

ALASKA LEGISLATURE COMMITTEE FILES 1983 - 1984 8672

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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 351, 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.

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

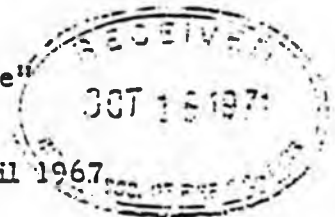
NOTE

PAGE NO. 2 - HEART AND LUNG REGULATION

THE VANGUARD

No. 6 - Special Edition - "Keep for future reference"

Winnipeg, April 1967
Page 1



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 Baisley, 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. 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 sequelae 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 sequelae 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 sequelae. 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 sequelae, 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 sequelae 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."

W-200

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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 brigades.

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. 73, 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., 1955, 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 the permission, of the fire guardian or conservation officer in charge, he ceases to be engaged in extinguishing the forest, brush, or grass fire.

En. S.M., 1955, 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., 1962, (2nd Sess.), c. 73, s. 2.

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 steamer, 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 for 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 supercedes 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., 1969, (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. 72, 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.

5(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 dependant of a workman to whom an accident happens in that place or country if he were in Manitoba would be entitled to compensation; and where the dependant is entitled to compensation under that law, the compensation to which the dependant is entitled under this Part is not greater than the compensation to which he would be entitled 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(5) 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 of 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.

(3) Where an action is brought by a workman or his dependants in circumstances in 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 the 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 special care or operation, the board, even though the injured man has not made an election or made election, may direct it to be given or done; and the cost thereof shall be 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 scope of this Part, the workman, or in the case of his death, a dependant, shall, as far 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. P.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 32, 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.

15(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 holding.

R.S.M., c. 297, s. 18; 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; P.S.M., c. 297, s. 19; am.

Sasis 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.

P.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(1) The board may, with the consent of the workman or dependant to whom it is payable, but not otherwise,
- (a) 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
 - (b) divide into periodical payments any compensation payable in a lump sum.
- R.S.M., c. 297, 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 surgical operation, or other special medical treatment for a workman, and the furnishing of any other medical aid 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 otherwise 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

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. P.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

(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 dependant, 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 dependant 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.

(1) 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.L. 1955, c. 94, s. 1; S.M.L. 1956, c. 74, ss. 2, 3, 4, 5; S.M.L. 1958, (1st Sess.), c. 77, ss. 1, 2, 3, 4, 5, 6, 7; S.M.L. 1959, (2nd Sess.), c. 73, s. 15; S.M.L. 1960, c. 85, s. 1; S.M.L. 1953, c. 95, s. 4; S.M.L. 1964, (1st Sess.), c. 60, s. 2; S.M.L. 1966, c. 74, ss. 6, 7, 8, 9; S.M.L. 1966-67, c. 73, s. 3; S.M.L. 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.L. 1955, c. 74, s. 6; S.M.L. 1960, c. 85, s. 2; S.M.L. 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 a like part 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., 1956, 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.

30 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. 50, 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. 23; 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(3) 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: 1-.

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 workmen.

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. 73, s. 29; S.M., 1961, (1st Sess.), c. 71, s. 5; S.M., 1955, c. 91, s. 5.

Pension, gratuity, etc., may be deducted.

33 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.

39(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 involved 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. 6.

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. 23; 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., 1962, 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. P.S.M., c. 207, 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.

45(2) Unless otherwise directed by the Lieutenant Governor in Council, the chairman shall cease to hold office when he attains the age of seventy-five years.

Am. S.M., 1963, c. 22, s. 3; am. R.S.M., c. 297, s. 35; am.

Term of office and retirement of commissioner.

45 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. 96, s. 10; am.

Chairman to devote his full time.

45(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. 43.

Commissioners.

45(2) The Lieutenant Governor in Council may require the commissioners or one or more 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 shall be payable out of the accident fund.

Am. S.M., 1953, c. 96, s. 12.

Allowance for attending meetings.

45(3) 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 to act in his stead and has acted, in his stead during his absence or incapacity;

his 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

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 unity 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., 1953, c. 93, s. 12; R.S.M., c. 297, s. 33; 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. 33; am.

Members of board to have no interest in industry under Part I.

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.M., 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.

51(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.

51(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. 207, s. 34; am.

Application to Crown employees.

52(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 51 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.

53(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. 19; S.M., 1967-67, 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 liability 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 municipality 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 periodic 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., 1965, c. 84, s. 2; S.M., 1964, (1st Sess.), c. 50, s. 8; Am. S.M., 1970, c. 96, 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.

Rates for increases in compensation.

55(3) 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. 41, s. 15; S.M., R.S.M., c. 297, s. 59; am.;
Am. S.M., 1979, 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 temporary, 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., 1959, (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.

P.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. P.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.

73(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. 207, 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. 207, 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.

78(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.

75(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.

75(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.

75(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., 1963, (2nd Sess.), c. 41, s. 17.

Principal and interest part of administration expenses.

75(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;

(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.

Ed. S.M., 1961, (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 55, 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, as 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.

62(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.

62(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.

33(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".**

88(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., 1955, c. 91, s. 14; am.

Time of employment and compensation.

88(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, 1935, 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.

88(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(5) 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(3) 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. 25.

Residence qualifications and exposure.

33(7) 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 date the workman left the employment in the industry in which he was exposed to dust containing silica; or
- (ii) the workman had ceased to be resident in Manitoba before he became disabled from silicosis;

the board, in its discretion, upon written application of the workman, may re-open the claim and consider it on its merits; or

(b) where a workman who had ceased to be resident in Manitoba before he became disabled from silicosis makes a claim under this section, the board, in its discretion, upon written application of the workman, may consider the claim on 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., 1953, 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;

- (3) as may be prescribed by the Lieutenant Governor in Council, discharge the duties of, and hold, any office authorized by law; and
 (4) be paid a salary or other remuneration as provided by law.
 R.S.M., c. 257, s. 20; am. S.M., 1959, (2nd Sess.), c. 72, 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., 1951, (2nd Sess.), c. 73, s. 30.

PART II

Application of sections 94 and 95.

93 Sections 94 and 95 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. 31; am. S.M., 1959, (2nd Sess.), c. 73, s. 31; S.M., 1963, c. 93, s. 15.

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.

P.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 36 of chapter 73 of the Statutes of Manitoba, 1959 (Second Session)
- (c) Section 3 of chapter 85 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; straddling; 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 mouldings, 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 scoops, 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-blackening 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 ments 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, rafts and dredges, operation of grain elevators and flourmills, teaming, scavenging and street cleaning, painting, decorating and renovating, dyeing and bleaching, 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 ferryman 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.

and other provisions that contain amendments and a Section 2212 of the Labor Code which can be located in the Labor Code section.

1977-1978. This act shall become operative on July 1, 1977.
Approved and filed June 15, 1977.

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WORKERS' COMPENSATION—PUBLIC EMPLOYEES

CHAPTER 466

SENATE BILL NO. 830

An act to amend Sections 2210, 2212, 2213, 2214, 2215, 2216, 2217, and 2218 of, and to add Section 4633 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 24 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 any relation is made nor obligation created for the reimbursement of any local agency for any costs incurred by it pursuant to the bill.

The people of the State of California do enact as follows:

SECTION 1. Section 2212 of the Labor Code is amended to read:
2212.

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 water rangers of the Wildlife Resources Branch of the Department of Fish and Game whose principal duties consist of police law enforcement services, arresting those whose principal duties are clerical or whose also do not clearly fall within the scope of police law enforcement services such as stenographers, telephone operators, and other office workers, the term "injury" as used in this act includes events when any part of the former divisions or divisions thereof during a period while such member is in the service in such office, post, 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 foresters or firefighting departments, except those whose principal duties are clerical, such as stenographers,

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RESEARCH

The Commission on the Labor Code shall have the honor to advise the Commission on the Labor Code of the results of its study of the proposed amendments to the Labor Code and to report thereon to the Commission on the Labor Code at the time of its next meeting.

Section 2, Section 3 of the Labor Code is amended to read:

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ORIGINAL.

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 three calendar months for each full year of the requisite service, but not to exceed 90 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 90 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,

definitions by asterisks * * *

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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 office workers, 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 reimbursements 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. 1904

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-