employed by the contractor or by any sub-contractor, and the defect arose from the negligence of the person for whom the work or any part of it is done or of some person in his service and acting within the scope of his employment, the person for whom the work or that part of the work is done is liable to the action as if the workman had been employed by him, and for that purpose shall be deemed to be the employer of the workman within the meaning of this Part; but any such contractor or sub-contractor is also liable to the action as if this subsection had not been enacted, but not so that double damages are recoverable for the same injury.

Am.

Saving.

94(3) Nothing in subsection (2) affects any right or liability of the person for whom the work is done and the contractor or sub-contractor as between themselves.

Continuing in employment with knowledge of defect.

94(4) A workman shall not, by reason only of his continuing in the employment of the employer with knowledge of the defect or negligence that caused his injury, be deemed to have voluntarily incurred the risk of the injury.

R.S.M. c. 297, s. 82; am.

Common law rules superseded.

95 A workman shall be deemed not to have undertaken the risks due to the negligence of his fellow workman, and contributory negligence on the part of the workman is not a bar to recovery by him, or by any person entitled, to damages under The Fatal Accidents Act or The Trustee Act in an action for the recovery of damages for an injury sustained by or causing the death of the workman while in the service of his employer for which the employer would otherwise have been liable.

R.S.M. c. 297, s. 83; am.

Contributory negligence.

96 Contributory negligence on the part of the workman shall nevertheless be taken into account in assessing the damages in any such action.

R.S.M., c. 297, s. 84.
Note: Compare The Tortfeasors and Contributory Negligence Act.

Continuance of board under 1916 Act.

97(1) The board constituted under The Workmen's Compensation Act, being chapter 125 of the Statutes of Manitoba, 1916, shall continue to be the board referred to in section 40, subject to the appointment by the Lieutenant Governor in Council of a successor to any member of the board who ceases to be a member thereof.

Administration of 1916 Act.

97(2) The board so constituted, either with or without change of personnel as herein provided, shall administer The Workmen's Compensation Act referred to in subsection (1) so long as any part of that Act remains in force and effect.

R.S.M., c. 297, s. 86.

Authority to assume liabilities of insurers under previous Act.

98 Where an insurer has insured an employer against liability, pursuant to The Workmen's Compensation Act, being chapter 125 of the Statutes of Manitoba, 1916, now repealed, the board may enter into an agreement with the insurer to assume, on terms satisfactory to the board, the outstanding liability of the insurer under that insurance.

R.S.M., c. 297, s. 87.
Note: Reference should also be made to the following provisions of certain amending Acts.
(a) Section 8 of chapter 75 of the Statutes of Manitoba, 1958 (First Session)
(b) Section 30 of chapter 73 of the Statutes of Manitoba, 1959 (Second Session)
(c) Section 3 of chapter 83 of the Statutes of Manitoba, 1960
(d) Sections 10 and 11 of chapter 60 of the Statutes of Manitoba, 1964 (First Session)
(e) Section 15 of chapter 91 of the Statutes of Manitoba, 1965
(f) Section 11 of chapter 74 of the Statutes of Manitoba, 1966
(g) Section 20 of chapter 41 of the Statutes of Manitoba, 1969 (Second Session).

SCHEDULE 1

(Section 60)

1. Lumbering; logging, river-driving, rafting, booming, saw-mills, shingle-mills, lath-mills; manufacturing of veneer, excelsior, staves, spokes, or headings; lumber yards (including the delivery of lumber) carried on in connection with saw-mills; the creosoting of timbers.

2. Pulp and paper mills.

3. Manufacture of furniture, interior woodwork, organs, piano actions, pianos, canoes, small boats, coffins, wicker and rattan ware, mattresses, bed-springs, artificial limbs, cork articles, cork carpets or linoleum, upholstering, picture framing and cabinet work.

4. Planing mills, sash and door factories, manufacture of wooden and corrugated paper boxes, cheese boxes, mouldings, window and door screens, window shades, carpet sweepers, wooden toys, articles and wares or baskets, matches or shade rollers; lumber yards (including the delivery of lumber) carried on in connection with planing mills or sash and door factories; cooperage, not including the making of staves or headings. Retail lumber yards (no mill or factory in connection).

5. Mining; reduction of ores and smelting; preparation of metals or minerals; boring and drilling, including sinking of artesian wells (except when done by an employer coming under paragraph 13); manufacture of calcium carbide, carborundum or alundum; oil well drilling and any operations conducted therewith and incidental thereto.

6. Sand, shale, clay or gravel pits; marble works, stone cutting or dressing; manufacture of brick, tile, terra-cotta, fire-proofing, paving blocks, sewer pipe, roof tile, plaster blocks, plaster boards, slate or artificial stone.

7. Quarries, stone crushing, lime kilns, manufacture of cement.

8. Manufacture of glass, glass products, glassware, porcelain or pottery.

9. Iron, steel or metal foundries; rolling mills; manufacture of castings, forgings, heavy engines, locomotives, machinery, safes, anchors, cables, rails, shafting, wires, tubing, pipes, shot, sheet metal, boilers, furnaces, stoves, structural steel, iron or metal.

10. Manufacture of small castings or forgings, metal wares, utensils and articles, hardware, nails, wire goods, screens, bolts, metal beds, sanitary, water, gas, or electric fixtures, light machines, typewriters, cash registers, adding machines, carriage mountings, bicycles, metal toys, tools, cutlery, instruments, sheet metal products, buttons of metal, ivory, pearl, or horn, dry batteries, storage batteries for autos and lighting plants, cameras, sporting goods, firearms, windmills, ivory articles, rubber stamps, pads or stencils, machine shops, not elsewhere included in Schedule 1; the industry of carrying on a blacksmith shop.

11. Manufacture of agricultural implements, threshing machines, traction engines, wagons, carriages, sleighs, vehicles, automobiles, motor trucks, toy wagons, sleighs or baby carriages; car shops, aeroplanes and hydroplanes (no flying); and the operation of farm machinery agencies.

12. Manufacture of gold and silverware, plateware, watches, watchcases, clocks, jewellery or musical instruments.

13. Manufacture of chemicals, corrosive acids, or salts, ammonia, gasoline, petroleum, petroleum products, celluloid, gas, charcoal, artificial ice, including the handling and delivery thereof; wood alcohol, celluloid articles; the manufacture, transmission and distribution of natural or artificial gas and operations connected therewith; the cutting, storing, handling and delivery of natural ice; the operation of bulk oil agencies.

14. The manufacture of fireworks, gun-powder, ammunition, nitroglycerine, dynamite, gun-cotton or other high explosives.

15. Manufacture of paints, colour, varnish, oil, japans, turpentine, printing ink, printers' rollers, tar, or tarred, pitched or asphalted paper.

16. Distilleries, breweries, bottling works; manufacture of spirituous or malt liquors, malt, alcohol, wine, vinegar, cider, mineral water.

17. Manufacture of non-hazardous chemicals, drugs, medicines, dyes, extracts, pharmaceutical or toilet preparations, soaps, candles, perfumes, non-corrosive acids or chemical preparations; shoe-blacking or polish, yeast, baking powder or mucilage.

18. Milling; manufacture of cereals or cattle foods, warehousing or handling of grain or operation of grain elevators.

19. Manufacture or preparation and wholesale distribution of meats or meat products.

20. Packing houses, abattoirs, cold storage warehouses, manufacture of fertilizers,

glue, and all work incidental thereto (not incidental to any other industry). The operation of stock yards with railway entry; the operation of cold storage locker plants.

21. Tanneries.

22. Manufacture of leather goods and products, belting, whips, saddlery, harness, trunks, valises, trusses, imitation leather, boots, shoes, gloves, umbrellas, rubber goods, rubber shoes, tubing, tires, or hose.

23. Sugar refineries; manufacture of dairy products, butter, cheese, condensed milk or cream, biscuits, confectionery, spices, condiments, salt or any kind of starch; bakeries.

24. Canning or preparation of fruit, vegetables, fish or foodstuffs; pickle factories.

25. Manufacture of tobacco, cigars, cigarettes or tobacco products.

26. Flax mills, manufacture of textiles or fabrics, spinning, weaving, and knitting manufactories, manufacture of yarn, thread, hosiery, cloth, blankets, carpets, canvas, bags, shoddy, felt, cordage, plastic material, ropes, fibre brooms, or brushes; asbestos goods, hair cloth and other hair goods; work in manilla or hemp; tents, awnings and articles not otherwise specified made from fabrics or cordage; the erection of awnings by the manufacturer.

27. Manufacture of men's and women's clothing, whitewear, shirts, collars, corsets, hats, caps, furs, robes, feathers or artificial flowers.

28. Power laundries, dyeing, cleaning or bleaching.

29. Printing, photo-engraving, engraving, lithographing, bookbinding, embossing, manufacture of stationery, paper, cardboard boxes, bags, wall-paper, or papier-mache.

30. Heavy teaming or cartage; safe-moving or moving of boilers, heavy machinery, building stone and the like, warehousing, storage, teaming and cartage, including the hauling for hire by means of any vehicle, howsoever drawn or propelled, of any commodity or material; scavenging, street cleaning or removal of snow or ice; the operation of wholesale establishments; coal, wood, lumber; and builders' supply industries.

31. The operation of retail establishments.

32. The operation of hospitals and nursing homes.

33. The operation of hotels and restaurants including those that sell intoxicating liquors.

34. The operation of radio stations, other than those operated by the Crown or by an agency of the Crown or by a corporation controlled by the Crown.

35. The operation of coaling plants or stations.

36. Steel building and bridge construction; installation of elevators, fire escapes, boilers, engines or heavy machinery, bridge building, not included elsewhere in Schedule 1; erection of windmills.

37. Bricklaying, mason work, stone setting, concrete work, plastering, manufacture of concrete blocks; structural carpentry, lathing, installation of pipe organs; house wrecking or house moving.

38. Painting, decorating or renovating; sheet metal work and roofing.

39. Plumbing, sanitary or heating engineering, gas and steam fitting; the work of artisans and mechanics employed for their whole time at their trade in an industry not classified herein; operation of theatres; operation of passenger or freight elevators which are not operated in connection with an industry included in another class, including the operation of elevators used in connection with an industry to which this Schedule does not apply or in connection with a warehouse or shop or an office or other building or premises.

40. Sewer construction, tunnelling, shaft-sinking and well-digging, the maintenance and operation of a waterworks system; excavation work for cellars, foundations and canals; trenching less than six feet deep, for gas pipes, water pipes or wire conduits; and all excavation work where the depth is more than six feet and the width is less than half the depth.

41. Construction, installation or operation of electric power lines or appliances and power transmission lines, electric wiring of buildings and installation of lighting fixtures; construction or operation of an electric light system, construction or operation of an electric light works not included elsewhere in Schedule 1; construction or operation of telegraph or telephone lines, construction or operation of telephone lines and works for the purpose of the business of a telephone company or used or to be used in connection with its business when constructed or operated by the company.

42. Construction or operation of railways, road making or repair of roads with machinery; making and repairing of roads of all kinds not included elsewhere in Schedule 1, manufacture of asphalt material and paving material.

43. Ship-building, dredging, subaqueous construction or pile-driving, fishing, stevedoring, operation of and work upon wharves, operation of dry docks, not included elsewhere in Schedule 1.

44. If not included elsewhere in Schedule 1, any trade or business connected with

the industries of, lumbering, mining, quarrying, fishing, manufacturing, building, construction, engineering, transportation, operation of electric power lines, waterworks and other public utilities, navigation, operation of boats, ships, tugs and dredges, operation of grain elevators and warehouses, teaming, scavenging and street cleaning, painting, decorating and renovating, dyeing and cleaning, or any occupation incidental thereto or immediately connected therewith.

45. The trade or business of a municipal corporation, a public utilities commission, or any other commission having the management and conduct of any work or service owned by or operated for a municipal corporation or a board of school trustees, and policemen, firemen or ferrymen employees of such a corporation.

46. The construction or operation of car shops, machine shops, steam and power plants and other works for the purposes of any such railway or used or to be used in connection with it when constructed or operated by the company which owns or operates the railway.

47. The construction or operation of steam vessels and works for the purpose of the business of a navigation company or used or to be used in connection with its business when constructed or operated by the company and all other navigation, towing, operation of vessels and marine wrecking.

48. The operation of the business of an express company which operates on or in conjunction with a railway, or of sleeping, parlor or dining cars, whether operated by the railway company or by an express, sleeping, parlor or dining car company.

49. The operation as an industry (otherwise than on tracks) on streets, highways or elsewhere of cars, trucks, wagons or other vehicles and rollers and engines propelled by steam, gas, gasoline, electric, mechanical or other power or drawn by horses or mules. (This paragraph does not include the operation of aircraft).

50. Auto garages, including sale of gasoline, oil, accessories and storage of cars (not including manufacture of cars).

R.S.M., c. 297, Sch 1; am. S.M., 1959, (2nd Sess.), c. 73, ss. 32, 33, 34; S.M., 1964, (1st Sess.), c. 60, s. 9.

The following sections were enacted as section 13 and 14 of Cap. 47, S.M. 1970

Application of amendments to sec. 32.

1970.13 The variations in the amounts of compensation payable under section 32 of The Workmen's Compensation Act resulting from the provisions of this Act apply to compensation payable to persons to whom compensation for permanent partial disability may be payable out of the Accident Fund in respect of an accident for which the initial permanent partial disability determination was made after the thirty-first day of December, 1966, irrespective of the date of the accident; but nothing in this section entitles any person to claim additional compensation for, or in respect of, any period before the first day of July, 1970.

Commencement of Act.

1970.14 This Act comes into force on the day it receives the royal assent but is retroactive and shall have been deemed to have been in force on, from and after the first day of July, 1970.

Printed by R. S. EVANS, Queen's Printer for the Province of Manitoba
1970

1975–1976 REGULAR SESSION

...ion and retirement laws; that makes miscellaneous and a section [illegible] ...ction 20, Operation Code which can be enacted [illegible] ...ature or ...ature

...ion 3. This act shall become operative on July 1, 1975

...proved and filed June 30, 1975.

CAL

WORKERS' COMPENSATION—PUBLIC EMPLOYEES

CHAPTER 466

SENATE BILL NO. 839

An act to amend Sections 3212, 3212.2, 3212.3, 3212.5, 3212.7, 3212.8, 3212.9, and 3213 of, and to add Section 3458 to, the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

The existing law provides that certain specified "injuries" suffered by specified public employees are presumed to arise out of and in the course of the employment.

This bill would provide that the presumption that the injury arises out of and in the course of employment shall be applied to such employees following termination of service for a period of time equivalent to one day for each full year of service, commencing with the last date actually worked, but not to exceed 60 months.

The bill would also specify that the average weekly earnings for such employees shall be taken at the maximum.

This bill would also provide that neither state nor local agency liability is made nor obligation created for the reimbursement of any local agency for any costs incurred by it pursuant to this bill.

The people of the State of California do enact as follows:

SECTION 1. Section 3212 of the Labor Code is amended to read:

3212.

In the case of members of a sheriff's office, district attorney's staff of inspectors and investigators or of police or fire departments of cities, counties, cities and counties, districts or other public or municipal corporations or political subdivisions, whether such members are volunteer, partly paid, or fully paid, and in the case of active firefighting members of the Division of Forestry of the State Department of Natural Resources whose duties require firefighting or of any county forestry or firefighting department or unit, whether volunteer, fully paid, or partly paid, and in the case of members of the wardens section of the Wildlife Protection Branch of the Department of Fish and Game whose principal duties consist of active law enforcement service, excepting those whose principal duties are limited to clerical or other duties which do not clearly fall within the scope of active law enforcement service such as stenographic, telephone operators, and other officeworkers, the term "employee" as used in this act includes people when any part of the hernia develops or manifests itself during a period while such member is in the employ in such office, police division, department or unit, and in the case of members of such fire departments, except those whose principal duties are clerical, such as secretaries, telephone operators and other officeworkers, and in the case of county foresters or firefighting departments, except those whose principal duties are of a clerical, such as secretaries,

deletions by asterisks * * *

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SEC. 2. Section 3212.2 of the Labor Code is proposed to read:

3212.2

In the case of officers and employees in the [illegible] commonly known as custodial duties, each officer and employee in the [illegible] having peace officer status, and each [illegible] at the California State Hospital, [illegible] who is employed upon a regular, full-time salary, the term "injury", as used in this division, includes [illegible] which develops or manifests itself during a period while such [illegible] of the California State Police. The compensation which is provided [illegible] shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.

SEC. 3. Section 3212.3 of the Labor Code is amended to read:

3212.3

In the case of a member of the California State Police who has graduated from an training certified by the Commission on Peace Officer Standards and Training, when any such member is employed upon a regular, full-time salary, the term "injury", as used in this division, includes [illegible] which develops or manifests itself during a period while such [illegible] of the California State Police. The compensation which is provided [illegible] shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.

THE FOLLOWING DOCUMENT(S) MAY NOT FILM LEGIBLY BECAUSE OF POOR QUALITY OF THE ORIGINAL.

CAL

WORKERS' COMPENSATION—PUBLIC EMPLOYEES

CHAPTER 466

SENATE BILL NO. 839

An act to amend Sections 3212, 3212.2, 3212.3, 3212.4, 3212.5, 3212.7, and 3213 of, and to add Section 3212.6 to, the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

The existing law provides that certain specified injuries suffered by specified public employees are presumed to arise out of and in the course of the employment.

This bill would provide that the presumption that the injury arises out of and in the course of employment shall be applied to such employees following termination of service for a period of three calendar months for each full year of service, commencing with the last date actually worked, but not to exceed 60 months.

The bill would also specify that the average weekly earnings for such employees shall be taken at the maximum.

This bill would also provide that neither state reimbursement nor obligation created for the reimbursement of any local agency for any costs incurred by it pursuant to this bill.

The people of the State of California do enact as follows:

SECTION 1. Section 3212 of the Labor Code is amended to read:

3212.

In the case of members of a sheriff's office, district attorney's staff of inspectors and investigators or of police or fire departments of cities, counties, cities and counties, districts or other public or municipal corporations or political subdivisions, whether such members are volunteer, partly paid, or fully paid, and in the case of active firefighting members of the Division of Forestry of the State Department of Natural Resources whose duties require firefighting or of any county forestry or firefighting department or unit, whether volunteer, fully paid, or partly paid, and in the case of members of the warden service of the Wildlife Protection Branch of the Department of Fish and Game whose principal duties consist of active law enforcement service, excepting those whose principal duties are clerical or other, who do not clearly fall within the scope of active law enforcement service such as stenographer, telephone operator, and other officeworkers, the term employee as used in this act includes any such member who has any part of the hernia disease or condition [illegible] during a period while such member is in the employ in such office, unit, division, department or unit, and in the case of members of such fire departments, except those whose principal duties are clerical, such as secretaries, telephone operators and other officeworkers, and in the case of county foresters or firefighting departments, except those whose principal duties are clerical, such as secretaries,

deletions by asterisks [illegible]

RECEIVED
JAN 10 1977
RESEARCH

SEC. 2. Section 3212 of the Labor Code is amended to read:

3212.2

In the case of officers and employees in the Department of Corrections having custodial duties, each officer and employee in the Department of Youth Authority having group supervision duties, and each person employed in the California State Hospital, who may sustain injury while under the influence of any narcotic or while under the influence of any alcoholic beverage during a period while such officer or employee is not on duty, the compensation which is awarded to such person shall include all medical, surgical, medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.

Such benefits shall not be awarded if such injury or death is proximately caused by the intoxication of the employee. Any controversy between the employer and the employee regarding the right to benefits under this section shall be determined by the appeals board in accordance with the procedure applicable to the determination of other controversies under this division.

SEC. 3. Section 3212.3 of the Labor Code is amended to read:

3212.3

In the case of a member of the California State Police Division employed on an assigned basis by the Commission on Peace Officer Standards and Training, when any such member is employed upon a regular, full-time salary, the term "salary", as used in this division, includes such benefits and emoluments as provides or mandates local during a period while such member is in the employ of the California State Police. The compensation which is awarded to such person shall include all medical, surgical, medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.

Such heart trouble or pneumonia so developing or manifesting itself shall be presumed to arise out of and in the course of the employment. However, the member of the California State Police shall have served five years or more in such capacity before the presumption shall arise as to the compensability of heart trouble so developing or manifesting itself. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a member following termination of service for a period of one calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

Such heart trouble or pneumonia so developing or manifesting itself in such cases shall in no case be attributed to any disease existing prior to such development or manifestation.

The term "members" as used herein shall be limited to those employees of the California State Police who are defined as peace officers in Section 830.2 of the Penal Code.

SEC. 4. Section 3212.4 of the Labor Code is amended to read:

3212.4

In the case of a member of a University of California fire department located at a campus or other facility administered by the Regents of University of California, when any such member is employed by such a department upon a regular, full-time salary, on a nonprobationary basis, the term "injury" as used in this division includes heart trouble, hernia, or pneumonia which develops or manifests itself during a period while such member is in the service of such a University of California fire department. The compensation which is awarded for such heart trouble, hernia, or pneumonia shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.

Such heart trouble, hernia, or pneumonia so developing or manifesting itself shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

Such heart trouble, hernia, or pneumonia so developing or manifesting itself in such cases shall in no case be attributed to any disease existing prior to such development or manifestation.

The term "member" as used herein shall exclude those employees of a University of California fire department whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active firefighting and prevention service.

SEC. 5. Section 3212.5 of the Labor Code is amended to read:

3212.5

In the case of a member of a police department of a city or municipality, or a member of the State Highway Patrol, when any such member is employed upon a regular, full-time salary, and in the case of a sheriff or deputy sheriff, or an inspector or investigator in a district attorney's office of any county, employed upon a regular, full-time salary, the term "injury" as used in this division includes heart trouble and pneumonia which develops or manifests itself during a period while such member, sheriff, or deputy sheriff, inspector or investigator is in the service of the police department, the State Highway Patrol, the sheriff's office or the district attorney's office, as the case may be. The compensation which is awarded for such heart trouble or pneumonia shall include full hospital, surgical,

medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.

Such heart trouble or pneumonia so developing or manifesting itself shall be presumed to arise out of and in the course of the employment; provided, however, that the member of the police department, State Highway Patrol, the sheriff or deputy sheriff, or an inspector or investigator in a district attorney's office of any county shall have served five years or more in such capacity before the presumption shall arise as to the compensability of heart trouble so developing or manifesting itself. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

Such heart trouble or pneumonia so developing or manifesting itself in such cases shall in no case be attributed to any disease existing prior to such development or manifestation.

The term "members" as used herein shall be limited to those employees of police departments, the California Highway Patrol and sheriffs' departments and inspectors and investigators of a district attorney's office who are defined as peace officers in Section 830.1, 830.2, or 830.3 of the Penal Code.

SEC. 6. Section 3212.6 of the Labor Code is amended to read:

3212.6

In the case of a member of a police department of a city or county, or a member of a sheriff's office of a county, or an inspector or investigator in a district attorney's office of any county, when any such member is employed upon a regular full-time salary, whose principal duties consist of active law enforcement service, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement service such as stenographers, telephone operators, and other officeworkers, the term "injury" includes tuberculosis which develops or manifests itself during a period while such member is in the service of such department or office. The compensation which is awarded for such tuberculosis shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.

Such tuberculosis so developing or manifesting itself shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

SEC. 7. Section 3212.7 of the Labor Code is amended to read:

3212.7

In the case of an employee in the Department of Justice falling within the "state safety" class, when any such individual is employed under civil service upon a regular, full-time salary, the term "injury," as used in this division, includes heart trouble or hernia or pneumonia or tuberculosis which develops or manifests itself during the period while such individual is in the service of the Department of Justice. The compensation which is awarded for any such injury shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.

Such heart trouble, hernia, pneumonia, or tuberculosis so developing or manifesting itself shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence but

unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

Such heart trouble, hernia, pneumonia, or tuberculosis developing or manifesting itself in such cases shall in no case be attributed to any disease existing prior to such development or manifestation.

SEC. 8. Section 3213 of the Labor Code is amended to read:

3213.

In the case of a member of the University of California Police Department who has graduated from an academy certified by the Commission on Peace Officer Standards and Training, when he and all members of the campus department of which he is a member have graduated from such an academy, and when any such member is employed upon a regular, full-time salary, the term "injury" as used in this division includes heart trouble and pneumonia which develops or manifests itself during a period while such member is in the service of such campus department of the University of California Police Department. The compensation which is awarded for such heart trouble or pneumonia shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.

Such heart trouble or pneumonia so developing or manifesting itself shall be presumed to arise out of and in the course of the employment; provided, however, that the member of the University of California Police Department shall have served five years or more in such capacity before the presumption shall arise as to the compensability of heart trouble so developing or manifesting itself. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

Such heart trouble or pneumonia so developing or manifesting itself in such cases shall in no case be attributed to any disease existing prior to such development or manifestation.

As used in this section:

(a) "Members" shall be limited to those employees of the University of California Police Department who are defined as peace officers in Section 830.2 of the Penal Code.

(b) "Campus" shall include any campus or other installation maintained under the jurisdiction of the Regents of the University of California.

(c) "Campus department" means all members of the University of California Police Department who are assigned and serve on a particular campus.

SEC. 9. Section 4458 is added to the Labor Code, to read:

4458.

If a member suffers "an injury" following termination of active service, and within the time prescribed in Section 3212, 3212.2, 3212.3, 3212.4, 3212.5, 3212.6, 3212.7, or 3213, then, irrespective of his remuneration from any postactive service employment, his average weekly earnings for the purposes of determining temporary disability indemnity, permanent total disability indemnity, and permanent partial disability indemnity, shall be taken at the maximum fixed for each such disability, respectively, in Section 4453.

SEC. 10. No appropriation is made by this act, nor is any obligation created thereby under Section 2231 of the Revenue and Taxation Code, for the reimburse-

deletions by asterisks * * *

ment of any local agency because there are savings as well as costs in this act which in the aggregate do not result in significant identifiable cost changes.

Approved and filed Aug. 18, 1976.

TANKS AND BOILERS—PERMITS

CHAPTER 467

ASSEMBLY BILL NO. 1504

An act to amend Sections 7680, 7683, and 7725 of the Labor Code, relating to tanks and boilers.

LEGISLATIVE COUNSEL'S DIGEST

(1) Existing law provides that no tank or boiler shall be operated unless a permit for its operation has been issued by the Division of Industrial Safety, such permit to continue in effect for not longer than three years.

This bill would specify that such permit be issued by or in behalf of the division and to continue in effect for not longer than five years.

(2) Existing law defines a "small tank" as any tank of less than 1,200 gallons water capacity.

This bill would define "small tank" as any tank with 1,200 gallons water capacity or less.

It would also make a technical nonsubstantive correction.

The people of the State of California do enact as follows:

SECTION 1. Section 7680 of the Labor Code is amended to read:

7680.

No tank or boiler shall be operated unless a permit for its operation has been issued by or in behalf of the division.

SEC. 2. Section 7683 of the Labor Code is amended to read:

7683.

If a tank or boiler is found to be in a safe condition for operation, a permit shall be issued by or in behalf of the division for its operation.

In the case of a tank, the permit shall continue in effect for not longer than * * * five years.

In the case of a boiler, the permit shall continue in effect for not longer than one year.

SEC. 3. Section 7725 of the Labor Code is amended to read:

7725.

As used in this chapter, the following terms shall have the meaning therein given them.

(a) "Small tank" shall mean any tank 1,200 gallons water capacity or less.

(b) "Large tank" shall mean any tank of more than 1,200 gallons water capacity.

(c) "Shop inspection" shall mean the inspection and testing of tanks or boilers, manufactured, or in the process of manufacture, repair, or alteration, in the manu-

THE PRECEDING DOCUMENT(S) MAY NOT FILM LEGIBLY BECAUSE OF POOR QUALITY OF THE ORIGINAL.

ALABAMA

FIRE DEPARTMENT

Sec. 450 (4). Disability or death of fire fighter caused by hypertension, heart disease or respiratory disease.--(1) Definitions.--As used herein the following words and terms shall have the meanings ascribed to them herein unless a contrary meaning is indicated by the contex: "City" shall mean any municipality of the state, regardless of its population; "fire fighter" shall mean a person employed as a fire fighter or fireman by a city "fire fighter's occupational disease" shall mean any condition or impairment of health caused by hypertension heart disease or respiratory disease; "disability" shall mean disability to perform duties as a fire fighter; "benefit" shall mean any monetary allowance payable by a city, or from a pension system established for the firemen of a city, to a fire fighter on account of his disability, or to his dependents on account of his death, irrespective of whether the same is payable under a pension law of the state or under some other law of the state.

(2) The provisions of this section shall apply to fire fighters who upon entering the service of the city as fire fighters have successfully passed a physical examination which failed to reveal any evidence of a fire fighter's occupational disease and who have completed at least three years service as fire fighters; provided, however, a physical examination was required at the time of entry into service.

(3) If a physical examination was not required at the time of entry into service, a fire fighter who has had at least three years continuous service as a fire fighter, next preceding the effective date of this section, shall be deemed eligible for benefits under the provisions of this section.

(4) If a fire fighter who qualifies for benefits under the provisions of this section suffers disability as a result of a fire fighter's occupational disease his disability shall be compensable the same as any service connected

disability under any law which provides benefits for fire fighters of such city injured in the line of duty. If a fire fighter who qualifies for benefits under the provisions of this section dies as the result of a fire fighter's occupational disease, his death shall be compensable to the same extent as the death of a fire fighter killed in the line of duty. (1967, p.1323, appvd. Sept. 8, 1967.)

FLORIDA

175.231 Diseases of firemen suffered in line of duty; presumption.--Any condition or impairment of health of a fireman caused by tuberculosis, hypertension, or heart disease resulting in total or partial disability or death shall be presumed to have been accidental and suffered in the line of duty unless the contrary be shown by competent evidence, provided, however, that such fireman shall have successfully passed a physical examination before entering into such service, which examination failed to reveal any evidence of such condition. This section shall be applicable to all firemen employed in Florida only with reference to pension and retirement benefits under this chapter.

IDAHO HEART AND LUNG LAW

OCCUPATIONAL DISEASES

Compensation shall be payable for disability or death of an employee resulting from the following Occupational Diseases:

> "Cardiovascular or pulmonary or respiratory diseases of a Paid Fireman, employed by a municipality, village, or Fire District as a regular member of a lawful established Fire Department, caused by overexertion in times of stress, or danger, or by proximate exposure or by cumulative exposure over a period of four (4) years or more to heat, smoke, chemical fumes, or other toxic gases arising directly out of, or in the course of, his employment."

The above enumerated Occupational Diseases are not to be taken as exclusive.

LOUISIANA

Sec. 2581. Development of heart and lung disease during employment in classified fire service; occupational disease

Any disease or infirmity of the heart or lungs which develops during a period of employment in the classified fire service in the State of Louisiana shall be classified as a disease or infirmity connected with the employment. The employee affected, or his survivors, shall be entitled to all rights and benefits to which one suffering an occupational disease is entitled as service connected in the line of duty, regardless of whether the fireman is on duty at the time he is stricken with the disease or infirmity. Such disease or infirmity shall be presumed, prima facie, to have developed during the employment whenever same is manifested at any time after the first five years of employment.

Title of Act: Declaring heart and lung disease developing during employment in the classified fire service in the State of Louisiana an occupational disease and providing for benefits to an affected employee; creating a presumption as to the development of the disease. Acts 1968, No. 337.

HOUSE BILL NO. 118 Heart & Lung BY: MR. STRAIN

AN ACT

Declaring heart and lung disease developing during employment in the classified fire service in the State of Louisiana an occupational disease and providing for benefits to an affected employee; creating a presumption as to the development of the disease.

Be it enacted by the Legislature of Louisiana:

Section 1. Any disease or infirmity of the heart or lungs which develops during a period of employment in the classified fire service in the State of Louisiana shallbe classified as a disease or infirmity connected with the employment. The employee affected, or his survivors, shall be entitled to all rights and benefits to which one suffering an occupational disease is entitled as service connected in the line of duty, regardless of whether the fireman is on duty at the time he is stricken with the disease or infirmity. Such disease or infirmity shall be presumed, prima facie, to have developed during the employment whenever same is manifested at any time after the first five years of employment.

Section 2. If any provision of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions or applications hereof which can be given effect without the invalid provisions or applications and, to this end, the provisions of this Act are hereby declared severable.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

LIEUTENANT GOVERNOR AND PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: July 20, 1968

APPROVED

APR 24 '75

BY GOVERNOR

CHAPTER

169

PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED SEVENTY-FIVE

H. P. 230 — L. D. 286

AN ACT Relating to Pulmonary and Cardiac Diseases under the Workmen's Compensation Act.

Be it enacted by the People of the State of Maine, as follows:

39 MRSA §§ 64-B and 64-C are enacted to read:

§ 64-B. Cardiovascular injury or disease or pulmonary disease suffered by a fire fighter

If any person has been an active member of a municipal fire department or of a volunteer fire fighters' association for at least 2 years prior to a cardiovascular injury or the onset of a cardiovascular disease or pulmonary disease and if said disease has developed or the injury has occurred within 6 months of having participated in fire fighting or training or drill which actually involves fire fighting, it shall be presumed, unless the employer proves the contrary by a preponderance of the evidence, that the employee received the injury or contracted the disease arising out of and in the course of his employment, that sufficient notice of the injury or disease has been given, and that the injury or disease was not occasioned by the willful intention of the employee to injure himself or another.

§ 64-C. Cardiovascular injury or disease or pulmonary disease resulting in a firefighter's death

If any person had been an active member of a municipal fire department or of a volunteer fire fighters' association for at least 2 years prior to a cardiovascular injury or the onset of a cardiovascular disease or pulmonary disease and provided that the person had developed the disease or had suffered the injury which resulted in death within 6 months of having a cardiovascular disease or pulmonary disease which resulted in his death, and had participated in fire fighting or training or drill which actually involves fire fighting, it shall be presumed, unless his employer proves to the contrary by a preponderance of the evidence, that the person received the injury or disease arising out of and in the course of his employment, that sufficient notice of the injury or disease was given, and that the injury or disease was not occasioned by the willful intention of the employee to injure himself or another.

~~H.B. [illegible]~~

AN ACT to add new Section ~~103~~ 64A to Article 101 ... Code of [redacted] (1970 Supplement), title "Wo... sation," ~~to be under the new subtitle "Death an... ments—Fire Fighters,"~~ to follow immediately aft... thereof, ~~to establish certain medical conditions or disability of a fire fighter is presumed to be a... result of his employment~~ PROVIDE THAT TH... SUMPTION OF COMPENSABLE OCCUPATIO... IN CASES OF CERTAIN FIRE FIGHTERS... TEMPORARY OR TOTAL DISABILITY OR I... CERTAIN CONDITIONS, AND TO PROVIDE... FITS MAY ALSO BE PAYABLE UNDER A... SYSTEM UNDER CERTAIN CONDITIONS.

Introduced by Delegates Robey and Welsongoff.

SECTION 1. *Be it enacted by the General Assem...* That new Section ~~103~~ 64A be and it is hereby added ... the Annotated Code of Maryland (1970 Supplem... men's Compensation," ~~to be under the new subtitle ... ability Payments—Fire Fighters,"~~ SUBTITLE, ...

OUS" to follow immediately after Section ~~103~~ 64 ... read as follows:

Death and Disability Payments—Fire Fig...

~~103~~ *64A.*

Any condition or impairment of health of any P... county, airport authority, ~~port authority,~~ or fire cont... fighter caused by lung diseases, heart diseases, or h... sulting in total or partial disability or death shall be p... ~~been accidental and to have been suffered in the course... ment, provided that such fire fighter had successfully p... examination upon entering into service as a fire fight... to reveal any evidence of any such condition or impai...~~ PRESUMED TO BE COMPENSABLE UNDER T... AND TO HAVE BEEN SUFFERED IN THE LI... AND AS A RESULT OF HIS EMPLOYMENT.

NOTWITHSTANDING ANY PROVISION OF ... CLE ~~AND~~ ANY PAID FIRE FIGHTER WHOSE ... BLE CLAIM RESULTS FROM A CONDITION ... MENT OF HEALTH CAUSED BY LUNG DISEA... DISEASES OR HYPERTENSION AND HAS ... FERED IN THE LINE OF DUTY SHALL REC... BENEFITS AS ARE PROVIDED FOR IN ... CLE IN ADDITION TO SUCH BENEFITS AS ... ENTITLED TO UNDER THE RETIREMENT ... WHICH SAID FIRE FIGHTER WAS A PARTICIP... TIME OF HIS CLAIM. THE BENEFITS RECEI... THIS ARTICLE HOWEVER, SHALL BE ADJUSTE... THE TOTAL OF ALL WEEKLY BENEFITS SHA... CEED ONE HUNDRED PERCENT OF THE WEEK... WHICH WAS PAID TO SAID FIRE FIGHTER.

SEC. 2. *And be it further enacted,* That this Act sh... July 1, 1971.

Sec. 94. Impairment of health caused by hypertension, etc., resulting in disability or death of paid fire or police department member; presumption. Nothwithstanding the provisions of any general or special law to the contrary affecting the non-contributory or contributory system, any condition of impairment of health caused by hypertension or heart disease resulting in total or partial disability or death to a uniformed member of a paid fire department or permanent member of a police department, or of the police force of the metropolitan district commission, or of the state police in the department of public safety, or of the capitol police, or of the public works building police, or to any employee of the registry of motor vehicles in the department of public works who entered the service of the registry as an investigator or examiner and performed police duty, or to any employee in the department of correction whose regular or incidental duties require the care, supervision or custody of prisoners, criminally insane persons or defective delinquents, or to any permanent crash crewman, crash boatman, fire controlman or assistant fire controlman employed at the General Edward Lawrence Logan International Airport, shall, if he successfully passed a physical examination on entry into such service, or subsequently successfully passed a physical examination, which examination failed to reveal any evidence of such condition, be presumed to have been suffered in line of duty, unless the contrary be shown by competent evidence.

Added St.1950, c.551, as amended St.1951, c.594; St.1956, c.411; St.1956, c.511; St.1956, c.580; St.1963, c.610.

MASSACHUSETTS

Sec. 94A. Disability or death caused by disease of lungs or respiratory tract; paid fire department member; presumption. Notwithstanding the provisions of any general or special law to the contrary affecting the non-contributory or contributory retirement system, any condition of impairment of health caused by any disease of the lungs or respiratory tract, resulting in total disability or death to a uniformed member of a paid fire department, shall, if he successfully passed a physical examination on entry into such service or subsequent to such entry, which examination failed to reveal any evidence of such condition, be presumed to have been suffered in the line of duty, as a result of the inhalation of noxious fumes or poisonous gases, unless the contrary be shown by competent evidence.

Added St.1962, c.164.

MICHIGAN STATUTES

Sec. 17.237 (401) Definitions; ordinary diseases not compensable; hernia. Sec. 401. Whenever used in this act:

(a) "Disability" means the state of being disabled from earning full wages at the work in which the employee was last subject to the conditions resulting in disability.

(b) "Disablement" means the event of becoming so disabled.

(c) "Personal injury" shall include a disease or disability which is due to causes and conditions which are characteristic of and peculiar to the business of the employer and which arises out of and in the course of the employment. Ordinary diseases of life to which the public is generally exposed outside of the employment shall not be compensable. A hernia to be compensable must be clearly recent in origin and result from a strain arising out of and in the course of the employment and promptly reported to the employer.

Sec. 17.237 (405) Respiratory and heart diseases of firemen and law enforcement personnel; conditions precedent to filing claim. Sec. 405.

(1) In the case of a member of a full paid fire or police department of a city, township or incorporated village employed and compensated upon a full-time basis, a county sheriff and his deputies and members of the state police, "personal injury" shall be construed to include respiratory and heart diseases or illnesses resulting therefrom which develop or manifest themselves during a period while the member of the department is in the active service of the department and result from the performance of duties as a fire fighter or policeman.

(2) Such respiratory and heart diseases or illnesses resulting

therefrom are deemed to arise our of and in the course of employment in the absence of evidence to the contrary.

(3) As a condition precedent to filing an application for benefits, the claimant, if he is one of those enumerated in subsection (1), shall first make application for, and do all things necessary to qualify for any pension benefits which he, or his decedent, may be entitled to. If a final determination is made that pension benefits shall not be awarded, then the presumption of "personal injury" as provided in this section shall apply. The employer or employee may request two copies of the determination denying pension benefits, one copy of which may be filed with the bureau.

Sec. 17.237(411) Disablement from occupational disease or injury deemed personal injury. Sec. 411. The disablement of an employee resulting from such disease or disability shall be treated as the happening of a personal injury within the meaning of this act and the procedure and practice provided in this act shall apply to all proceedings under this chapter, except where specifically otherwise provided herein.

MINNESOTA

§ 176.011 WORKMEN'S COMPENSATION

Subd. 15. Occupational disease. "Occupational disease" means a disease arising out of and in the course of employment peculiar to the occupation in which the employee is engaged and due to causes in excess of the hazards ordinary of employment and shall include undulant fever. Ordinary diseases of life to which the general public is equally exposed outside of employment are not compensable, except where such diseases follow as an incident of an occupational disease, or where the exposure peculiar to the occupation makes such disease an occupational disease hazard. A disease arises out of the employment only if there be a direct causal connection between the conditions under which the work is performed and if the occupational disease follows as a natural incident of the work as a result of the exposure occasioned by the nature of the employment. An employer is not liable for compensation for any occupational disease which cannot be traced to the employment as a direct and proximate cause and is not recognized as a hazard characteristic of and peculiar to the trade, occupation, process, or employment or which results from a hazard to which the workman would have been equally exposed outside of the employment. If immediately preceding the date of his disablement or death, an employee was employed on active duty with an organized fire or police department of any municipality, as a member of the Minnesota highway patrol, conservation officer service, state crime bureau, or sheriff or full time deputy sheriff of any county, and his disease is that of myocarditis, coronary sclerosis, pneumonia or its sequel, and at the time of his employment such employee was given a thorough physical examination by a licensed doctor of medicine, and a written report thereof has been made and filed with such organized fire or police department, with the Minnesota highway patrol, conservation officer service, state crime bureau, or sheriff's department of any county, which examination and report negatived any evidence of myocarditis, coronary sclerosis, pneumonia or its sequel, the disease is presumptively an occupational disease and shall be presumed to have been due to the nature of his employment.

CHAPTER 281

CREATE PRESUMPTION IN DEATH OR DISABILITY

Legislative Bill 826

INTRODUCED BY TERRY CARPENTER, 48TH DISTRICT; EUGENE T. MAHONEY, 5TH DISTRICT; WILLIAM R. SKARDA, JR., 7TH DISTRICT; BILL K. BLOOM, 20TH DISTRICT; HAROLD T. MOWLAN, 6TH DISTRICT

AN ACT relating to public employment; to provide a presumption in certain cases of death or disability of firemen or policemen as prescribed.

Be it enacted by the people of the State of Nebraska,

Section 1. Whenever any fireman who has served a total of five years as a member of a paid fire department of any city in this state or any policeman of any city or village, including any city having a home rule charter, shall suffer death or disability as a result of hypertension or heart or respiratory defect or disease, there shall be a rebuttable presumption that such death or disability resulted from accident or other cause while in the line of his duty for all purposes of Chapter 15, article 10, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto, sections 16-329 to 16-337, Revised Statutes Supplement, 1967, Chapter 35, article 2, Reissue Revised Statutes of Nebraska, 1943, and any firemen's or policemen's pension plan established pursuant to any home rule charter, the Legislature specifically finding the subject of this act to be a matter of general statewide concern. Such rebuttable presumption shall apply in any action or proceeding arising out of death or disability incurred prior to the effective date of this act and which has not been processed to final administrative or judicial conclusion prior to such date.

Approved May 5, 1969.

Research Dept

HB 269 ~~HB 668~~ Chapter 506

STATE OF NEW HAMPSHIRE

In the year of Our Lord one thousand nine hundred and seventy-three

AN ACT

relative to diseases characteristic of the occupation of firefighting.

Be it Enacted by the Senate and House of Representatives in General Court convened:

506: 1 New Provision. Amend RSA 281:2 (supp), as amended, by inserting after paragraph V the following new paragraph:

V-a. Notwithstanding the provisions of the foregoing paragraph, there shall exist a prima facie presumption that heart or lung disease in a firefighter, whether he is a regular, call, volunteer or retired member of a fire department, is occupationally related; provided, however, that a call or volunteer firefighter shall have the benefit of this prima facie presumption only if there is on record reasonable medical evidence that he was free of such disease at the beginning of his employment. It shall be the duty of the employer of call or volunteer firefighters to provide the said reasonable medical evidence; if the employer fails to do so, the call or volunteer firefighter shall have the benefit of the prima facie presumption regardless of the absence of the said reasonable medical evidence. Provided further, that a retired firefighter who agrees to submit to any physical examination requested by his city, town, or precinct shall have the benefit of the prima facie presumption only during the period of time of five years from the effective date of his retirement. For the purposes of this paragraph,

a call or volunteer firefighter shall mean a firefighter not regularly employed by a fire department of any city, town or precinct in the state, but answering for duty only to alarms of fire, and who has been appointed by the fire department and is a member of the New Hampshire State Firemen's Association, provided however, that the benefits of this section shall not continue in effect beyond one month after a call, volunteer or permanent firefighter, reaches his sixty-fifth birthday.

506: 2 Effective Date. This act shall take effect sixty days after its passage.

Approved July 2, 1973
Effective Date August 31, 1973

LAW DO-NOT-R...

ASSEMBLY, No. 2100

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 1, 1971

By Assemblymen COLEMAN, HORN, FAY, GARIBALDI, FLORIO, HIGGINS, LeFANTE, ESPOSITO, CONWELL, JACKMAN, IRWIN, PARKER, LITTELL, FORAN, BROWN, MABIE, SHUSTED, TURNER and AZZOLINA

Referred to Committee on Labor Relations

A SUPPLEMENT to "An act providing for the retirement of policemen and firemen of the police and fire departments in municipalities of this State, including members of the fire departments of any fire district located in any township and including all police officers having supervision or regulation of traffic upon county roads, and providing a pension for such retired policemen and firemen and members of the police and fire departments, and the widows, children, and sole dependent parents of deceased members of said departments, and supplementing Title 43 and amending R. S. 43:16-1, 43:16-2, 43:16-3, 43:16-4, 43:16-5, 43:16-6, 43:16-7 and repealing 43:16-11," approved May 23, 1944 (P. L. 1944, c. 253).

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Nothwithstanding the provisions of any law to the contrary, any conditions or impairment of health caused by hypertension, heart disease or tuberculosis of the respiratory system resulting in total or partial disability to a full time employed uniformed member of a paid or part-paid fire department, or permanent member of a police department, who successfully passed a physical examination on entry into such service, which examination failed to reveal any evidence of such condition, shall be presumed to have been suffered in the line of duty unless the contrary be shown by competent evidence.

2. This act shall take effect immediately.

STATEMENT

Instances of upper respiratory infections and heart disease are high among firemen and policemen.

The firemen and policemen have a thorough preemployment physical examination including an X-ray of the chest. Therefore, it must be assumed that when a man enters either department he is as free of heart and lung disease as is humanly possible to ascertain.

Undoubtedly, the high instances of heart disease among firemen is due, in part, to the startling effect of each alarm of fire sounded over the joker, the speed with which they must drive the apparatus and the tenseness of going through congested traffic. This together with the lugging of hose, climbing 65-or 100-foot ladders undoubtedly places a servere strain on the heart.

There are other features which make heart disease prevalent among the members of a police department, They too, are frequently subjected to violent physical strain, chasing, wrestling with and apprehending prisoners and battling bandits, the pursuit of stolen cars, directing modern traffic—all of which certainly predisposes to an unusual amount of strain on the heart.

With regard to the diseases of the lungs or upper respiratory tract, the members of the fire departments are subjected to work in the heat of summer, as well as the cold, rain and snow; provocative of colds, bronchitis and pneumonia.

Tuberculosis of the lungs is caused by a germ, but with frequent attacks of bronchitis and other respiratory infections resistance against tuberculosis especially if it be latent is lessened and active pulmonary tuberculosis may follow such attacks.

It is, therefore, only reasonable to assume that such afflictions are acquired by firemen and policemen in the line of duty.

STATE OF NEW YORK

IN SENATE

January 21, 1969

Introduced by Messrs. DONOVAN, FLYNN--read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions--reported favorably from said committee, committed to the committee of the whole, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT

To amend the retirement and social security law, in relation to benefits payable to, or in behalf of certain firemen and policemen injured or killed in the performance of duty

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The retirement and social security law is hereby amended by inserting therein a new section, to be section three hundred sixty-three-a, to read as follows:

Section 363-a. Firemen and policemen; certain disabilities. 1. Notwithstanding any provision of this chapter or of any general, special or local law to the contrary, any disability or death resulting from an injury to or impairment of the heart, caused by reason of and in the performance of duty as a fireman or policeman and not caused by the wilful negligence of such fireman or policeman, presumptively shall be deemed to be the natural and proximate result of an accident, in the absence of substantial evidence to the contrary for the purposes of this article, or any general, special or local law relating to the operation and qualification for benefits under any municipal pension or retirement plan or system.

2. As used in this section, the term "fireman" and "policeman" means any member who is performing police or fire service, as the

phrase police or fire service is defined in paragraphs a, b, c and d of subdivision eleven of section three hundred two of this article, and who, prior to entry into service as a fireman or policeman, successfully passed a physical examination which failed to disclose evidence of any disease or other impairment of the heart.

Section 2. This act shall take effect on the first day of September next succeeding the date on which it shall have become a law and shall remain in force and effect to and including the thirty-first day of August in the year next succeeding the year in which it shall have become a law.

PENNSYLVANIA

No. 435

~~AN ACT~~

HB 505

~~Amending the act of June 21, 1939 (P. L. 566), entitled~~ An act defining the liability of an employer to pay damages for occupational disease contracted by an employe arising out of and in the course of employment; establishing an elective schedule of compensation; providing procedure for the determination of liability and compensation thereunder; imposing duties on the Department of Labor and Industry, the Workmen's Compensation Board, Workmen's Compensation Referees, and deans of medical schools; creating a medical board to determine controverted medical issues; establishing an Occupational Disease Fund in custody of the State Workmen's Insurance Board; imposing upon the Commonwealth a part of the compensation payable for certain occupational diseases; making an appropriation; and prescribing penalties, further defining diseases of fire fighters within the act, and fixing liability for compensation thereunder on the Commonwealth.

The General Assembly of the Commonwealth of [redacted] hereby enacts as follows:

Section 1. Clause (o) of section 108, act of June 21, 1939 (P. L. 566), known as "The Pennsylvania Occupational Disease Act," added December 10, 1959 (P. L. 1746), is amended to read:

Section 108. The term "occupational disease," as used in this act, shall mean only the following diseases:

* * *

(o) Diseases of the [redacted] resulting in either temporary or permanent total or partial disability or death, after four years or more of service in [the full time salaried occupation of] fire fighting for the benefit or safety of the public, caused by extreme over-exertion in times of stress or danger or by exposure to heat, smoke, fumes or gases, arising directly out of the employment of any such firemen. The Commonwealth shall pay the full amount of compensation for disability under this clause.

APPROVED—The 17th day of December A. D. 1965.

WILLIAM W. SCRANTON

The foregoing is a true and correct copy of Act of the General Assembly No. 435.

W. Stuart Helm

Secretary of the Commonwealth.

Heart Study

Senate: Bristow and Rubin
Attorney: Heilman
Stenographer: Hall
Date: 2-1-67
No.: 157

RECEIVED
OCT 26 1971
INT'L ASSOC. OF FIRE FIGHTERS

SOUTH CAROLINA

S. 157
Gen. Com.

A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1962, BY ADDING NEW SECTION 72-251.1, SO AS TO CREATE A PRESUMPTION IN FAVOR OF FIRE FIGHTERS THAT CERTAIN CONDITIONS OF HEALTH ARISE OUT OF AND IN THE COURSE OF THEIR EMPLOYMENT FOR THE PURPOSES OF THE SOUTH CAROLINA WORKMEN'S COMPENSATION LAW.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. The Code of Laws of South Carolina, 1962, is amended by adding new Section 72-251.1, so as to create a presumption in favor of fire fighters that certain conditions of health arise out of and in the course of their employment, as follows:

"Section 72-251.1. Notwithstanding the provisions of Chapter 5 of Title 72, for purposes of the South Carolina Workmen's Compensation Law, any impairment or injury to the health of a fire fighter caused by tuberculosis, hypertension, heart disease or respiratory disease resulting in total or partial disability, or death, shall be presumed to have arisen out of and in the course of employment, unless the contrary is shown by

competent evidence, if such fire fighter is at the time of such impairment or injury a bona fide member of a fire department in this State. In order to be entitled to the presumption provided for herein, any person becoming a member of a fire department after the effective date of this act must be under the age of thirty-seven years and must have successfully passed a physical examination by a competent physician upon entering into such service, which examination failed to reveal any evidence of such condition or conditions."

SECTION 2. This act shall take effect upon approval by the Governor.

SOUTH DAKOTA

Circulatory or respiratory disease presumed occupational in firemen. Notwithstanding the provisions of any general or special law to the contrary, any condition of impairment of health caused by hypertension, heart disease, or respiratory disease resulting in total or partial disability to an officer or member of a fire department who successfully passed physical examination on entering into such service, which examination failed to reveal any evidence of such condition, shall be presumed to have been suffered in line of duty, unless the contrary be shown by competent evidence.

TENNESSEE

HOUSE BILL NO. 790

BY

Atkinson
Galbreath
Allen
Bradley
Agee
Mrs. Anderson
Cook
Pride

AN ACT to provide for a presumption that the impairment of health by lung disease, hypertension or heart disease of Firemen or Fire Fighters regularly employed by the State of Tennessee, any county, city, municipal or other governmental agency in the State of Tennessee, shall be presumed to have occurred, suffered or arose out of and in the course of duty of such employee.

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, That the State of Tennessee, or any municipal corporation or other political subdivision thereof that maintains a regular Fire Department manned by regular and full-time employees and has established or hereafter establishes any form of compensation, other than workman's compensation, to be paid to such Firemen or Fire Fighters for any condition or impairment of health which shall result in loss of life or personal injury in the line of duty or course of employment, there shall be and there is hereby established a presumption that any impairment of health of such Firemen caused by disease of the lungs hypertension or heart disease resulting in hospitalization, medical treatment or any disability, shall be presumed (unless the contrary be shown by competent medical evidence) to have occurred or to be due to accidental injury suffered in the course of employment. Any such condition or impairment of health which results in death shall be presumed (unless the contrary be shown by competent medical evidence) to be a loss of life in line of duty, and to have been in the line and course of employment, and in the actual discharge of the duties of his position, or the sustaining of personal injuries by external and violent means or by accident in the course of employment and in the line of duty. Provided, however, that such firemen shall have successfully passed a physical examination prior to such claimed disability, or upon entering upon his governmental employment and such examination fails to reveal any evidence of the condition or disease of the lungs, hypertension or heart disease.

It is hereby declared to be the legislative intent that this Act is to be remedial in character and to permit and require any municipal corporation maintaining any permanent Fire Department heretofore created or created after the effective date of this Act, to be covered by its provisions.

SECTION 2. BE IT FURTHER ENACTED, That all Acts or parts of Acts in conflict with the provisions of this Act be and the same are hereby repealed, and the provisions of this Act are declared to be severable; and, if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this Act shall continue in full force and effect, it being the legislative intent, now hereby declared, that this Act would have passed even if such unconstitutional or void matter had not been included therein.

SECTION 3. BE IT FURTHER ENACTED, That this Act take effect from and after its passage, the public welfare requiring it.

PASSED: March 19, 1965

SPEAKER OF THE HOUSE OF REPRESENTATIVES

SPEAKER OF THE SENATE

GOVERNOR

APPROVED:

WISCONSIN

WORKMEN'S COMPENSATION

66.191 Special death and disability benefits for certain public employes subject to Wisconsin retirement act and conservation warden fund. (1) Whenever a policeman, fireman, county undersheriff, deputy sheriff, county traffic policeman, conservation warden, state forest ranger, field conservation employe of the department of natural resources who is subject to call for forest fire control or warden duty, member of the state traffic patrol, university of Wisconsin full-time policeman, guard or any other employe whose principal duties are supervision and discipline of inmates at a state penal institution including central state hospital, investigator employed by the division of criminal investigation of the department of justice who is a participating employe under subch. I of ch. 41 shall, while engaged in the performance of duty, be injured or contract a disease due to his occupation, and be found upon examination to be so disabled by a disability which is likely to be permanent, as to render necessary his retirement from any of the aforesaid services, the department of industry, labor and human relations shall order payment to him monthly, under s. 20.865 (1) (d) or 102.21, of a sum equal to one-half his monthly salary in such service at the time that he became so disabled. A disability of such a nature as to require reduction in pay or position or assignment to light duty or adversely affect promotional opportunities within the service shall be deemed sufficient to permit the employe the option of retirement.

(2) If such injury or disease shall cause the death of such person, or the death of a conservation warden who is a member of the conservation warden pension fund under subch. II of ch. 41, and he dies leaving surviving a widow or an unmarried child under the age of 18 years, the department shall order monthly payments as follows.

(a) To the widow, unless she shall have married the deceased after he sustained such injury or contracted such disease, one-third of the monthly salary being paid to the deceased in such service at the time of his disability or death until she marries again.

(b) To the guardian of each such child, $15 until he becomes 18 years of age; provided that the total monthly payments ordered under this subsection shall not exceed 65 per cent of the monthly salary being paid to the deceased in such service at the time of his disability or death, and there shall be a pro rata reduction in the benefits paid hereunder, if necessary, in order to comply with such limitation. On or before January 15 in each year any widow entitled to a benefit under this subsection shall file with the municipality which makes payments hereunder an affidavit stating that she has not married again. The monthly payment ordered to any widow under this subsection shall begin in each calendar year only after such affidavit shall have been filed with the clerk of such municipality, and no payment shall be made for any month in such year prior to the one in which such affidavit was filed.

(c) If any person entitled to death benefit payments under this subsection is also entitled to death benefits under ch. 102 because of the death of such participating employe, the death benefit payments due under this subsection shall be reduced by an amount equal to the total weekly death benefits payable under ch. 102.

(3) Any policeman, fireman or conservation warden who has fulfilled all other requirements for inclusion as a participating employe under the Wisconsin retirement fund shall be eligible to the benefits payable under this section during the qualifying period established pursuant to s. 41.02 (6) (c).

(4) This section shall be administered by the department of industry, labor and human relations, which may adopt necessary rules relating to *** investigations and other matters in connection with applications for benefits under this section. *In case of dispute the procedure for hearing, award and appeal shall be as set forth in ss. 102.16 to 102.26.*

(5) Any person entitled to disability benefit payments under this section may file with the department of industry, labor and human relations and the board of trustees of the Wisconsin retirement fund a written election to waive such payments and accept in lieu thereof such payments as may otherwise be due under s. 41.13; but no person shall receive disability benefit payments under both s. 41.13 and this section.

(6) Any city, village, town or county liable to pay special death and disability benefits provided for by this section may insure payment of such benefits in any insurance company authorized to transact business in this state.

891.45 Presumption of employment connected disease. in any proceeding involving the application by a municipal fireman or his beneficiary for disability or death benefits under s. 66.191 or any pension or retirement system applicable to firemen, where at the time of death or filing of application for disability benefits the deceased or disabled fireman had served a total of 5 years as a fireman and a qualifying medical examination given prior to the time of his joining the department showed no evidence of heart or respiratory defect or disease, and where the disability or death is found to be caused by heart or respiratory defect or disease, such finding shall be presumptive evidence that such defect or disease was caused by such employment.

MANITOBA REGULATION /77

being a regulation under

The Workers Compensation Act

respecting fire fighters

1. In this regulation "fire fighter" means a full time member of a professional fire fighting department.

2. Where

(a) a fire fighter suffers injury to the heart diagnosed as such by a duly qualified medical practitioner;

(b) the fire fighter has been in continuous service as a fire fighter during the 2 years immediately preceding the injury; and

(c) the fire fighter on or after beginning service as a fire fighter underwent a physical examination, including an examination of the circulatory system, required by the fire fighting department of which he is a member, and was in light of the physical examination approved for service as a fire fighter;

unless the contrary is shown, the injury shall be presumed to have arisen out of and in the course of his employment as a fire fighter.

3. A fire fighter who has had an injury to the heart and who has, thereafter, been medically certified to be fit for service as a fire fighter is, in the case of any subsequent injury to the heart, entitled to the benefit of section 2.

4. Where a fire fighter suffers injury to his lungs, brain or kidneys, unless the contrary is shown, the injury shall be presumed to have arisen out of and in the course of his employment as a fire fighter resulting from the inhalation of smoke, gases and fumes or any of them.

5. Where a fire fighter suffers disability by reason of inhalation of carbon monoxide, unless the contrary is shown, the disability shall be presumed to have been caused by injury arising out of and in the course of his employment as a fire fighter.

6. Where a fire fighter is disabled by reason of injury to his lungs, brain or kidneys resulting from the inhalation of smoke, gases and fumes or any of them, or by reason of inhalation of carbon monoxide, the date of the beginning of the disability shall be deemed to be the date of the accident causing the disability.

7. Manitoba Revised Regulation W200-R2 is repealed.

PULMONARY DISEASE AMONG FIRE FIGHTERS

By M. Howard Skolnick, M.D.
Medical Advisor to the John P. Redmond Memorial Fund
Director of the Redmond Library

Tuberculosis is the second of the most commonly occurring diseases of chronic nature among fire fighters. (Heart disease is first.) It is universally recognized as a scourge of mankind to which all individuals are exposed. Modern existence, in which one cannot live in isolation, provides the condition that makes this disease so widespread. In every activity that one performs in a normal day, whether it is eating, riding, walking or working, he is constantly exposed to other people, and therefore may be the unwitting target of infection.

The picture is not as gloomy as it may seem at first, however. The danger of the infection is widespread but, fortunately, individuals have built up a resistance or fighting protection against it. The more the human race congregates with each succeeding generation, the greater the resistance developed against this malady.

Almost the entire adult population has had contact with the germ of tuberculosis, and while in states of good health most have resisted the development of this disease. Yet, as if nature seems to challenge one's right to maintain freedom from this disease, certain obstacles may be thrown in one's path to break down this state of protection.

It is these obstacles or antagonizing conditions that result in a latent condition, which is, without practical exception, being thrown into an activity by reason of some interference with the otherwise protective resistance that certain individuals possessed in keeping them free from this disease.

These thoughts form an important basis in the understanding of how

the responsibility lies with the extraneous developments, such as occupational hazards. These do not expose the individual to a new infection but, instead, activate an already present germ into the active stages of the disease.

Therefore, there should be no undue surprise when the incidence of active tuberculosis may, at one time or another, show fluctuations in the degree of occurrences. It is with the full understanding of the various factors, and indeed there are many responsible for the precipitation of this disease, and in proper avoidance or elimination of these factors that future hope for reducing tuberculosis lies.

From an occupational point of view as it affects fire fighters, the chief factors involved in producing this infection into an active disease are: (1) exposure to irritants (gases); (2) exposure to general breakdown of resistance; and (3) exposure to trauma or injury.

Without going into the too technical explanation of the mechanism involved in this process of active disease, the point may be best explained by citing an actual case which exemplifies the factors involved.

The following case illustrates the definite role that the exposure to such irritants as gases assumes in the precipitation and development of the active form of tuberculosis of the lungs.

CASE REPORT

Case of fire fighter, E.M., who was age 37 at time of study.

Present Illness: The patient states that he was apparently in perfect health since entering the fire service 14 years ago. On June 23 he responded to an alarm for an explosion which occurred in a bin containing sawdust, mixed with an acid and carbon tetrachloride which was fed by six sprinklers. There were no flames. The explosion blew the bin door open, filling the vault with obnoxious gases. Chlorine and phosgene gases were predominant.

The victim reported that he worked outside the door for three or four

minutes and some additional time on top of the sawdust pile. He estimated his total exposure to have been about seven or eight minutes. He experienced an immediate reaction of choking spells, difficulty in breathing and a burning sensation of the eyes. After returning to the fire station, he continued to have a slight difficulty in breathing.

The next morning he felt fine. Later in the day, however, while moving a house trailer frame at his home, things went black before his eyes and he had a sudden dizzy spell. This occurred after only a few moments of work. He went into the house and laid down. For the following two hours he was in a stupor, taking no interest in his immediate surroundings. When he attempted to sit up, he experienced difficulty in breathing and a tightness in the right side of his chest. He explained that he took only rapid, shallow breaths because of this discomfort.

The following morning (36 hours after the exposure) he reported for duty at the fire station. At that time, upon questioning by his captain (who had seen eight of his men similarly ill at the scene of the explosion) he related that he had a tightness in his chest and difficulty in breathing but had no nausea or vomiting. The department doctor was then called to examine him. The doctor ordered him hospitalized because of a fever and the difficulty in breathing.

At the hospital the chief treatment consisted of the use of an oxygen tent, which was applied every alternate hour for the following 26 hours. The patient improved very satisfactorily and promptly, leaving the hospital shortly thereafter at his own request.

However, while driving his car the next day, he experienced a severe coughing spell and became ill again. He had to pull over to the side of the road and wait until he regained control of himself. He went to the doctor, who ordered rehospitalization after determining that the patient

had a fever and other signs of weakness. He remained in the hospital for three days, and spent the following week at home.

When he returned to duty, he stated that he felt apparently well and had lost the feeling of tightness in his chest and shortness of breath. However, he still was not entirely free of chest discomfort at any time.

During the following months he paid frequent visits to the doctor's office. His condition was slowly progressing into weakness, tiredness, malaise, and general lassitude, and he had frequent chest pains and breathing discomfort.

On April 30 of the following year (about 10 months after the initial incident) he took a leave of absence with permission of the department doctor. He spent the time in a southern climate. After his return, he again conferred with the department doctors, and on July 6 was ordered to report back to his old engine company for light duty. While carrying out his duties, he reported feeling fairly well except for occasional pains and a burning sensation in the right upper section of his chest. He continued to work until relieved of duty early in November (18 months after the initial incident.) He still, however, experienced the pains in his chest. In addition, he had several night sweats, wet cough, weakness, and shortness of breath on the least exertion.

Past History: The patient stated that he had the usual childhood diseases, without complications, and had never had an operation. He had been on the fire department 14 years and two months at the time of the explosion incident. During this time he was assigned a company which was no busier than most companies. He consumed the average amount of smoke but was never hospitalized or overcome.

Family History: There was no family history of tuberculosis, diabetes, cancer, goiter, nephritis, arteriosclerosis, nervous afflictions or heart disease.

Physical Examination: The patient was well-developed, age 39, weighing 166 pounds, and was 69 inches in height. The examination findings were essentially negative, except for chest disclosures of fine moist rales over both apieces. His heart function was normal in rate and rhythm, and was forceful and without murmurs. His blood pressure was 128/78.

Special Examinations: An x-ray of his chest taken six days after the explosion incident was interpreted as showing a mottled and glanular condition in both upper chest areas. It was diagnosed as a healed chronic tuberculosis process. Another chest x-ray, taker three months after the explosion incident, indicated a similar condition with some questionable improvement (clinically, the patient was less improved). Another chest x-ray, taken seven months after the explosion incident, indicated a questionable activity of the tuberculosis process of both right and left upper lobes. (This was the first time this condition was discussed with the patient. He was then ordered off duty, on a temporary basis.)

Another chest x-ray was taken 16 months after the explosion incident. This interpretation was given: "Bilateral upper lobe parenchymal process, a little more extensive on the right side, with cavitation in the upper left lobe. From this film study, this is a process of active type and is of tuberculous origin."

A tuberculin test, begun a week later, was interpreted as strongly positive and recorded as a four plus reaction.

An electrocardiogram, taken at the same time, was interpreted as entirely negative, thus ruling out heart disease. A Wasserman blood test was negative for syphilis. A urinalysis was essentially negative.

Diagnosis: Based on the patient's history, physical examination, x-rays of his chest, as well as the exclusion of other conditions, the diagnosis was: active pulmonary tuberculosis, with involvement of the right and left upper lobes and cavitation in the left upper lobe.

CASE DISCUSSED

In review, this case presents a fire fighter who suffered from an exposure of irritating gases (apparently short duration) with varying degrees of effects.

The first effect was the immediate reaction to the mucous membranes of his eyes, throat and lungs due to the contact irritation. The next effect was due to the absorption of these gases producing shock and toxemia. The third effect, which was slow but progressive, was the activation of a latent or quiescent tubercular condition into an active disease of tuberculosis. It was this last stage that represented the disability stage and permanently affected the patient. Through the course of x-ray examinations the development of the progress of this disease was apparent with all processes being in an active stage and even to the stage of tuberculous cavity formation. These findings showed the necessity for immediate hospitalization and corrective treatment.

In conclusion, it was therefore evident that this fire fighter was entitled to a disability retirement, due to the occupational nature of his tuberculosis of his lungs. (NOTE: A disability retirement with compensation was granted to him.)

SUMMARY

It is a recognized fact that almost every adult at some time or other has been exposed to tuberculosis of the lungs but due to inherited resistance has been able to avoid an active case of this disease. However, medical authorities substantiate the opinion that latent tuberculosis can become active if the lungs are irritated by inhaling streng gases. Since this danger is an occupational hazard a fire fighter cannot possibly avoid, any fire fighter who develops active tuberculosis, after encountering irritating gases while performing fire fighting duties, should be fully compensated for the disability.

Pulmonary emphysema is a destructive condition of the small units of the lung, leading to big sacculations in the lung. In the microscopic study of this condition of the lungs, portions of the lung are seen as destroyed, resulting in big cysts or blebs all through the lung tissue. In the normal lung, there are tiny sacs consistently scattered within this area.

This lung disease develops slowly and chronically into an obstructive lung condition, in which there results an increasing difficulty in the usual exchange of air in and out of the lungs.

Laboratory findings of the ventilation, diffusion, and the blood circulation studies, as recorded in the pulmonary function tests, indicate a very appreciable interference of oxygen use in the lungs. There results an interference with maintaining the airflow in and out of the lungs, with the usual passing of oxygen across the lung membranes, as well as with the normal transportation of oxygen in the blood stream. In addition to the interference of oxygen gas, there correspondingly results an excessive accumulation of carbon dioxide in the tissues.

The general laboratory confirmation of the diagnosis of pulmonary emphysema is found from the combined studies of the chest x-ray, bronchoscopy, bronchogram, along with the history and physical examination of the individual. Incidentally, especially in the stages of early development of the disease, the x-ray evidence of emphysema may not be demonstrated.

Treatment of emphysema results in only more or less temporary relief, with improvements only in associated effects (as drainage, spasm) but not in basic emphysematous damage, which is by its nature progressively deteriorating. These treatments may slow or temporarily stop deterioration of the involved lung tissue, but are not curative or even permanently helpful.

The basic process of the emphysematous destruction continues, faster with associated maladies of infection, spasm and lung irritation. Thus all irritations to the lung must be stopped or curtailed. The chief irritant is smoke (which, in fire fighters, represents an ever present occupational hazard predominating this professional activity). In addition, any possible infection must be avoided or radically treated. The specific bacteria that invade these diseased tissues are not present in normal lungs. These bacteria are even present as actual or potential menaces throughout the remaining years of life in these cases of emphysema. Conditions favoring developing infection are stagnant bronchial secretions, which must be removed by some form of postural drainage, or by the aid of special suction machines, and/or bronchoscopic manual removal of the resultant plugs. When these mucous plugs become excessive and obstructive to normal breathing, pulmonary embarrassment of the breathing function of the lungs results as pulmonary insufficiency.

Due to the difficult management procedures of constant vigil, the victims of severe impairment of pulmonary emphysema, by self defense and possibly fear of extenuating circumstances, soon become very, very inactive. These individuals have great limitations of activity because of physical and mental suffering in starting a chain event of severe discomfort beginning with shortness of breath, dyspnea, and coughing as clinical symptoms of this lung disease.

Regardless of whatever treatment is expended against the immediate distress, this disease process of the lungs thus continues as an irreversible chronic disease. The basic principles of this temporary treatment are directed towards attempting to get the best air exchange. The avoidances and minimizing of lung irritations form the major factors in the treatment of this lung disease. Smoke resulting from fire combustions with its ever

present noxious gases as products of occupational conflagrations must be avoided or at least drastically reduced or removed from the scene of life activity. As readily seen, fire fighting activities present these unavoidable hazards in varying quantities.

The following case is presented to illustrate the definite role that factors of a fire fighter's occupation assumed in the precipitation and development of this disease of pulmonary emphysema, which led to his disability and subsequent retirement.

CASE REPORT

Case of fire fighter, W.J.R., male, age 53 (during study).

Present Illness: This fire fighter was apparently in perfect health while engaging as a fire fighter over a period of approximately 27 years. As a fire captain, he responded with his company to a factory fire. Upon arriving at the scene of the fire, it was evident that there was a heavy haze inside the building. The factory was closed at the time and nobody was available to give information relative to which chemicals were involved. In the course of his investigation inside the factory, the captain found an unmarked vat and leaned over in order to try to determine its contents so that the proper extinguishing agent could be used. It proved to be perchorethylene giving off toxic fumes. Later, while outside, he was believed to have had a heart attack, with a chief symptom of breathing difficulty. After being given oxygen at the station house for an hour and a half, he was transported to a hospital for additional oxygen and additional treatment. This was diagnosed as a coronary disease.

Progress Report: Since that time, he had on various occasions repetition of the same symptoms, which included shortness of breath, wheezing, and pains in his chest. This was always attributed to his heart condition,

along with the diagnosis of chronic bronchitis. Inhalation of smoke at fires and getting wet and cold continued to cause these attacks. Some of these attacks had emergencies, for which he had to be hospitalized. In the last 14 months, he had been in the hospital seven times. Finally, following all these episodes, he was referred to a lung specialist by his own treating doctor. The final diagnosis of pulmonary emphysema was made, substantiated by pulmonary function tests. In his recent hospitalization, he experienced one good day with four bad days. He was advised to have a change of climate to help his breathing and control of resulting infection. Subsequently he became distressed even after walking a few feet.

In review, this case was caused by the chronic exposure of smoke which was finally precipitated into this chronic lung condition of pulmonary emphysema by the inhalation of toxic fumes, with the progressive deterioration resulting from the effects of smoke inhalation and resultant complication of persistent lung infections.

SUMMARY

Thus, when so established, an irreversible progressive deterioration of a developing impairing degree of a lung disorder was finally diagnosed as pulmonary emphysema. This was the result of the occupational nature by exposure of inescapable smoke and gas hazards. Despite mechanical means of minimizing smoke, the byproducts of smoke and its toxic accompaniments are the major causative factors of this type of lung irritation.

This resultant pulmonary emphysema must be universally accepted as being caused from fire fighting professional activities. These affected fire fighters are therefore entitled to a disability pension when so retired from active duty by this disease.

Bronchiectasis is another disease of the lungs. It consists of dilitation and destruction of the walls of the bronchi (the small breathing tubes of the lungs). Infection is usually present, often as a precursor, in the lung tissues. This accounts for the most common clinical manifestation, the irritating persistent cough. This repeated and chronic persistent coughing expels large quantities of infective and foul smelling colored (varieties of yellow) sputum. Usually the greater the block to adequate drainage and the developing infection determines the degree of severity and disability of the resultant bronchiectasis.

The bronchial walls and the surrounding lung tissues so involved are the seats of pathological changes that produce these excessive pus formations, along with local death of tissues (necrosis). These changes begin in the lungs and may progress beyond the branches of the bronchial system, by becoming systemic in spread and involving other organs. Depending upon the severity and extent of the primary focus, this lung disease of bronchiectasis may be extremely widespread or may remain sharply localized with no spread at all.

Due to the varying degrees of pathological changes present in each case, the symptoms often vary considerably with the extent of involvement pathologically related to the severity of the lung infection. The onset and course of the disease are also variable. Usually, following an acute lung infection, the full blown characteristic course of bronchiectasis may develop rapidly. But more often, it takes a slow chronic form, with spurts of activity especially when associated with upper respiratory infections. During a quiet period, symptoms may subside even to the point of disappearance. Frequently there may be episodes of acute lung involvement, as in a current case of pneumonia, that would increase the severity of an already pre-existing bronchiectasis.

The classical clinical course of bronchiectasis is one of fever episodes with subsequent increase in both local and constitutional symptoms. There are discomforts and harassments by attacks of severe coughing with expectoration of large quantities of sputum, often very foul smelling. This severe coughing produces pain and soreness in the chest and abdomen. This pain, although physically distressing, is not of serious significance pathologically. However, resultant hemorrhaging that occasionally follows is therefore very serious, and may be fatal in extreme cases. Varying changes may eventually result in the lungs during the development of this process, such as: atelectasis, fibrosis, emphysema, and empyema. In addition, if prolonged sepsis continues, death may result. This points out the necessity for early diagnosis, so that appropriate and adequate treatment may be correctly applied.

Even during this course of active involvement, complications of bronchiectasis may involve other organs, particularly the heart and brain.

In addition to these physical factors, bronchiectasis may also impose serious psychologic handicaps. There often develops the fear that any activity may produce a dreaded attack of lung hemorrhage with infection, forerunners and aftermaths of advanced bronchiectasis. There is also an embarrassment associated with an uncontrolled hacking cough and the expectoration of large quantities of this foul smelling sputum.

The diagnosis is dependent upon the physical signs, x-ray examination of the chest, contrast dye study of bronchography, bronchoscopy, and bronchograms. Bronchiectasis is proven by the demonstration of dilatations of the bronchi, as illustrated best by the contrast medium of iodized oil.

Other medical studies are thereafter indicated to ascertain the possible causative factors, among these are the types of infectious processes or other reasons for this pathological development. The extent of the disease

and the degree of abnormal dilatation may aid in determining the intensity of the destructive changes, with resultant evidence of other organ involvement and signs of degrees of toxicity.

Treatment is therefore guided by the forementioned findings. This study would serve as a guide in determining whether the diseased lung tissue should be removed by surgery or treated by the more conservative medical approach, if conditions are especially unsuited for surgery. This form of conservative treatment consists of a definite regime of establishing adequate drainage, controlling infection and improving the general health.

As to the last improvement of the general health--a well regulated life which provides proper periods of rest, nutrition and freedom from lung irritants are essential.

The effects from smoke of fire combustion, along with its resultant toxic and irritating gases, must be avoided or at least drastically reduced to minimal effects. Fire fighting activities with its unavoidable occupational hazards increase the risk of substandard health, or even life in extreme cases of this disease, especially in the susceptible or developed case of significantly resultant bronchiectasis.

The following case is presented to illustrate the definite role that factors of a fire fighter's occupation assumed in the precipitation and development of this disease of bronchiectasis, which led to his disability and subsequent retirement. (note: the official determining board concurred in the disability allowance of this fire fighter in awarding him an occupational pension award.)

CASE REPORT

Case of fire fighter, G.W.B., male, age 45 (during study).

Present Illness: This fire fighter was thought to be in apparent excellent health up until the last six or seven years of his fire fighting career.

His poor health began during this period with complaints of congestion in his chest. Frequently the congestion would clear up and then return. He began to suffer from frequent colds. After each of these, the congestion would last longer. He had used various antibiotic medications prescribed by several physicians. These only helped to temporarily clear up his increasing expectorations. While employed as a fire fighter, there had been several occasions during which he was exposed to escessive amounts of smoke, with one particular exposure to excessive smoke from a mattress fire.

During this period his reactions to exposure to even milder degrees of smoke, dust inhalations, chest colds, and minimal degrees of infection produced chest discomfort more severe than that experienced by his fellow fire fighters under comparable conditions.

He began to notice an increasing degree of coughing, bringing up at these times, yellowish to brownish material. He also noticed that humid weather produced more mucus and that at these times his coughing was worse. This symptom related directly to his exposures to varying amounts of water while fighting fires. However, there were periods during which he felt better and did not cough. These occurred most frequently when he was not exposed to conditions irritating to his lungs.

Past Medical History: His medical record showed that he had undergone surgery for hemorrhoids and had his tonsils removed as well as a planter wart. There was no history of allergies (sulfa and penicillin tolerated).

No significant history in his systemic review. Interesting were the negative phases in his cardio-pulmonary review (other than mentioned in the previous present history of pulmonary distress from coughing and its sequences) especially as not affecting the cardiac portion. There was no shortness of breath, no ankle edema, no orthopnea, and no chest pain (other than induced by the physical violence of severe coughing). He could walk

up stairs without shortness of breath, and could do his ordinary activities without true shortness of breath (when free from coughing).

Physical Examination: This fire fighter was a tall, well developed, well nourished male who (on a routine examination, without a coughing spell) was in no apparent distress. But on initial discussion of his problem, he was clearing his throat rather frequently. There were no significant abnormalities of the systems other than his chest. His chest was slightly emphysematoid. Physically, the diaphragms move adequately. No rales were noted to auscultation, no dullness to percussion. The heart is not increased in size to percussion, no murmurs noted, regular sinus rhythm heart rate, and normal blood pressure readings.

Laboratory Studies: Blood counts, urinalysis (routine and special), blood sugar and cholesterol were all within the normal limits. The electrocardiogram was essentially normal. The chest x-ray showed essentially normal cardiac silhouette with a prominence of both pulmonary arteries, increased lung markings throughout both lung fields, and a depression of the leaves of the diaphragm. Bronchograms were typical evidence of demonstrations of dilitations of the bronchi, characteristic of bronchiectasis. Bronchoscopy confirmed these findings.

Primary Diagnosis: Bronchiectasis, as proven by bronchoscopy and bronchogramic studies, which demonstrated chronic inflammatory disturbances involving the bronchi of both lower lobes of the lungs, as well as involving the right middle lobe.

Recommendations: (including treatment): In order not to aggravate his lung condition and thus hope to slow up the inevitable progressive increase in the degree and extent of his pulmonary disturbance, he was relieved of duty as a fire fighter. Any exposure to the normal routine of fire fighting duties would have certainly aggravated this condition. The immediate treatment with specific medical antibiotic drugs for the actual presence of infection was an essential adjunct in controlling specific instances of the pulmonary infections.

Pulmonary fibrosis is another disease of the lungs in which large amounts of fibrous tissue grow into the substance of the lungs, either diffusely or in localized areas. There is a generalized type of pulmonary fibrosis that is caused by constant irritations of the lung tissue by smoke products of combustion, with the prolonged inhalation of the very fine irritating particles from the polluted air. This causes a toxic reaction in the lung tissues with gradually increasing deposition of fibrous tissues. The earliest abnormal effect is the decreased pulmonary function, which is reflected by the increase of the muscular effort required for respiration.

In the late stages of this process, irritations and infections develop in the diseased lung, causing a multitude of other abnormalities besides the decreased pulmonary function. In a previously discussed article on pulmonary diseases among fire fighters, the instance of developing and precipitating of pulmonary tuberculosis was the determining result which caused further fibrosis, as well as much destruction of the pulmonary structure.

The initial principal effect of pulmonary fibrosis is the increase in the work load of respiration. This is usually followed later by an alveolo-capillary block of the pulmonary circulation with a reduced diffusing capacity of gas exchange in the lungs. Among the developing complications of this increasing pulmonary fibrosis, varying pathological conditions may be superimposed.

Various types of pulmonary insufficiency results from this developing dysfunction. As previously mentioned, in the beginning, the increased airway resistance due to the increasing fibrosis causes a greatly increased work load on the respiratory muscles, leading to the chronic increase in the respiratory effort.

Secondly, greatly reduced diffusing capacity of the gases circulating in the lungs, results in a reduction of the membrane area, alveolo-capillary

block, and the abnormal ventilation-perfusion ratios. This necessitates still further increase in the ventilatory effort. This, combined with the increased workload even for normal ventilation, multiplies the effort of respiration to the point of the development of air hunger and severe dyspnea. Thereafter, this difficulty finally becomes so severe that the tissue cells of the lungs themselves develop respiratory difficulties. This serious result of developing anoxia initiates the dimishing availability of oxygen to the cells of the body. This anoxia of the reduced oxygen of the arterial blood upon which the deficiency is reflected in the body fluids, is a very serious pathological development. Anoxia, if severe enough, can actually cause death of the cells, but in less severe degrees, it results principally in a depressed mental activity, sometimes culminating in coma. In addition, anoxia can cause a marked reduction of the work capacity of the respiratory muscles. The prominent symptom of dyspnea, which is "air hunger" or a desire for air, is also very frequently experienced in the advancing stages of pulmonary fibrosis. A cycle is set up when dyspnea builds up, severely affecting the respiratory muscles to a degree of paralysis. This causes the lungs to function with a wholely inadequate intake of oxygen and an accumulation of carbon dioxide, which is deficiently expelled. This dyspnea results from the abnormal excessive accumulation of carbon dioxide, as well as the reduced amount of oxygen in the body fluids.

PATHOLOGIC CONDITIONS

A number of pathologic conditions cause this excessive fibrosis in the supportive tissues in the lungs. The fibrous tissue in turn contracts around the vessels of the lungs. Among the most frequent conditions are those due to the constant irritation of impurities of the air. Most prominently are the smoke particles of fire combustions, the dust and irritants stirred

up during these times of conflagrations with various mixtures of obnoxious products in this air environment. In this condition, the advent of infection (notably tuberculosis in the susceptible individual) adds to this disturbed lung by this development of lowered tissue resistance. In addition, the resulting diminished diffusion and increase of resulting fibrosis may lead to pulmonary emphysema and atelectasis.

In this development of pulmonary emphysema (discussed in more detail as an entity in the previous article of Pulmonary Disease Among Fire Fighters), the alveolar walls become stretched and may even rupture, leaving much fewer small alveoli. This greatly decreases the total alveolar surface area and hinders gaseous exchange from the alveoli to the blood.

An additional possible development is a condition of atelectasis, the collapse of the lung in whole or in part, especially with the advent of plugged bronchi. When the bronchi become plugged, the blood in the capillaries rapidly absorbs the air in the entrapped alveoli, causing these alveoli to collapse. When a permanent atelectasis of a portion of a lung occurs, that portion gradually becomes fibrosed, with the resulting fibrotic tissue in gradual contraction. This causes the flow of blood through this permanent atelectic area of the lungs soon to be entirely cut off, thereby gradually destroying the lung tissue in a spreading manner.

Fortunately, however, a great amount of lung tissue may be so destroyed up to as much as two thirds of both lungs in which a person can still live without total impairment, as long as he is inactive.

SIMILAR SYMPTOMS

Symptoms produced by any of the chronic pulmonary diseases may stimulate each other in any of these diseases. In other words, there are no individual or distinctive symptoms of any one disease that is not present in some or all these diseases. For optimum treatment, early diagnosis is essential so that specific treatments can be applied most effective with

each cause of this lung involvement.

Prevention or minimizing the principal culprits or precipitating effects remains the best treatment for the individual, if one is especially susceptible to lowered lung tissue resistance. Specialized diagnostic procedures should be resorted to in difficult to diagnose cases, especially in their early pathological developments. In addition to the physical examination, laboratory means, as material expectoration studies, blood analysis, x-rays with bronchography and bronchoscopy (if indicated) are very valuable for understanding the nature of the underlying lung disease.

The symptomalogy of common occurrence in any or all of these lung conditions involve coughing, with or without expectoration, dyspnea, hemoptysis (hemorrhaging in degrees), all of which may be accompained by an otherwise unexplained loss of weight. Other symptoms, depending upon the accompanying involvement of the organs or parts of organs, are usually also prominently present.

From the occupational standpoint of the fire fighter, the inhalation of irritating gases and fumes is a primary factor in inducing a chronic inflammatory reaction in the lungs. This is especially true in the susceptible fire fighter with a history of repeated insults resulting in the lowering of his resistence, in tissue and exposure to bouts of infection. Dust, particularly that containing silica particles (a well established industrial hazard) may be a major factor in this developing pulmonary disease. In many cases, the cough of this disease is constantly being aggravating by exposure to the sensitizing substances of these irritants. In addition, pulmonary stasis is favored in developing fibrosis, acting as precipitating causes by interfering with normal respiratory mechanics. This is present in such predisposing causes as chronic passive congestion, emphysema, and atelectasis (as previously reviewed).

Respiratory complications are common whenever the pulmonary fibrosis has progressed to extensive degrees. These, in turn, may cause cardiac

embarrassment by involving right heart failure, which may result in death.

IRREVERSIBLE

Most unfortunately, pulmonary fibrosis is irreversible, never resolves to a normal state. At best, control of activating factors may reduce progression, depending upon the individual success, to a standstill. This would be best accomplished by removal from the environmental cause of the irritation. In fire fighting, serious consideration is given to complete separation from active service, at least that phase of involving exposures of the responsible hazards contained in this causation of pulmonary disease.

The following case is presented to illustrate the definite role that factors of a fire fighter's occupation assumed in the precipitation and development of this disease of pulmonary fibrosis, which led to his disability and subsequent retirement. (Note: the official determining board concurred in the disability allowance of this fire fighter in awarding him an occupational pension award.)

CASE REPORT

Case of fire fighter, W.T.H., age 70 (at study). Experience, 43 years.

This case concerns a fire fighter who, after a prolonged time experience in the fire department, answered his last service call on August 31, 1963. At this fire he suffered from inhalation of intense heat, acrid smoke, and gases, chiefly affecting his chest and throat. He remained on duty until September 3, 1963, when he went on vacation. However, he was unable to return to duty on October 1, 1963 when his vacation ended, remaining off duty since.

On a physical examination, upon his return for duty, he complained of dyspnea on exertion, accompanied by a persistent chronic cough.

The physical examination report (last from his service on June 1964) indicated a decided evidence of a distinct weight loss, with his chest

distinctly conforming to his emphysemous breathing with diminished breath sounds in his lungs. There was significantly noted the presence of cyanosis of both hands and feet, although there was no extremity edema present at this examination.

The primary diagnosis was pulmonary fibrosis with emphysema. The prognosis was guarded. As for work there was a recommendation for a complete removal from his fire fighting duties, with a recommendation for this fire fighter to lead a sedentary life, with rest from any work activity, along with a continued medical observation and corresponding treatment.

He was accordingly awarded an occupational pension, after due deliberation of the appropriate authorities, on July 8, 1964.

SUMMARY

Pulmonary fibrosis represents another type of pulmonary disease among type of pulmonary disease among fire fighters, resulting from the ordinary and usual discharge of their occupational duties.

This disease category does not necessarily exist in a constant pattern of distinctive form. The susceptible individual may end up in varying degrees of pathology with varying combinations.

For example, in this development of pulmonary fibrosis, there may also result in combination degrees of pulmonary emphysema, pulmonary atelectasis, various inflammatory reactions, acute and chronic (of which pulmonary tuberculosis is most prominent) all of which in causing pulmonary insufficiency is most incompatible with good health, with an inevitable diminishing lung function.

Nature has richly endowed the individual with an overabundant amount of lung tissue for life--but even these limits can be reached if these individuals are not removed from this devastating working environment if the disease is in a progressive stage. Much of the lung pathology so resulting

is permanent and irreversible, with treatments having only a holding action, if effectively applied.

The major irritations of occupational smoke of conflagrations and its accompanying noxious and irritating gases must be recognized, especially in susceptible or previously diseased lung victims, as the very significant occupational factors tending to extend this disease, once started, either to disability or progressively to death--especially if not removed from this environment of fire fighting.

These fire fighters who so develop the progressive stage of pulmonary fibrosis, with the involvement of pulmonary insufficiency, should therefore be entitled to a disability pension, when so retired from active duty as a consequence of this disease.

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