

## CHAPTER 98.

## AN ACT

[S. B. 120]

Relating to the measure and recovery of compensation of injured employees in all businesses, occupations, work, employments, and industries employing five or more employees in the Territory of Alaska, except domestic service, agriculture, dairying and the operation of railroads as common carriers, and relating to the Compensation to designated beneficiaries where such injuries result in death, defining and regulating the liability of employers to their employees in connection with such business and industries and repealing all acts and parts of acts in conflict with this act.

Be it enacted by the Legislature of the Territory of Alaska:

Section 1. Any person, or persons, partnership, joint stock company, association or corporation employing five or more employees in connection with any business, occupation, work, employment, or industry carried on in this Territory, except domestic service, agriculture, dairying, or the operation of railroads as common carriers who shall not have given notice of his, her, their or its election to reject the provisions of this act in the manner hereinafter provided, or, who having given such notice shall, prior to the time that an employee is injured, as hereinafter referred to, have waived the same in the manner hereinafter provided, shall be liable to pay compensation, in accordance with the schedule herein adopted, to each of his, her, their or its employees who receives a personal injury by accident arising out of and in the course of his or her employment, or to the beneficiaries named herein, as the same are hereinafter designated and defined, in all cases where the employee shall be so injured and such injuries shall result in his or her death, provided, the employee so injured had not, prior to the time of being so injured, given notice of his or her election to reject the provisions of this Act in the manner hereinafter provided, or, having given such notice, had,

When persons or corporations liable to pay compensation to injured employees.

prior to such time, waived the same in the manner hereinafter provided.

Compensation—  
amount of in  
case of death.

The compensation to which such employee so injured, or, in case of his or her death, if death results from such injury, such beneficiaries, shall be entitled, and for which such employer shall be legally liable, shall be as follows:

To widow.

(1) In the event of the death of any such employee resulting from such injury, where such employee at the time of his death was married, his widow shall be entitled to receive the sum of Three Thousand Nine Hundred Dollars (\$3,900.00).

Compensation to be paid in case of death to widow where children of deceased are under 16.

(2) In those cases where such married employee had children under the age of sixteen (16) years at the time of his death, his widow shall be entitled to receive in addition to the sum above specified, the sum of Seven Hundred Eighty Dollars (\$780.00) for each child under the age of sixteen (16) years, or child wholly dependent upon his or her parents for support by reason of mental or physical incompetency, or unborn or posthumous child, which such employee left at the time of his decease, but not to exceed in all the sum of Seven Thousand Eight Hundred Dollars (\$7,800.00).

To dependent father and mother of married employee.

(3) In those cases where such employee left either father or mother or both, dependent upon him for support at the time of his death, the sum of Seven Hundred Eighty Dollars (\$780.00), shall be paid to such father or mother or both, in addition to the sum provided for and made payable to the widow. In no case however, is the total sum to be paid hereunder to exceed the sum of Seven Thousand Eight Hundred Dollars (\$7,800.00) and the payments to which the widow and children may be entitled shall be first paid out of said sum of Seven Thousand Eight Hundred Dollars (\$7,800.00).

Widow and children to be paid first.

(4) In those cases where such deceased employee was unmarried at the time of his or her death survived by

either his or her father or mother, who was at the time of his or her death dependent upon him or her for support, such father or mother shall be paid the sum of One Thousand Five Hundred Sixty Dollars (\$1,560.00).

To dependent father or mother of single employee.

(5) Where such deceased employee was survived by his or her father and mother both dependent upon him or her for support at the time of his or her death, such father and mother dependent upon him or her for support, shall be paid the sum of One Thousand Five Hundred Sixty Dollars (\$1,560.00) each.

To dependent father and mother of single employee.

(6) In those cases where such deceased employee was a widower at the time of his death, but left one or more minor orphan children, there shall be paid the sum of Three Thousand Nine Hundred Dollars (\$3,900.00), and the further sum of Seven Hundred Eighty Dollars (\$780.00) for each orphan child under the age of sixteen (16) years, provided the total amount paid shall not exceed Seven Thousand Eight Hundred Dollars (\$7,800.00), and the judge of the probate court of the precinct wherein such accident or injury occurred, shall appoint a guardian, for all of said children, who shall be entitled to, and who shall be paid, the amount specified in this paragraph, for the benefit of said orphan children, and shall divide Three Thousand Nine Hundred Dollars, (\$3,900.00) thereof equally among such children and divide the surplus, if any, among the children under Sixteen (16) years of age.

To orphan children.

(61½) Provided, however, that if such beneficiary or beneficiaries as described in Section 1 to 6, inclusive, immediately preceding this Section be neither resident nor a citizen of the United States of America, then the amount due and payable to such beneficiary or beneficiaries shall be in an amount equal to seventy-five (75) per cent of the sums set forth in Sections 1 to 6, immediately preceding, and such amount shall be in full settlement of all claims under this act.

Aliens to receive 75% only.

(7) In those cases where such deceased employee is, at the time of his or her death unmarried, and leaves no children nor father nor mother dependent upon him or her as above specified, the employer shall be required to pay the funeral expenses of the deceased not to exceed the sum of One Hundred Ninety-five Dollars (\$195.00), and such other expenses, if any, arising after the injury and before the death, not to exceed the further sum of One Hundred Ninety-five Dollars (\$195.00).

For funeral and other expenses of single employee.

Where any such employee receiving an injury arising out of, and in the course of his or her employment, as the result of which he or she is totally and permanently disabled, he or she shall be entitled to receive compensation as follows:

Permanent disability—amount of compensation for.

(a) If such employee was at the time of his injury married he shall be entitled to receive Six Thousand Two Hundred Forty Dollars (\$6,240.00) with Seven Hundred Eighty Dollars (\$780.00) additional for each child under the age of Sixteen (16) years, but the total to be paid shall not exceed Seven Thousand Eight Hundred Dollars (\$7,800.00).

If married.

(b) If such employee at the time of his injury had no wife or children, but had a mother or father dependent upon him, Five Thousand Four Hundred Sixty Dollars (\$5,460.00).

Father or mother dependent.

(c) In case where such employee who at the time of his injury had both father and mother dependent upon him, Six Thousand Two Hundred Forty Dollars (\$6,240.00).

Father and mother dependent.

(d) In those cases where such employee was at the time of his injury, a widower, or was divorced, but had minor children, he shall receive the sum of Four Thousand Six Hundred Eighty Dollars (\$4,680.00) with an additional sum of Seven Hundred Eighty Dollars (\$780.00) for each child below the age of Sixteen (16) years, provided that the total sum to be paid such

If widower with minor children.

employee shall not in any case exceed the sum of Seven Thousand Eight Hundred Dollars (\$7,800.00).

(e) In those cases where such employee so injured at the time of his injury was unmarried and had no children nor father nor mother dependent upon him, he shall receive the sum of Four Thousand Six Hundred Eighty Dollars (\$4,680.00). If single without dependent.

Where any such employee received an injury arising out of, or in the course of, his or her employment, resulting in his or her partial disability, he or she shall be paid in accordance with the following schedule: Partial disability, compensation for.

For the Loss of a Thumb:

(a) In case the employee was at the time of the injury unmarried, \$624.00.

(b) In case the employee was married but had no children, \$780.00.

(c) In case the employee was either married or a widower, but had one or more children, \$936.00.

For the Loss of an Index Finger:

(a) In case the employee was at the time of the injury unmarried, \$390.00.

(b) In case that the employee was married but had no children, \$507.00.

(c) In case the employee was either married or a widower, but had one or more children, \$624.00.

For the Loss of Other Finger than the Index Finger and Thumb: \$234.00.

For the Loss of a Great Toe: \$390.00.

For the Loss of any other Toes than the Great Toe: \$156.00.

For the Loss of a Hand:

(a) In case the employee was at the time of the injury unmarried, \$1,872.00.

(b) In case the employee was married but had no children, \$2,496.00.

(c) In case the employee was either married or a widower and had one child, \$2,496.00 and \$312.00 additional for each of said children, not to exceed, however, the total sum of \$3,120.00.

For the Loss of an Arm:

(a) In case that the employee was at the time of the injury, unmarried, \$2,340.00.

(b) In case the employee was married but had no children, \$3,120.00.

(c) In case the employee was either married or a widower and had one child, \$3,120.00 and \$390.00 additional for each additional child, the total amount not to exceed, however, \$3,900.00.

For the Loss of a Foot:

(a) In case that the employee was at the time of the injury unmarried, \$1,872.00.

(b) In case the employee was married but had no children, \$2,340.00.

(c) In case the employee was either married or a widower and had one child, \$2,496.00 and \$312.00 additional for each additional child, but not to exceed the total sum of \$3,120.00.

For the Loss of a Leg:

(a) In case the employee was at the time of the injury, unmarried, \$2,340.00.

(b) In case the employee was married but had no children, \$3,120.00.

(c) In case the employee was either married or a widower and had but one child, \$3,120.00 with \$390.00 for each additional child, not to exceed the total sum of \$3,900.00.

For the Loss of an Eye:

(a) In case the employee was at the time of the injury, unmarried, \$1,872.00.

(b) In case the employee was married but had no children, \$2,496.00.

(c) In case the employee was either married or a widower and had one child, \$2,496.00 plus \$312.00 for each additional child, not to exceed however, the total sum of \$3,120.00.

For the Loss of an Ear: \$312.00.

For the Loss of the Nose: \$624.00.

For all other injuries causing temporary disability, the employer shall pay to the employee, during the period of such disability, Fifty per cent (50%) of his daily average wages. And in all cases where the injury develops or proves to be such as to entitle the employee to compensation under some provision in this schedule, relating to cases other than temporary disability, and the employee has been paid compensation for temporary disability, the amount so paid him shall be deducted from the amount to which he shall be entitled under such provision in this schedule.

The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or any two thereof, shall constitute total and permanent disability and be compensated according to the provisions of this Act with reference to total and permanent disability.

Permanent  
total disability,  
what consti-  
tutes.

Amputation between the elbow and the wrist shall be considered equivalent to the loss of a hand, and amputation between the knee and the ankle shall be considered equivalent to the loss of a foot.

Whenever such employee receives an injury, arising out of and in the course of employment, as a result of which he or she is partially disabled, and the disability so received is such as to be permanent in character

Permanent  
partial disability:  
compensation for

and such as not to come wholly within any of the specific cases for which provision is herein made, such employee shall be entitled to receive as compensation a sum which bears the same relation to the amount he or she would be entitled to receive hereunder if he or she were totally and permanently disabled that the loss of earning capacity of such employee, by reason of the accident, bears to the earning capacity such employee would have had had he or she not been injured, the amount to be paid in no case to exceed Six Thousand Two Hundred Forty Dollars (\$6,240.00).

To illustrate: If said employee were of a class that would entitle him or her to Six Thousand Two Hundred Forty Dollars (\$6,240.00) under this schedule, if he or she were totally and permanently disabled, and his or her injury would be such as to reduce his or her earning capacity twenty-five (25%) per cent, he or she would be entitled to receive One Thousand Five Hundred Sixty Dollars (\$1,560.00) it being the amount that bears the same relation to Six Thousand Two Hundred Forty Dollars (\$6,240.00) that Twenty-five (25%) per cent does to one hundred (100%) per cent. Should such employee receive an injury that would impair his or her earning capacity seventy-five (75%) per cent, he or she would be entitled to receive Four Thousand Six Hundred Eighty Dollars (\$4,680.00), it being the amount that bears the same relation to Six Thousand Two Hundred Forty Dollars (\$6,240.00) that seventy-five (75%) per cent does to one hundred (100%) per cent.

Section 2. If an injured employee entitled to compensation hereunder shall be paid compensation under any sub-division or part of this schedule, and it shall afterwards develop that he or she is or was entitled to a higher rate of compensation under some other part or subdivision of this schedule, then and in that event he or she shall receive such higher rate, after first deducting the amount that has already been paid

him or her. Provided, however, that no compensation under such increased rate shall be paid unless the disability entitling the employee thereto shall develop within two (2) years after the injury.

Section 3. At any time subsequent to the injury, the employer and the employee shall have the right to compromise and settle any claim for injury hereunder in accordance with schedules hereof, and the employee shall have the right to give full satisfaction and acquittance therefor and thereby discharge the employer from further liability, and such satisfaction and acquittance shall be binding upon the said employer, employee, beneficiaries under this Act and all other persons whomsoever.

Right to compromise.

Section 4. No compensation shall be allowed or paid for the injury or death of an employee in any case where such injury or death was occasioned by his or her wilful intention to bring about the injury or death of himself or herself or of another, or where the employee's intoxication was the proximate cause of the injury.

Willful neglect or intoxication.

Section 5. No compensation shall be paid under this Act for any injury which does not incapacitate the employee for a period of at least one week from earning full wages, but if incapacity extends beyond the period of one week, compensation shall begin on the eighth day after the injury. Provided, however, that if such disability continues for eight weeks or longer, such compensation shall be computed from the date of the injury.

No compensation for disability under one week.

Proviso.

Section 6. No contractor or sub-contractor shall be entitled to receive compensation under this Act, but shall be deemed to be an employer.

Contractors or sub-contractors not entitled to compensation.

Section 7. The right to compensation for an injury and the remedy therefor granted by this Act shall be in lieu of all rights and remedies as to such injury now existing either at common law or otherwise, and no

Remedy herein supersedes existing remedies and is in lieu thereof.

rights or remedies, except those provided for by this Act, shall accrue to employees entitled to compensation under this Act while it is in effect; nor shall any right or remedy, except those provided for by this Act, accrue to the personal or legal representative, dependents, beneficiaries under this Act, or next of kin of such employee.

Definitions.

Section 8. Step parents shall be regarded in this Act as parents; and an adopted child, or adopted children, or a step child, or children, shall be regarded in this Act as issue of the body.

Statement of beneficiaries.

Section 9. Every employee, coming within the provisions of this Act, shall, either at the time he, or she, is employed, or thereafter, furnish his, or her, employer with a written statement showing the name or names of each and all persons that would be entitled to benefits under the provisions of this Act in case such employee should become deceased as a result of an injury received by him, or her, arising out of and in the course of his or her employment; such written statement shall bear the date upon which the same shall be furnished to the employer, and shall be signed by the employee. Provided, that, in cases where such employee is unable to write his, or her, name, his, or her, name may be affixed to such statement by another, and such employee shall make his, or her, mark in the manner customary in such cases, and such mark shall be made in the presence of at least one witness, who shall subscribe such statement as a witness.

Change of beneficiaries.

In all cases where there shall be a change of beneficiaries, or a change in the address of any beneficiary, the employee may furnish the employer with a new statement showing such change; such new statement to be so furnished shall in all respects conform and comply with the provisions hereof with reference to the original statement to be furnished.

In all cases where such statement, or statements, is, or are, furnished the employer by the employee,

the employer shall, if such employee became deceased, as a result of an injury received in the course of his or her employment, notify each beneficiary named in the last statement of that fact; such notice shall be given by sending each beneficiary at the address given in the last statement furnished a copy of such notice by registered mail, and an envelope containing such notice addressed to each beneficiary at the address given in said last statement furnished, shall be deposited in the Post Office and registered, within ten days after such employee shall have become deceased.

Notice to Beneficiaries.

The notice to be so given shall be substantially in the following form:

To .....(giving the name of the beneficiary) This is to advise you that.....  
 .....(giving the name of the deceased person) became deceased on the ..... day of ..... as a result of an injury received while in the employ of .....  
 You will take notice that all persons entitled to benefits because of the fact that the above named employee was injured and as a result thereof became deceased, under the laws of Alaska, are required to serve notice upon the employer within one hundred and twenty (120) days after the date on which such employee became deceased, in accordance with the provisions of the laws of Alaska upon that subject, and that a failure to serve such notice within the time specified and in the manner specified will result in depriving the beneficiary, failing to give such notice within such time and in such manner, of his or her rights to compensation under the laws of Alaska.

.....  
 Any failure on the part of the employee to supply the employer with a statement as hereinabove provided shall not work a forfeiture of the right of his, or her, beneficiaries to benefits hereunder, but it shall

Failure to supply employer with statement of beneficiaries.

relieve the employer of all obligation to give to any of the beneficiaries of such deceased employee notice of the fact that such deceased employee became deceased.

Failure of employers to notify beneficiaries.

In cases where the employer shall have been furnished with such statements and shall fail to notify the beneficiaries therein named as shown by the last statement furnished, within the time and in the manner herein provided, such beneficiaries who have not been so notified shall have the right to notify the employer of their claims to benefits and file claims and prosecute actions or other proceedings for the recovery thereof, notwithstanding the fact that such notice was not served as hereinafter provided within the period of one hundred and twenty (120) days from and after the time that the employee became deceased.

Statement to be accepted as evidence.

Upon the trial of any issue relating to a beneficiary's right to compensation under this Act, any statement furnished an employer, as hereinabove provided, may be offered in evidence by such employer and when so offered shall be received in evidence and shall be held to establish the fact that the persons named in the statement bore to the deceased the relation shown by such statement at the date thereof.

Beneficiaries notice.

In all cases where any person claims to be a beneficiary under this Act entitled to compensation because of an injury to an employee coming within its provisions, which resulted in his or her death, such beneficiary, or someone in his or her behalf shall within one hundred and twenty (120) days from and after the death of such employee serve a written notice upon the employer, which notice shall contain the name and address of the person claiming to be such beneficiary, the relationship existing between such beneficiary and the deceased, and if such beneficiary shall be either the father or mother of the deceased, such notice shall also contain a statement showing that such person was dependent upon the earnings of the deceased. Such

notice shall be liberally construed and no claim for compensation shall be denied because of any defect in the notice, provided it appears that a notice was served with a bona fide intention to comply with the provisions of this Act. Such notice may be served by any person of legal age by delivering a copy thereof to the employer or the employer's agent in person or by leaving a copy thereof at the employer's principal place of business within the Territory of Alaska with some person over the age of eighteen (18) years in the employ of such employer. If the employer cannot be found within the Territory and has no known agent or place of business therein, such beneficiary may serve such notice by publishing the same in one issue of any newspaper of general circulation published in the Judicial Division where the injury, out of which the right to compensation arose occurred. Failure to serve such notice shall not be a bar to recovery of compensation by beneficiary unless it be proven that the employer at no time prior to the expiration of the one hundred twenty (120) days herein mentioned had any information about the injury of the employee for which the compensation is claimed, or, having such information, had, subsequent to the expiration of said one hundred twenty (120) days in good faith, paid the compensation herein provided for to another person who claimed to be the beneficiary and whom the employer at the time of making such payment believed in good faith to be the beneficiary entitled to the compensation.

Failure to serve notice not a bar to compensation, unless,

Section 10. In case one or more beneficiaries serve notice upon an employer, as above provided, of his, her or their claims to compensation under this Act, such employer may at any time during the ten days next following the period of One Hundred and Twenty (120) days during which such notices could be served, deposit Seven Thousand Eight Hundred (\$7,800.00) Dollars with the Clerk of the District Court for the Division within which such employee was injured, or, such employer may deposit with such Clerk of the

Employer to  
deposit bond.

Court a bond in the sum of Seven Thousand Eight Hundred (\$7,800.00) Dollars, signed by such employer as principal and two or more good and sufficient sureties, to be approved by the Judge of the Court, conditioned that such employer will pay the sum or sums that may be finally awarded as compensation under this Act under the Judgment of the Court to the person or persons entitled thereto according to said judgment, and conditioned further that judgment may be entered on said bond, not only against the principal, but against the sureties, and each of them jointly and severally, as well, by the court in said proceeding and without bringing a separate action on said bond. No action brought to recover such compensation shall be tried until after the expiration of said period of one hundred and twenty (120) days and said period of ten days.

To notify bene-  
ficiaries in  
writing.

Section 11. Upon depositing such sum, or such bond, as above provided, the employer shall notify in writing any and all persons who shall have served notice upon such employer as herein provided, claiming to be beneficiaries under this Act, of the fact that such sum or bond has been so deposited. Such notice may be served by delivering a copy thereof to the person to be served in person, or, by sending a copy thereof by registered mail to the address given in the notice served upon the employer by the beneficiary to be served.

Beneficiaries to  
establish claim.

Section 12. If prior to the time that such sum or such bond is so deposited, an action or actions have been commenced against such employer to recover compensation on account of the death of such employee by a person or persons claiming to be a beneficiary or beneficiaries, such action or actions shall thereupon abate and all proceedings had therein shall be quashed and set aside, and the plaintiff or plaintiffs shall thereupon be required to establish his, her or their claims to compensation in the manner hereinafter provided.

In case where such action or actions is or are so dismissed, and it is afterwards adjudged that the plaintiff or plaintiffs is or are entitled to compensation in connection with the injury which was the subject matter of the action or actions so dismissed, such plaintiff or plaintiffs shall then be awarded his, her or their costs in the action or actions so dismissed, which the employer shall be required to pay, in addition to the other sum or sums awarded against the employer.

Section 13. The employer by whom such sum or such bond shall have been deposited, shall upon such deposit having been made give at least sixty (60) days notice of the fact that such sum or such bond has been so deposited with the Clerk of the District Court, which notice shall be published in a newspaper published within the Commissioner's precinct within which such employee was injured, or, if no newspaper be published in such precinct, then in a newspaper published nearest the place where such employee was injured. The notice shall be published once a week for four (4) consecutive weeks and the sixty (60) days period shall commence to run from the date of the first publication. Such notice shall be substantially in the following form:

Notice of Posting of bond to be published in newspaper.

NOTICE TO BENEFICIARIES BY .....  
 ....., employer, has deposited with the Clerk of the District Court for the Territory of Alaska, Division Number ....., the sum of Seven Thousand Eight Hundred (\$7,800.00) Dollars (or a good and sufficient bond in the sum of Seven Thousand Eight Hundred (\$7,800.00) Dollars, as the case may be) in accordance with the provisions of the law relating to employees' compensation, for award and distribution among the beneficiaries thereto entitled because of the death of .....  
 an employee of said .....,  
 employer, and all persons are notified, cited and warned to appear before the District Court for the Territory of

Alaska, Division Number ..... on  
 or before the ..... day of .....  
 and make and file their claim, if any, to compensation.

.....  
 Employer.

Beneficiaries to  
 file their claims  
 with District  
 Court.

Section 14. All beneficiaries shall, within the time fixed by said notice, file his or her or their claim in writing with such District Court, which said claim shall be verified by the oath of the claimant or claimants, or someone authorized thereto in his or her or their behalf, and shall set up the facts relied upon as a basis for the claimant's or claimants' claim to such compensation under this Act. Two or more claimants may join in the same claim or may file separate claims. A copy of each claim so filed shall be served upon the employer, who shall have twenty days, from and after the time such copy has been so served, to file an answer thereto. Such answer may admit, or deny, the facts set up in said claim either in whole or in part, or may set up any other defense thereto. And any and all claimants shall have the right within twenty (20) days from and after the date as fixed in the published notice within which claims may be filed, to file an answer thereto admitting or denying the same either in whole or in part, or setting up any defense whatsoever to the allowance of such claim. The Court may, in its discretion and in furtherance of justice allow the parties to amend the claim or answers filed.

Hearing.

Section 15. The Court shall upon the application of the employer or any claimant fix a date for a hearing upon the claim or claims so filed, which date shall be not less than thirty (30) days later than the date fixed in the published notice for the filing of such claims. The hearing may be continued at any time by the Court for good cause shown as in other cases. Upon the date set for hearing or at any time prior thereto, the employer or any claimant, who shall have filed

his claim, as herein provided, may ask for a jury to try and determine any issue or issues of fact arising upon any of the claims and answers so filed. If no jury is demanded, as above provided, a jury shall be deemed to have been waived, and the trial of all the issues raised shall proceed before the judge of the Court as in other cases. Upon a trial, whether before the Court or jury, proofs shall be offered by the claimant or claimants in support of his, her or their claims to compensation under this Act in the same manner that proof is heard and received upon the trial of other civil cases. The Court shall also hear and receive such proof as may be offered by the employer touching the right of any or all of the claimants to compensation under this Act and the fact that such employer has deposited the sum aforesaid, or the bond as herein provided, for, shall not be construed as an admission against such employer.

Upon such trial evidence shall be received in accordance with the rules of evidence touching any issue of fact raised as hereinbefore provided. The order of proof shall rest in the discretion of the Court, but such discretion shall be so exercised as to give all parties a full, fair and complete hearing. Upon the conclusion of such trial the Court shall, in all cases tried before the Court without a jury, make written Findings of Fact based upon the evidence before him. And in all cases tried before a jury, the jury shall determine any and all issues of fact under instruction from the Court as in other cases. Upon the filing of such Findings of Fact made by the Court or such verdict rendered by the jury, the Court shall, unless a new trial is granted, enter a judgment in accordance therewith.

Section 16. If no claim on the part of any defendant be filed with the District Court within the time specified by the notice above referred to, or, if such claim or claims be filed and it appear from the findings of the Court or the verdict of the jury, that none of

When deposit  
to be returned  
to employer.

the claimants is entitled to compensation under this Act, then the sum deposited by the employer, less the cost of publishing the notice above provided for and the filing, trial and other fees of Court in connection with such proceeding, shall be returned to the employer, in cases where such sum was deposited as above provided, and the bond shall be declared void and the sureties thereon exonerated in these cases where a bond was deposited, upon the payment by the employer of the filing, trial and other fees of Court and the cost of publishing the notice, as herein provided.

Judgments.

Section 17. In all cases where a judgment is entered against the employer and in favor of one or more claimants, and where the sum of Seven Thousand Eight Hundred (\$7,800.00) Dollars was deposited as aforesaid by the employer, the amount to which each, any and all claimants shall be so adjudged to be entitled shall be paid to such claimant or claimants out of the sum so deposited without costs and without the allowance of interest thereon. And if any part of said Seven Thousand Eight Hundred (\$7,800.00) Dollars so deposited shall remain after such payments have been made to the claimant or claimants entitled thereto, under the judgment of the Court, such amount shall be returned to the employer, less the Court costs of any claimant or claimants, in any action or actions which have been dismissed because of the deposit by the employer of such Seven Thousand Eight Hundred (\$7,800.00) Dollars, as herein previously provided for. Such court costs in such cases so previously dismissed, shall be allowed and paid to the claimant or claimants, by which the same was or were brought, in addition to the compensation to which such claimant or claimants shall be found entitled, and shall be deducted from the amount deposited in cases where the total amount of the claims allowed plus such Court costs does not exceed Seven Thousand Eight Hundred (\$7,800.00) Dollars. In other cases such claimant or claimants shall have judgment against such employer for the

Court costs that shall have accrued in such action or actions so dismissed.

Section 18. In cases where the employer has deposited a bond as herein provided and judgment is entered in favor of one or more claimants as herein provided, such judgment shall be entered in favor of the claimant or claimants found entitled thereto, and shall specify the amount to which each of such claimants, if more than one, is entitled, and shall be against the employer and each of the sureties on the bond so deposited in such a manner that each and all shall be jointly and severally liable under said judgment. In those cases where any one or more claimants had filed actions which were dismissed because of the deposit of a bond as herein provided and such claimant or claimants shall be adjudged entitled to compensation so as to entitle him, her or them to costs in connection with such action under the provisions hereof and the total amount of claims allowed plus such costs shall be less than Seven Thousand Eight Hundred (\$7,800.00) Dollars, the amount to which any claimant may be entitled to as such costs shall be added to the amount to which such claimant is entitled as compensation, and included within said judgment in his favor and against the employer and the sureties as above provided. In all other cases separate judgments shall be entered against the employer only for the amount of such costs in favor of the claimant or claimants entitled thereto because of the dismissal of an action previously brought by such claimant or claimants.

Section 19. One or more claimants may take an appeal from any judgment rendered under this Act as to such claimant or claimants, and any employer may take an appeal from any such judgment, either in whole or in part, that is to say, as to any one or more of the claimants. Such appeal shall be to the United States Circuit Court of Appeals for the Ninth Circuit, and shall be taken up on Writ of Error, sued out and

prosecuted as in other cases. When, however, an employer takes an appeal from such judgment or any part thereof against the allowance in favor of any one or more claimants, and the judgment shall be affirmed as to any such claimant, the claimant in whose favor the judgment has been so affirmed shall be entitled to interest at the rate of eight (8%) per cent on the amount of his claim calculated from the date of the judgment and shall also be entitled to costs on appeal.

Actions may be consolidated.

Section 20. Whenever two or more persons claiming to be beneficiaries of any deceased employee, whose beneficiaries are entitled to compensation under the provisions of this Act, bring separate actions to recover such compensation, such actions shall be consolidated and tried as one action upon the application of any party to either or any of such actions.

To be governed by laws applicable to recovery of money.

Section 21. Actions for the recovery of compensation due under this Act, may be brought, maintained and determined in and by the courts of this Territory, and when so brought shall be governed by the law of procedure applicable to other actions for the recovery of money except as herein otherwise expressly provided.

Actions to be brought within judicial division wherein injury occurred.

Section 22. No action for the recovery of compensation hereunder shall be brought in any court holden outside of the judicial division in which the injury occurred, out of which the right to compensation arises, except in cases where service can not be had on the employer in the judicial division where the injury occurred. No action for the recovery of compensation hereunder shall in any case be brought in any court outside of the Territory of Alaska, except in cases where it is not possible to obtain service of summons upon the defendant in said Territory, and in all such cases the plaintiff must plead and prove his inability to obtain service of summons upon the defendant within the Territory of Alaska.

Exceptions.

Writ of attachment.

Section 23. (a) A writ of attachment shall be issued by the Clerk of the Court in which such action for the

recovery of compensation under this Act is pending, or by the United States Commissioner in actions pending in the Court of such Commissioner. Whenever the plaintiff or anyone in his behalf shall make and file an affidavit showing that he or she is entitled to recover compensation from the defendant, under the provisions of this Act, such affidavit must show all the facts necessary to bring the plaintiff within the provisions of this Act, and must further set up all the facts necessary to show that a cause of action exists in favor of the plaintiff and against the defendant for the amount sued for and for which the attachment is sought under the provisions of this Act.

(b) Upon filing such affidavit in actions pending as aforesaid with the Clerk of the Court, or, the Commissioner, in actions pending in the Court of such Commissioner, the plaintiff shall be entitled to have a writ of attachment issued without filing any bond or other security; such writ shall be directed to the marshal and shall in all respects conform to writs of attachment in other cases and shall be issued, served, executed and returned in the same manner that writs of attachment in other cases are now issued, served, executed and returned.

When issued  
without bond.

(c) The defendant may, however, file a written undertaking in any pending cause for the benefit of the plaintiff in an amount equal to double the amount sued for, executed by two or more sufficient sureties, to be approved by the Judge or Commissioner in whose court the action is pending and conditioned that the defendant will pay any judgment that may be awarded against such defendant in the action. No writ of attachment shall issue after such undertaking has been filed by the defendant, and if such undertaking shall be filed after the writ has been issued, such writ shall be quashed and if property has been attached under such writ at the time of the filing of such undertaking, such

Exceptions.

attachment shall be dissolved and set aside and the property attached returned to the defendant.

Employees to submit to examination by physician.

Section 24. The employee shall, after an injury at reasonable times during the continuance of his or her disability, if so requested by his or her employer, submit himself or herself to an examination by a physician or surgeon authorized to practice medicine under the laws of the Territory or State in which such employee may be found, furnished and paid for by the employer. The employee shall have the right to have a physician, provided and paid by himself or herself, present at such examination or examinations. If any employee refuses to submit himself or herself to any such examination or examinations provided for in this Act, or in any way obstructs any such examination or examinations, his or her rights to compensation shall be suspended, and his or her compensation, during such period of suspension, may, in the discretion of the jury or Court determining an action brought for the recovery of compensation under this Act, be forfeited.

Agreement to waive rights by employee to be void.

Section 25. No agreement by an employee to waive his or her rights to compensation under this Act shall be valid, except as herein elsewhere provided, and no employer or employee shall exempt himself, herself or itself, except in the manner herein elsewhere provided, from the burden, or waive the benefits of this Act, by any contract, agreement, rule, regulation or device and any such contract, agreement, rule, regulation or device shall be absolutely void.

Action to be commenced within 2 years from date of injury.

Section 26. Any and all claims for compensation under this Act shall be barred unless an action for the recovery of the same shall be commenced within two years after the cause of action shall have accrued, or, in the event of mental incapacity, within two years after the removal of such mental incapacity.

Section 27. Where the injury for which compensation is payable under this Act, was caused under cir-

cumstances creating a legal liability in someone other than the employer to pay damages in respect thereof, the employee may take proceedings both against the one so liable to recover damages and against any one liable to pay compensation under this Act, but shall not be entitled to receive both damages and compensation. And if the employee has been paid compensation under this Act, the employer by whom the compensation was paid shall be entitled to indemnity from the person, firm or corporation so liable to pay damages as aforesaid and to the extent of such indemnity shall be subrogated to the rights of the employee to recover damages therefor.

Action for both damages and compensation may be brought.

Shall not be entitled to receive both.

Section 28 When five or more employees, as defined by this Act, are employed in the same general employment in connection with any business or industry carried on in this Territory, and in the usual and ordinary conduct of such operations, it shall be presumed that the employer, as defined by this Act, has elected to pay compensation according to the terms, conditions and provisions of this Act to such employees as may sustain personal injury arising out of and in the course of the employment, and in such case the employer shall be relieved from liability for a recovery of damages or other compensation for such personal injuries unless by the terms of this Act otherwise provided.

Employer to be presumed to have elected to pay compensation.

Section 29. If such employer, exercise the right to reject the terms, conditions, and provisions of this Act, in the manner and form by this Act provided, such employer shall not escape liability for personal injury sustained by an employee of such employer when the injury sustained arises out of and in the usual course of the employment because:

If terms hereof rejected employer shall be liable notwithstanding common law doctrines.

(1) The employee assumed the risks inherent to or incidental to or arising out of his or her employment; or the risks arising from the failure of the employer to provide and maintain a reasonably safe

place to work, or the risks arising from the failure of the employer to furnish reasonably safe tools or appliances, or because the employer exercises reasonable care in selecting reasonably competent employees in the business;

(2) That the injury was caused by the negligence of a co-employee;

(3) That the employee was negligent, unless and except it shall appear that such negligence was wilful [willful] and with intent to cause the injury; or the result of intoxication on the part of the injured party;

(4) In actions by an employee against an employer for personal injury sustained arising out of and in the course of the employment where the employer has elected to reject the provisions of this Act, it shall be presumed that the injury to the employee was the first result and growing out of the negligence of the employer; and that such negligence was the proximate cause of the injury; and in such case the burden of proof shall rest upon the employer to rebut the presumption of negligence.

Burden of proof to rebut presumption of negligence upon employer if terms hereof rejected.

How provisions hereof may be rejected.

Section 30. Every such employer shall be conclusively presumed to have elected to pay compensation to employees for injuries sustained arising out of and in the course of the employment according to the provisions of this Act unless and until notice in writing of an election to the contrary shall have been given to the employee by recording said notice with the United States Commissioner in whose precinct the employer's operations are carried on, and if such operations are carried on in more than one precinct, then such notice shall be recorded in the office of the Commissioner for each precinct in which the same are being conducted, and the notice to reject shall be recorded by the Commissioner, who shall be paid a fee of one and one-half dollars therefor, and such notice when so recorded shall be and become a public record.

Such recorded notice shall be substantially in the following form, and the signature shall be witnessed by two witnesses:

EMPLOYER'S NOTICE TO REJECT.

Employer's notice to reject.

To the employees of the undersigned:

You and each of you are hereby notified that the undersigned rejects the terms, conditions, and provisions to pay compensation to employees of the undersigned for injuries received as provided in the Act of the Legislature of the Territory of Alaska, known as "The Workmens' Compensation Act of the Territory of Alaska," and that the undersigned employer elects to pay damages for personal injuries of such employees under the common law and statutes of this Territory modified by the provisions of the Act above referred to and the other laws of the Territory of Alaska.

(signed) .....

Witnesses:

.....  
.....

Section 31. The notice so recorded shall apply to the employees subsequently employed by the employer with the same fullness and effect and to the same extent and in like manner as employees in the employ at the time the notice was recorded, except as herein provided.

Shall apply to employees subsequently hired.

Section 32. Where the employer and employee have not given notice of an election to reject the terms of this Act, this act shall constitute a part of every contract of hire, express or implied, and the same shall be construed as an agreement on the part of the employer to pay, and on the part of the employee to accept compensation in the manner as by this Act provided for all personal injuries sustained, arising out of and in the course of the employment.

When notice to reject not given this act to be part of every contract to hire, etc.

All employees to be presumed to be under provisions hereof, unless—

Section 33. All employees affected by this Act shall be conclusively presumed to have elected to take compensation in accordance with the terms, conditions and provisions of this Act until notice in writing shall have been served upon the employer, or his agent in person, and shall also have been recorded in the office of the Commissioner for the precinct in which the mining operations of the employer, in connection with which the employee is employed, are conducted, and if such operations are carried on in more than one precinct then the same shall be recorded in the precinct wherein the employer's principal place of business in the Territory is situated, and the Commissioner shall record the same and shall receive a fee of one dollar and fifty cents therefor, and the same shall be and become a public record. Such notice shall be accompanied with an affidavit thereon showing the date upon which the same was served upon the employer.

If employee rejects provisions hereof rights and remedies not to apply.

(b) In the event that such employee elects to reject the terms, conditions and provisions of this Act, the rights and remedies thereof shall not apply where an employee brings an action or takes proceedings to recover damages or compensation for injuries received growing out of and in the course of his or her employment, except as otherwise provided by this Act; and in such actions where the employee has rejected the terms of this Act, the employer shall have the right to plead and rely upon any and all defenses including those at common law, and the rules and defenses of contributory negligence, assumption of risk and fellow servant shall apply and be available to the employer unless otherwise provided in this Act; Provided, however, that if an employee sustains an injury as the result of the employer's failure to furnish, or failure to exercise reasonable care to keep or maintain, any safety device required by statute, or violates any of the statutory provisions or rules and regulations now or hereafter in force relating to safety of employees, the doctrine of assumed risk in such case

Employers to have right to plead common law defenses.

Proviso: In case of employer's neglect defense of assumption of risk not to apply.

growing out of the negligence of the employer shall not apply or be available as defensive matter to such offending party. The notice required to be given by an employee shall be substantially in the following form:

EMPLOYEE'S NOTICE TO REJECT.

To.....(Giving the name of the employer)

You are hereby notified that the undersigned elects to reject the terms, conditions and provisions of an Act for the payment of compensation as provided by an Act of the Territorial Legislature of the Territory of Alaska, known as "The Workmen's Compensation Act of the Territory of Alaska," and acts amendatory thereto, and elects to rely upon the common law, as modified by the provisions of the Act last above referred to, for the right to recover for personal injury, which I may receive, if any, growing out of and arising from the employment while in line of duty for my employer above named.

Employee's notice to reject.

Dated this ..... day of .....

(Signed) .....

United States of America, }  
Territory of Alaska. } SS.

The Undersigned being first duly sworn deposes and says: That the above and foregoing written notice was on the ..... day of ..... served on the within named employer of the undersigned by delivering to ..... (here give the name of the employer or his agent) a true, correct and verbatim copy thereof.

(Signed) .....

Subscribed and sworn to before me this .....  
day of .....

.....  
Notary Public for Alaska.

My commission expires  
.....

Notice to be renewed—when.

Section 34. Where the employer or employee has given notice in compliance with this Act electing to reject the terms thereof, such election shall be for one year from the date of becoming effective, and unless renewed within thirty days before the expiration of one year, as herein provided, it shall be conclusively presumed that such party has elected to waive the rejection made and come under the provisions of this Act to pay or accept, as the case may be, the compensation here provided, until the contrary is shown by the service of notice anew, electing to reject the provisions of this Act as herein provided.

Notice to reject may be waived. Waiver to be recorded.

Section 35. Where an employer or employee rejects the terms, conditions or provisions of this Act, such party may at any time thereafter elect to waive the same by giving notice in writing in the same manner required of the party in electing to reject the provisions of this Act, and which shall become effective, and be recorded with the Commissioner or Commissioners, in like manner that said notice to reject is required to be recorded.

When both reject employer to be liable.

Section 36. Where the employer and employee elect to reject the terms, conditions and provisions of this Act, the liability of the employer shall be the same as though the employee had not rejected the terms and conditions thereof and the employer had rejected the same.

No claim to compensation assignable.

Section 37. No claim for compensation due under this Act shall be assignable, and all compensation due hereunder shall be exempt from execution.

Section 38. Whenever the term "employer" is used in this Act, reference is had to any person or persons, partnership, joint stock company, association or corporation employing five or more employees in connection with any business or industry coming within the scope of this act and carried on in this Territory, and whenever the term "employee" is used in this Act, reference is had to an employee employed by an employer as above defined.

Definition of terms.

Section 39. The term "beneficiary" as used in this Act refers to any person entitled to compensation under the provisions hereof.

Section 40. The masculine gender whenever used herein shall be held to include the feminine and neuter.

Section 41. If the court, before whom any proceedings are brought under this Act, determines that such proceedings have been brought, prosecuted, or defended without reasonable ground, it may assess the whole cost of the proceedings upon the party who has so brought, prosecuted, or defended them.

Entire costs may be assessed upon party prosecuting or defending suit without reasonable grounds.

Section 42. This Act may be cited as "The Workmen's Compensation Act of Alaska."

Act, how cited.

Section 43. All acts and parts of acts in conflict herewith are hereby repealed to the extent of such conflict; but this repeal shall not affect any right or claim which arose under any other act prior to the time when this act shall go into effect.

Repeal.

Approved May 4, 1923.