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NEW LAW

**WORKMEN'S
COMPENSATION ACT
OF COLORADO**

and

**COLORADO
OCCUPATIONAL DISEASE
DISABILITY ACT**



Issued 1949 by the

Industrial Commission of Colorado

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**Workmen's Compensation Act
of Colorado
and
Colorado
Occupational Disease
Disability Act**

Showing All Amendments to Date

Sections 76 and 93 were amended in 1945, becoming effective April 9, 1945, and April 24, 1945, respectively.

Section 141 was amended effective April 4, 1947, and Sections 9, 54, 63, 64, 65, 71, 72, 78 and 82 were amended effective April 22, 1947.

Sections 51, 54, 59, 63 (b), 70, 71, 72, 78, 82 and 93 were amended, effective April 30, 1949.

An asterisk following a section number indicates that such section does not apply to the provisions of the Colorado Occupational Disease Disability Act.

Issued 1949 by the

Industrial Commission of Colorado

Office:

Seventh Floor, State Capitol Annex
Denver 2, Colorado

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COLORADO**

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WORKMEN'S COMPENSATION ACT OF COLORADO

AN ACT TO DETERMINE, DEFINE AND PRESCRIBE THE RELATIONS BETWEEN EMPLOYER AND EMPLOYEE AND PROVIDING FOR COMPENSATION AND BENEFITS TO EMPLOYEES AND THEIR DEPENDENTS FOR ACCIDENTAL INJURY TO OR DEATH OF EMPLOYEES FOR INSURANCE OF SUCH COMPENSATION AND BENEFITS; CREATING A STATE COMPENSATION INSURANCE FUND TO PROVIDE SUCH INSURANCE, AND PROVIDING FOR ITS ADMINISTRATION BY THE INDUSTRIAL COMMISSION OF COLORADO; PROVIDING FOR THE EXERCISE OF THE POWERS AND DUTIES AND PROVISIONS OF THIS ACT BY THE INDUSTRIAL COMMISSION OF COLORADO; PRESCRIBING ITS POWERS AND DUTIES AND METHOD OF PROCEDURE; PROVIDING FOR REVIEW OF ITS PROCEEDINGS; PROVIDING PENALTIES FOR VIOLATION OF THIS ACT; REPEALING ALL ACTS AND PARTS OF ACTS IN CONFLICT WITH THIS ACT; CONTINUING THE JURISDICTION OF THE INDUSTRIAL COMMISSION OF COLORADO IN CASES ARISING UNDER PRIOR ACTS; VALIDATING ITS METHOD OF PROCEDURE UNDER FORMER ACTS; AND DECLARING THIS ACT TO BE NECESSARY FOR THE IMMEDIATE PRESERVATION OF PUBLIC PEACE, HEALTH AND SAFETY.

(Numbers appearing in brackets after the section numbers refer to paragraph numbers, Chapter 97, Colorado Statutes Annotated, 1935.)

Section 1. [280]* This Act shall be known and may be cited as, "Workmen's Compensation Act of Colorado."

Section 2. [281]* The Industrial Commission of Colorado created by the Act of the General Assembly of Colorado, shall enforce and administer the provisions of this Act. The said Commission, in the administration of this Act, shall be governed by its provisions if there be conflict between the same and the provisions of the Act creating said Commission.

DEFINITIONS

Section 3. [282]* The term "Commission" when used in this Act shall mean the Industrial Commission of Colorado.

Section 4. [283] Unless the context otherwise requires, a word used in this Act in the singular number shall also include the plural; and the masculine gender shall include feminine and neuter.

Section 5. [284] The term "order" shall mean and include any decision, finding and award, classification, rate, rule, regulation, direction, requirement or standard of the Commission, or any other determination arrived at or decision made by such Commission.

Section 6. [285] The term "place of employment" shall mean and include every place whether indoors or outdoors or underground, and the premises, work places, works and plants appertaining thereto or used in connection therewith, where either temporarily or permanently any industry, trade or business is carried on, or where any process or operation directly or indirectly relating to any industry, trade or business is carried on, or where any person is directly or indirectly employed by another for direct or indirect gain or profit, except as otherwise expressly provided in this Act.

Section 7. [286] The term "employment" shall mean and include any trade, occupation, job or position, or process of manufacture or any method of carrying on any such trade, occupation, job or position or process of manufacture in which any person may be engaged, except as otherwise expressly provided in this Act.

Section 8. [287] The term "employer" shall mean and include:

(a) The State, and each county, city, town, irrigation, drainage and school district therein, and all public institutions and administrative boards thereof without regard to the number of persons in the service of any such public employer; and provided that all such public employers shall be at all times subject to the compensation provisions of this Act.

(b) Every person, association of persons, firm and private corporation (including any public service corporation), personal representative, assignee, trustee or receiver, who has four or more persons engaged in the same business or employment (except as otherwise expressly provided in this Act), in service under any contract of hire, express or implied, and who, at or prior to the time of the accident to the employe for which compensation is claimed under this Act, has elected to become subject to the provisions of this Act, and who shall not, prior to such accident, have effected a withdrawal of such election in the manner provided in this Act.

(c) This Act is not intended to apply to employers of private domestic servants or farm and ranch labor, nor to employers who employ less than four employes in the same business, or in or about the same place of employment; provided, that any such employer may elect to accept the provisions of this Act in the manner herein provided.

Section 9. [288] The term "employee" shall mean and include:

(a) Every person in the service of the State, or of any county, city, town, irrigation, drainage, or school district therein, or any public institution or administrative board thereof, under any appointment or contract to hire, express or implied, except an elective official of the State, or any county, city, town, irrigation, drainage, or school district therein or of any public institution or administrative board thereof, but for the purpose of this Act sheriffs shall be deemed employes, except all officers and enlisted men of the National Guard of the State of Colorado, and all members of the volunteer fire departments of any city or town. Policemen and firemen who are regularly employed shall be deemed employes, within the meaning of this paragraph; as shall also sheriffs, deputy sheriffs, regularly employed, and any or all person or persons called to serve upon any posse in pursuance of the provisions of Section 8759 of Compiled Laws of Colorado, 1921, during the period of his or their service upon such posse, and any and all members of volunteer fire departments in any city, town, municipality or legally organized fire protection district in the State of Colorado, while said person or persons are actually performing duties as volunteer firemen. The rate of compensation of such person or persons accidentally injured while serving upon such posse or as volunteer firemen shall be at the maximum rate provided by Chapter 97 of the 1935 Colorado Statutes Annotated, as amended.

(b) Every person in the service of any person, association of persons, firm, private corporation, including any public service corporation, personal representative, assignee, trustee or receiver, under any contract of hire, express or implied, including aliens and also including minors, whether lawfully or unlawfully employed (who for the purpose of this Act shall be considered the same, and shall have the same power of contracting with respect to their employment, as adult employes), but not including any persons who are expressly excluded from this Act or whose employment is but casual and not in the usual course of trade, business, profession or occupation of his employer.

Section 10. [289] The provisions of this Act shall not apply to common carriers by railroad, but shall apply to all other employers as defined in this Act engaged in intrastate or interstate commerce, or both, except those employers for whom a rule of liability has been, or may be, established by the laws of the United States.

LOANING SERVICES

Section 11. [290] Where an employer, who has accepted the provisions of this Act and has complied therewith, shall loan the service of any of his employes who have accepted the provisions of this Act, to any third person, he shall be liable for any compensation thereafter for any injuries or death of said employe as in this Act provided, unless it shall appear from the evidence in said case that said loaning constitutes a new contract of hire express or implied between the employe whose services were loaned and the person to whom he was loaned.

ABROGATION OF DEFENSES

Section 12. [291] In an action to recover damages for a personal injury sustained by an employe on and after the first day of August 1915, while engaged in the line of his duty as such, or for death resulting from personal injuries so sustained in which recovery is sought upon the ground of want of ordinary care of the employer, or of the officer, agent or servant of the employer, it shall not be a defense:

(a) That the employe, either expressly or impliedly, assumed the risk of the hazard complained of as due to the employer's negligence.

(b) That the injury or death was caused, in whole or in part, by the want of ordinary care of a fellow servant.

(c) That the injury or death was caused, in whole or in part, by the want of ordinary care of the injured employe where such want of care was not wilful.

Section 13. [292] Any employer who has elected to and has complied with the provisions of this Act, including the provisions relating to insurance, shall not be subject to the provisions of Section 12 of this Act; nor shall such employer be subject to any other liability whatsoever for the death of or personal injury to any employe except as in this Act provided; and all causes of action, actions at law, suits in equity, and proceedings whatever, and all statutory and common law rights and remedies for and on account of such death of, or personal injury to any such employe and accruing to any and all persons whomsoever are hereby abolished except as in this Act provided.

Section 14. [293] If an employer has elected to and has complied with the provisions of this Act, including the provisions thereof relating to insurance, and an action is brought against such employer to recover damages for personal injuries or death sustained by an employe who has elected not to come under this Act, then such employer shall have all the defenses to such an action which he would have had if this Act and that certain other Act entitled, "An Act Concerning Assumption of Risk," being

Chapter 43, page 115, of the Session Laws of 1913, and an Act entitled, "To give a Right of Action against an Employer for Injuries or Death resulting to his Agents, Employes, or Servants, etc.," same being Chapter 113, page 294 of the Session Laws of 1911, and also an Act entitled, "To Relieve Employes and Workmen from Assuming the Risk of Injury or Death, etc.," same being Chapter 72, page 197, Session Laws of 1915, had not been enacted.

WHEN RIGHT TO COMPENSATION EXCLUSIVE

Section 15. [294]* The right to the compensation provided for in this Act, in lieu of any other liability whatsoever, to any and all persons whomsoever, for any personal injury accidentally sustained or death resulting therefrom, on and after August 1st, 1915, shall obtain in all cases where the following conditions occur:

(a) Where, at the time of the accident, both employer and employe are subject to the provisions of this Act; and where the employer has complied with the provisions thereof regarding insurance.

(b) Where, at the time of the accident, the employe is performing service arising out of and in the course of his employment.

(c) Where the injury or death is proximately caused by accident arising out of and in the course of his employment, and is not intentionally self-inflicted.

ELECTION AND ACCEPTANCE AND REJECTION

Section 16. [295] Every employer of four or more employes (not including private domestic servants and farm and ranch laborers), engaged in a common employment, shall be conclusively presumed to have accepted the provisions of this Act, unless, prior to the date such employer becomes the employer of four or more persons, he shall have filed with the Commission a notice in writing to the effect that he elects not to accept the provisions of this Act or unless said employer has rejected the provisions of the Workmen's Compensation Act of Colorado in conformity with the provisions of said Act as heretofore existing.

Section 17. [296] Election on the part of any employer to be subject to this Act, including the employer of private domestic servants, farm and ranch laborers or of three or less employes, may be made by filing with the Commission a written statement to the effect that he accepts the provisions of this Act.

Any employer subject to the provisions of this Act may withdraw from its provisions and reject the same upon the first day of any month, provided, said employer gives written notice to the Commission of his intention to withdraw from and reject

such Act, not less than thirty days prior to the first day of the month in which he desires such withdrawal and rejection to become effective; and, provided, further, that such withdrawing employer shall post in conspicuous places in his several places of employment written or printed notice to the effect that on and after the first day of the month in which such withdrawal and rejection shall become effective, said employer will not be subject to the provisions of the Workmen's Compensation Law, which notices shall be posted at least thirty days prior to the date of such withdrawal and rejection and shall be kept continuously posted thereafter in sufficient places frequented by his employes to reasonably notify such employes of such rejection.

Any employer having withdrawn from the provisions of, or rejected this Act, as in this Section provided, may thereafter at any time elect to become subject to said Act and shall become subject thereto by filing the notice herein provided for, or upon the insuring of his liability under and in accordance with the provisions of this Act.

Section 18. [297] Every employe shall be conclusively presumed to have accepted the provisions of this Act, if his employer is subject to the provisions of this Act and has complied with the requirements thereof, including insurance, and, unless said employe has at the time of or prior to entering into his contract of hire, express or implied, with such employer, given notice in writing to his employer and to the Commission, electing not to become subject to the provisions of this Act.

Section 19. [298]* Such election and compliance with the provisions of this Act, including the provisions for insurance, shall be, and be construed to be, a surrender by the employer and the employe of their rights to any other method, form or amount of compensation or determination thereof, or to any cause of action, action at law, suit in equity or statutory or common law right or remedy or proceeding whatever for or on account of such personal injuries or death of such employe than as provided in this Act, and shall be an acceptance of all of the provisions of this Act, and shall bind the employe himself, and for compensation for his death, shall bind his personal representatives, his widow and next of kin, as well as the employer, and those conducting his business during bankruptcy or insolvency.

Section 20. [299] Every employer, not electing to accept or rejecting the provisions of this Act, shall cause printed notices thereof to be kept posted in and about his place of employment in a conspicuous manner and in sufficient places frequented by his employes, as to reasonably notify such employes that he is not subject to the provisions of this Act, and shall likewise cause similar notices to be given of the filing of any change of such election on his part.

INSURANCE

Section 21. [300] Any employer electing to become subject to the provisions of this Act shall secure compensation for his employes in one of the following ways, which shall be deemed to be compliance with the insurance requirements of this Act:

(a) By insuring and keeping insured the payment of such compensation in the State Compensation Insurance Fund, or,

(b) By insuring and keeping insured the payment of such compensation with any stock or mutual corporation authorized to transact the business of Workmen's Compensation Insurance in this State. If insurance be so effected in such stock or mutual corporation, the employer or insurer shall forthwith file with the Commission, in form prescribed by it, a notice specifying the name of the insured and the insurer, the business and place of business of the insured and the effective and termination dates of the policy, also, when requested, a copy of the contract or policy of insurance.

(c) By procuring a self-insurance permit from the Commission as hereinafter provided.

Provided, however, that the State itself, and each county, city, town, irrigation, drainage and school district therein and each public institution and each administrative board thereof shall, at all times, insure and keep insured the payment of such compensation in the State Compensation Insurance Fund.

Section 22. [301] Every contract for the insurance of compensation and benefits as herein provided, or against liability therefor, shall be deemed to be made subject to all the provisions of this Act and all provisions in such contract for insurance inconsistent with the provisions of this Act, shall be void. Any contract of insurance issued hereunder by any insurance carrier, including stock and mutual corporations and the State Compensation Insurance Fund, may include and cover any liability of the employer on account of personal injuries sustained by, or death resulting therefrom to any employe as such. No insurance carrier shall write any policy of insurance covering the liability under this Act of any employer doing business within the State of Colorado except on a form that has been previously filed with and approved by the Industrial Commission of Colorado, nor shall there be attached to said policy or contract of insurance any endorsement, rider, letter or other document affecting such contract, unless the same has been filed with and the form thereof approved by said Commission, which form shall be similar to that used by the Commission. The Industrial Commission shall from time to time approve and prescribe a standard or universal form, as nearly as possible, for every contract or policy of insurance, endorsement, rider, letter, or other document affecting such contract, for use in insuring the compensation herein provided for.

Section 23. [302] Every insurance carrier authorized to transact business in this State, which insures employers against liability for compensation, under the provisions of this Act, shall file with the Commission its classification of risks, and premiums relating thereto, and any subsequent proposed classification of risks and premiums together with all rates and any system or systems of rating, none of which shall take effect until approved by the Industrial Commission, and said Commission shall have the power to disapprove same as inadequate. The Commission may, at any time, withdraw its approval of any rate or system of rating.

Section 24. [303] Every insurance carrier writing compensation insurance shall write said insurance at the rate or rates approved as adequate by the Industrial Commission, and the cutting of rates or rebating, or any other method whereby directly or indirectly any employer is given the benefit of, or obtains a rate lower than that approved by the Industrial Commission is hereby prohibited. Any insurance carrier or any employer or any officer, agent or employe of either, violating any of the provisions of this Section shall be deemed guilty of a misdemeanor and may be punished by a fine of not more than \$500.00 or imprisonment for a period not longer than thirty days, or both such fine and imprisonment.

Section 25. [304] Every contract insuring against liability for compensation or insurance policy evidencing the same, must contain a clause to the effect that the insurance carrier shall be directly and primarily liable to the employe, and in the event of his death, to his dependents, to pay compensation, if any, for which the employer is liable, thereby discharging to the extent of such payment the obligations of the employer to the employe; that, as between the employe and the insurance carrier, the notice to or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be, on the part of the insurance carrier; that jurisdiction of the employer shall, for the purpose of this Act, be jurisdiction of the insurance carrier, and that the insurance carrier shall in all things be bound by and subject to the order, findings, decisions or awards rendered against the employer under the provisions of this Act.

Such policy must also provide that the employe shall have a first lien upon any amount which shall become owing to the employer from the insurance carrier, and the said insurance carrier may and shall pay the same directly to the said employe or his dependents, thereby discharging to the extent of such payment the obligation of the employer to the employe, and such policy shall not contain any provisions relieving the insurance carrier from payment when the employer becomes legally in-

capable, insolvent, or is discharged in bankruptcy, or otherwise, during the period that the policy is in operation or the compensation remains owing.

Section 26. [305] If any insurance carrier, intentionally, knowingly or wilfully violates any of the provisions of this Act, the Insurance Commissioner, on the request of the Industrial Commission, shall suspend or revoke the license or authority of such carrier to do a compensation business in this State.

Section 27. [306] In any case where the employer is subject to the provisions of this Act by election or by non-rejection, and at the time of an injury has not complied with the insurance provisions of this Act, or has allowed his insurance to terminate, or has not effected a renewal thereof, the employe, if injured, or, if killed, his dependents, if such employe has not rejected this Act as herein provided, may claim the compensation and benefits provided in this Act, and in any such case the amounts of compensation or benefits provided in this Act shall be increased fifty per cent.

In all cases where compensation is awarded under the terms of this Section, the Commission or referee shall compute and require the employer to pay to a trustee designated by said Commission or referee an amount equal to the present value of all unpaid compensation or benefits in any case, computed at the rate of four per cent per annum, or in lieu thereof such employer shall within ten days after the date of such order file a bond with said Commission or referee, signed by two or more responsible sureties to be approved by the Commission or by some surety company authorized to do business within the State of Colorado. Said bond shall be in form and amount as prescribed and fixed by the Commission and shall guarantee the payment of the compensation or benefits as awarded. Provided a certified copy of any award of the Commission or order of the referee ordering the payment of compensation, entered in such case, may be filed with the Clerk of the District Court of any County in this State, at any time after the order of the referee awarding compensation, and the same shall be recorded by him in the judgment book of said Court and entry thereof made in the Judgment Docket, and shall thenceforth have all the effect of a judgment of the District Court, and execution may issue thereon out of said Court as in other cases. Provided, however, that upon the reversal, setting aside, modification or vacation of said order or award, or upon payment to the trustee, or furnishing of bond in accordance with the terms of this Section, then upon certificate thereof by the Commission, the said record in the judgment book, and the entry in the Judgment Docket shall be vacated, and any execution thereon shall be recalled.

Section 28. [307] Any insurance carrier operating under the terms and provisions of the Workmen's Compensation Act shall have the right to apply to the Industrial Commission for

permission to examine any of the books, payrolls or other documents of any employer insured by such carrier, or of any contractor, sub-contractor, lessee, sub-lessee, person or persons covered by the employer's compensation insurance to determine the amount of wage expenditure of such employer, or of any contractor, sub-contractor, lessee, sub-lessee, person or persons during any period that such employer, or contractor, sub-contractor, lessee, sub-lessee, person or persons was insured by such insurance carrier and the Commission may grant such carrier authority in writing to make such investigation, or may appoint any of its agents, to conduct such investigation.

SELF-INSURANCE

Section 29. [308] The Commission in its discretion may grant to any employer who has accepted the provisions of this Act, permission to be its own insurance carrier for the payment of the compensation and benefits herein provided. Such permission may be granted by the Commission after the filing by such employer of such statement or statements and the giving of such information as may be required by the Commission. The Commission shall have the sole power to prescribe the rules, regulations, orders, terms and conditions upon which said permit shall be granted or continued. Such permission for self-insurance may be revoked at any time by the Commission and such employer shall upon notice of revocation immediately insure otherwise his liability.

NOTICES AND REPORTS

Section 30. [309]* Every employer shall keep a record of all injuries, fatal or otherwise, received by his employes in the course of their employment. Within ten days after the occurrence of an accident resulting in personal injury, a report thereof shall be made, in writing by the employer to the Commission, upon forms prescribed by the Commission for that purpose. Such report shall contain such information as shall be required by the Commission.

Section 31. [310]* Every employe who sustains an injury shall notify his employer of said injury within two days of its occurrence, unless said employe shall be physically or mentally unable to do so, or unless his employer or his foreman, superintendent, manager or other person in charge shall have actual notice of said injury. If said employe shall fail to report said injury he shall lose one day's compensation for each day's failure to so report; provided, however, that if anyone shall report the said accident for said injured employe within the time above specified, to his employer, then the injured employe shall be relieved from reporting the accident as provided above.

Section 32. [311] Every employer shall furnish the Commission, upon request, all information required by it, to accom-

plish the purposes of this Act, which information shall be for the confidential use of said Commission unless otherwise ordered by it, and shall not be open to the public nor used in any court, or any action or proceedings pending therein, unless the Commission is a party to such action or proceeding.

Section 33. [312] Every employer receiving from the Commission any blanks with directions to fill out the same or requests for information required for the purposes of this Act shall properly fill out said blanks and furnish said information so requested fully and correctly. The Commission may require that any information requested by it be verified under oath and may fix the time within which said information shall be returned to it.

GENERAL POWERS

Section 34. [313] The Commission, or any of its agents, may enter into any place of employment for the purpose of collecting facts and statistics, examining the provisions made for the health, protection and safety of the employes and bringing to the attention of every employer any rule, order or requirement of the Commission, or any law, or any failure on the part of any employer to comply therewith.

Section 35. [314] All books, records and payrolls of employers, or of any contractor, sub-contractor, lessee, sub-lessee, person or persons, showing or reflecting in any way upon the amount of wage expenditure of such employers, contractors, sub-contractor, lessee, sub-lessee, person or persons, and all other facts, data and statistics appertaining to the purposes of this Act, shall always be open for inspection by the Commission, or any of its agents, for the purpose of ascertaining the correctness of the reported wage expenditure, number of men employed and such other information as may be necessary for the uses and purposes of the Commission in its administration of this Act.

Section 36. [315] In case any person fails or refuses to comply with any order of the Commission or obey any subpoena issued by it or its agents or to furnish the statistics, data, and information required to be furnished to the Commission by the provisions of this Act or refuse to permit an inspection as provided in this Act, or being in attendance refuses to be sworn or examined or answer a question or produce a book or paper when ordered so to do by the Commission or any of its deputies, agents, or referees, the Commission may apply to the District Court upon proof by affidavit of the facts for an order returnable in not less than three days nor more than five days directing such person to show cause before the District Court which made the order, why he should not be committed to jail. Upon the return of such order the District Court shall examine under oath such person and give him an opportunity to be heard and if the Court deter-

mines that he has refused without legal excuse in any one of the foregoing matters, it may forthwith by warrant commit the offender to jail, there to remain until he submits to do the act which he was required to do or until he is discharged according to law.

Section 37. [316] All expenses incurred by the Commission pursuant to the provisions of this Act shall be paid from funds appropriated for the use of the Commission upon claims therefor, itemized and sworn to, made by the person who incurred the same, which shall be allowed by the Commission subject to the approval of the State Auditing Board, provided that the traveling expenses of any member or members of the Commission or of any employe or employes thereof incurred while on business of the Commission outside the State of Colorado, shall be paid in the manner aforesaid, but only when such expenses are in advance authorized to be incurred by the Commission and by the State Auditing Board.

Section 38. [317] All orders of the Commission shall be valid and in force, and prima facie reasonable and lawful until they are found otherwise in an action brought for that purpose, pursuant to the provisions of this Act, or until altered or revoked by the Commission.

Section 39. [318] A substantial compliance with the requirements of this Act shall be sufficient to give effect to the orders or awards of the Commission and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto.

Section 40. [319] For the purpose of making any investigation or conducting any hearing with regard to any matter or matters contemplated by the provisions of this Act, the Commission shall have power to appoint, by an order in writing, any competent person as an agent or referee whose duties shall be prescribed in such order.

(a) In the discharge of his duties such agent or referee shall have every power whatsoever for obtaining information granted in this Act to the Commission and all powers granted by law to officers authorized to take depositions are hereby granted to such agent.

(b) The Commission may conduct any number of such investigations contemporaneously through different agents or referees and may delegate to such agents the subpoenaing and swearing of witnesses, and the taking of all testimony bearing upon any investigation or hearing. The decision of the Commission shall be based upon its examination of all testimony and records. The recommendations made by such agents or referees shall not preclude any further investigation, or the taking of further testimony, if the Commission so order.

Section 41. [320] The Commission shall have power to adopt reasonable and proper rules and regulations relative to the exercise of its powers and authorities and proper rules to govern its proceedings and to regulate the mode, and manner of investigations and hearings, and to alter and amend said rules from time to time in its discretion; such rules and regulations, amendments and alterations shall be effective ten days after same are adopted and posted. A copy of such rules and regulations shall be delivered to every person making application therefor, and to every insurance carrier doing business in this State by mailing a copy thereof to such insurance carrier at the address within this State as furnished the Commission by such insurance carrier.

Section 42. [321] The Commission may employ and maintain in the department a compensation actuary who shall be experienced and skilled and fully competent to perform the duties of the position and who shall assist in or take charge of the practical operation of the State Compensation Insurance Fund under the general direction of the Commission. The Actuary shall receive such salary as may be agreed upon by the Commission.

Section 43. [322] The Commission shall have power to employ during their pleasure such deputies, experts, statisticians, accountants, actuaries, inspectors, clerks and other employes as they may deem necessary to carry out the provisions of this Act or to perform the duties and exercise the powers conferred by law upon the Commission. Such deputies, statisticians, accountants, inspectors, clerks and all other employes, except experts and actuaries in the employ of the Commission, shall have been for two years prior to such employment or appointment, bona fide residents of the State of Colorado, and each and all of them, except only the experts, shall, while in the employ of the Commission, devote their entire time to the service of the Commission.

Section 44. [323] All deputies, statisticians, accountants, actuaries, clerks, experts and all other employes of the Commission, except those employed in the State Compensation Insurance Fund, shall receive such compensation as may be fixed by law, and their salaries so fixed, as aforesaid, shall be paid monthly from the fund appropriated for the use of the Commission, after being approved by the Commission. Salaries of the employes of the State Compensation Insurance Fund, and other operating expenses of said Fund, shall be paid monthly out of the earnings of said Fund; provided, however, that in no case shall the total operating expense of the State Compensation Insurance Fund, including the salaries of the employes of said Fund, exceed ten per cent (10%) of the premiums written by said State Compensation Insurance Fund during the preceding years. The salaries to be paid to the employes of the State Compensation Insurance Fund and the number of employes to be employed in said Fund shall be fixed and determined by the Commission, with the

approval of the Governor in writing, as provided in Section five and six of the Administrative Code of 1941, but in no case shall the salaries exceed the following amounts: Manager, Thirty-five Hundred Dollars (\$3500.00) per annum; Actuary, thirty-five Hundred Dollars (\$3500.00) per annum; Assistant Actuaries, Three Thousand Dollars (\$3000.00) per annum; Statisticians, Eighteen Hundred Dollars (\$1800.00) per annum; Director of Claims, Thirty-four Hundred Dollars (\$3400.00) per annum; Assistants to Director of Claims, Three Thousand Dollars (\$3000.00) per annum; Assistant Manager, Three Thousand Dollars (\$3000.00) per annum; Underwriters, Twenty-four Hundred Dollars (\$2400.00) per annum; Assistant Underwriters, Eighteen Hundred Dollars (\$1800.00) per annum; Safety Engineers, Three Thousand Dollars (\$3000.00) per annum; Safety Supervisors, Twenty-five Hundred Dollars (\$2500.00) per annum; Payroll Auditors and Classification Inspectors, Twenty-four Hundred Dollars (\$2400.00) per annum; Claim Examiners, Twenty-four Hundred Dollars (\$2400.00) per annum; Assistant Claim Examiners, Eighteen Hundred Dollars (\$1800.00) per annum; Bookkeepers, Eighteen Hundred Dollars (\$1800.00) per annum; Statistical Clerks, Fifteen Hundred Dollars (\$1500.00) per annum; Claim Secretaries, Eighteen Hundred Dollars (\$1800.00) per annum; Stenographers, Fifteen Hundred Dollars (\$1500.00) per annum; Filing Clerks, Fifteen Hundred Dollars (\$1500.00) per annum. No person shall be employed at a consecutive salary of more than One Hundred and Twenty-five Dollars per month, except under one of the above classifications.

Section 45. [324] It shall be the duty of all officers and employes of the State, counties and municipalities, upon the request of the Commission to enforce in their respective departments all lawful orders of the Commission in so far as the same may be applicable and consistent with the general duties of such officers and employes, and it shall also be their duty to make to the Commission such reports as it may require concerning matters within their knowledge appertaining to the purposes of this Act, and to furnish to it such facts, data, statistics and information as may from time to time come to them appertaining to the purposes of this Act and the duties of the Commission thereunder, and particularly all information coming to their knowledge respecting the condition of all places of employment subject to the provisions of this Act, as regards the health, protection and safety of employes, and the hazard of risk of such places of employment.

Section 46. [325] Such employes of the Commission as shall be directed by the Commission shall furnish surety company bonds in such sum as may be fixed by the Commission, the premiums therefor to be paid as other expenses of the Commission are paid.

EARNINGS

Section 47. [326] The average weekly wage of an injured employe shall be taken as the basis upon which to compute compensation payments and shall be determined as follows:

(a) Whenever the term "wages" is used, it shall be construed to mean the money rate at which the services rendered are recompensed under the contract of hire in force at the time of the accident, either express or implied, and shall not include gratuities received from employers or others, nor shall it include the amounts deducted by the employer under the contract of hire for materials, supplies, tools and other things furnished and paid for by the employer and necessary for the performance of such contract by the employe, but the term "wages" shall include the reasonable value of board, rent, housing, lodging or any other similar advantages received from the employer, the reasonable value of which shall be fixed and determined from the facts by the Commission in each particular case.

(b) Average weekly wages for the purpose of computing benefits provided in this Act shall, except as hereinafter provided, be calculated upon the monthly, weekly, daily, hourly, or other remuneration which the injured or killed employe was receiving at the time of the injury, and in the following manner, to-wit:

1. Where the employe is being paid by the month for his services under a contract of hire, the weekly wage shall be determined by multiplying the monthly wage or salary at the time of the accident, by twelve (12) and dividing by fifty-two (52).

2. Where the employe is being paid by the week for his services under a contract of hire, said weekly remuneration at the time of the accident shall be deemed to be the weekly wage for the purposes of this Act.

3. Where the employe is rendering service on a per diem basis, the weekly wage shall be determined by multiplying the daily wage by the number of days and fractions of days in the week during which the employe under a contract of hire was working at the time of the accident, or would have worked if the accident had not intervened; provided, however, that in no case shall the daily wage be multiplied by less than five (5) for the purpose of determining the weekly wage.

4. Where the employe is being paid by the hour, the weekly wage shall be determined by multiplying the hourly rate by the number of hours in a day during which the employe was working at the time of the accident, or would have worked if the accident had not intervened, to determine the daily wage; then the weekly wage shall be determined from said daily wage in the manner set forth in sub-paragraph 3 hereof; provided, that in no case shall the hourly rate be multiplied by less than eight (8).

5. Where the employe is paid on a piece-work, tonnage, commission, or any other basis except upon a monthly, weekly, daily, or hourly wage, and where the employment is but casual and in the usual course of the trade, business, profession, or occupation of his employer, the total amount earned by the injured or killed employe, in the twelve (12) months preceding the accident shall be computed, which sum shall be divided by the number of days the injured person was employed during the twelve (12) months immediately preceding the accident, and the result thus ascertained shall be considered the average daily wage of said employe; then the weekly wage shall be determined from said daily wage in the manner set forth in sub-paragraph 3 hereof.

(c) Provided further, however, that in any case where the foregoing methods of computing the average weekly wage of the employe by reason of the nature of the employment or the fact that the injured employe has not worked a sufficient length of time to enable his earnings to be fairly computed thereunder, or has been ill or in business for himself, or where for any other reason said methods will not fairly compute the average weekly wage, the Commission may in each particular case compute the average weekly wage of said employe in such other manner and by such other method as will in the opinion of the Commission, based upon the facts presented, fairly determine such employe's average weekly wage.

(d) Where an employe is a minor and the disability is temporary the average weekly wage of such minor shall be determined by the Commission as in cases of disability of adults. Where the disability of such minor is permanent or if benefits under this Act shall accrue because of the death of such minor, compensation to said minor or death benefits to his dependents shall be paid at the maximum rate of compensation payable under this Act at the time of the determination of such permanency or of such death.

(e) If any sub-section or sub-division of this Section or the application thereof to any person or circumstances is held invalid, the remainder of the Section, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

(Initiated Measure, Effective Dec. 10, 1936, supersedes § 326, Ch. 97, C. S. A., 1935.)

Section 48. [327] The fact that an employe has suffered a previous disability or received compensation therefor, shall not preclude compensation for a later injury or for death, but in determining compensation for the later injury or death his average weekly earnings shall be such sum as will reasonably represent his average weekly earning capacity at the time of the latter injury and shall be arrived at according to and subject to the limitations in the foregoing sections.

CONTRACTORS AND LESSEES

Section 49. [328] Any person, company or corporation operating or engaged in or conducting any business by leasing, or contracting out any part or all of the work thereof to any lessee, sub-lessee, contractor or sub-contractor, shall irrespective of the number of employes engaged in such work, be construed to be and be an employer as defined in this Act and shall be liable as provided in this Act to pay compensation for injury or death resulting therefrom to said lessees, sub-lessees, contractors and sub-contractors and their employes, and such employer as in this section defined shall, before commencing said work, insure and shall keep insured his liability as herein provided and such lessee, sub-lessee, contractor or sub-contractor, as well as any employe of such lessee, sub-lessee, contractor, or sub-contractor, shall each and all of them be deemed employes as defined in this Act. Such employer shall be entitled to recover the cost of such insurance from said lessee, sub-lessee, contractor, or sub-contractor, and may withhold and deduct the same from the contract price or any royalties or other money due, owing or to become due, said lessee, sub-lessee, contractor, or sub-contractor; provided, however, that if said lessee, or sub-lessee, contractor, or sub-contractor doing any work as in this Section provided shall himself be an employer as defined in this Act in the doing of such work and shall before commencing said work insure and shall keep insured his liability for compensation as herein provided then and in that case such person, company or corporation operating, engaged in, or conducting said business shall not be subject to the provisions of this Section.

Section 50. [329] Every person, company or corporation that owns any real property or improvements thereon and that contracts out any work done on and to said property to any contractor, sub-contractor, person or persons, who shall hire or use four or more employes or workmen (including himself if working thereon) in the doing of such work, shall be deemed to be an employer under the terms of this Act and every such contractor and sub-contractor, person or persons, as well as his or their employes, shall each and all of them be deemed to be employes as defined in this Act and such employer shall be liable as provided in this Act to pay compensation for injury or death resulting therefrom to said contractor, and sub-contractor and their employes and shall before commencing said work insure and shall keep insured his liability as herein provided. Such employer shall be entitled to recover the cost of such insurance from said contractor, sub-contractor, person or persons, and may withhold and deduct the same from the contract price or any royalties or other money due, owing or to become due said contractor, or sub-contractor, person or persons; provided, however, that if said contractor, sub-contractor, person or persons doing or undertaking

to do any work for an owner of property as above provided shall himself be an employer as defined in this Act and shall before commencing said work insure and shall keep insured his liability for compensation as herein provided, then and in that case said owner of said property shall not be subject to the provisions of this Section.

MEDICAL, SURGICAL AND HOSPITAL

Section 51. [330]* Every employer, regardless of his method of insurance, shall furnish such medical, surgical, nursing and hospital treatment, medical, hospital and surgical supplies, crutches and apparatus, as may reasonably be needed at the time of the injury and thereafter during the disability, but not exceeding six months from the date of the accident and One Thousand (\$1,000.00) in value to cure and relieve from the effects of the injury; provided, however, in all cases where the accident results in the loss of a member, or part of the employee's body, or loss of vision, or hearing, the employer shall furnish in addition to the medical benefits hereinabove provided for, such artificial member, glasses, hearing aid, brace, and other prosthetic device as may be reasonably required to replace or improve the function of each member or part of the body so affected, or to improve the employee's vision or hearing, but the employer's obligation in this regard shall be discharged by the purchase of one each of such artificial members, glasses, hearing aids, braces and other prosthetic devices, as are required by the foregoing provision; provided further, however, that every employer subject to the terms and provisions of this Act, must insure his liability for the medical, surgical and hospital expenses herein provided for, unless permission is given by the Industrial Commission to such employer to operate under a medical plan, as hereinafter set forth.

Every plan which is in force at the time of the adoption of this Act, or which is hereafter agreed to between the employer and employee, for the furnishing of medical, surgical and hospital treatment, whether the employee is to pay any part of the expense of such treatment or not, shall, before being put into effect, receive the approval of the Industrial Commission, which shall have full power and authority to formulate the terms and conditions under which any such plan may operate and the essentials thereof, and it may at any time order modifications or changes in any such plan, or withdraw its approval thereof; provided, however, that no plan shall be approved by the Commission which relieves the employer from the burden of assuming and paying for any part of the medical, surgical and hospital services and supplies hereinabove required.

The Commission shall have the power to establish a schedule fixing the fees for which all medical, surgical and hospital treatment rendered to employees under this Section shall be compensated.

DEPENDENCY

Section 52. [331] For the purpose of this Act the following described persons shall be conclusively presumed to be wholly dependent:

(a) Wife, unless it be shown that she was voluntarily separated and living apart from the husband at the time of his injury or death, and was not dependent in whole or in part on him for support.

(b) Minor children of the deceased under the age of eighteen years. The term "minor child" shall include posthumous children or a child legally adopted prior to the injury.

Section 53. [332] Children eighteen years of age or over, husband, mother, father, grandmother, grandfather, sister or brother, or grandchild, who were wholly or partially supported by the deceased employe at the time of his death and for a reasonable period of time immediately prior thereto, shall be considered his actual dependents. If such dependents be a son, grandson or brother eighteen years of age or over, a husband, father or grandfather, to be entitled to compensation, they must prove that they were incapable of or actually disabled from earning their own living during the said time, provided, however, if said incapacity or disability is temporary only, compensation shall be paid only during the period of such temporary incapacity or disability.

Section 54. [333] In case of death, the dependents of deceased entitled thereto, shall receive as compensation or death benefits fifty per cent (50%) of the deceased employee's average weekly wages not to exceed a maximum of Twenty-Two Dollars and Seventy-Five Cents (\$22.75) per week and not less than a minimum of Ten Dollars (\$10.00) per week, for a period not to exceed six (6) years from the date of the death of the injured employee, less any sums paid to the employee prior to his death as compensation for his disability as in this Act provided.

Section 55. [334]* (Repealed by Section 58 as amended; see Javenor vs. Indemnity Co., 84 Colo. 521.)

Section 56. [335] Partial dependents shall be entitled to receive only that portion of the benefits provided for those wholly dependent which the average amount of the wages regularly contributed by the deceased to such partial dependents at and for a reasonable time immediately prior to the injury bore to the total income of the dependents during the same time. The Commission shall have power and discretion to determine the proper elements to be considered as income of said dependents in each particular case. Where there are persons both wholly dependent and partially dependent, only those wholly dependent shall be entitled to compensation.

Section 57. [336] The question as to who constitute dependents and the extent of their dependency shall be determined as of the date of the accident to the injured employe and the right to death benefits shall become fixed as of said date irrespective of any subsequent change in conditions and such death benefits shall be directly payable to the dependent or dependents entitled thereto or to such person legally entitled thereto as the Commission may designate.

In case of the death of an employe or claimant entitled to compensation leaving dependents, any accrued and unpaid portion of the compensation or benefits up to the time of the death of such employe or claimant shall be paid to such dependents as may be ordered by the Commission and not to the legal representative as such of said decedent. In case said injured employe or claimant leaves no dependents the Commission may order the application of any accrued and unpaid benefits up to the time of the death of such employe or claimant, paid upon the expenses of the last sickness or funeral of such decedent as may be ordered by the Commission, the preference in such payment to be to funeral expenses. In case an injured employe or dependent of a deceased employe entitled to benefits hereunder, is declared incompetent or insane, any benefits accrued or to accrue may be paid to the conservator of his estate, if any, or to his dependents, if any, or to the party or institution having custody of the person of such injured employe or dependent of a deceased employe as may be ordered by the Commission in its discretion.

Section 58. [337] Death benefits shall terminate upon the happening of any of the following contingencies and shall thereupon survive to the remaining dependents, if any, to-wit:

- (a) Upon marriage.
- (b) Upon the death of any dependent.

(c) When a son or brother of the deceased reaches the age of eighteen years, except as otherwise provided in Section 53 hereof.

Section 59. [338] **Burial expenses.** When as a proximate result of an accident death occurs to an injured employe, there shall be paid in one lump sum within thirty days after his death the sum of \$150.00 for his reasonable funeral and burial expenses. Said sum may be paid to the undertaker or to any other person who may have paid the undertaker, if the Commission so orders. If the employe leaves no dependents compensation shall be limited to said sum and the compensation, if any, which has accrued to date of death, and the medical, surgical and hospital expenses herein provided. If the deceased employe leaves dependents said sum shall be paid in addition to all other sums of compensation herein provided for.

Section 60. [339] No dependent of an injured employe shall be deemed, during the life of the employe, a party in interest to any proceeding by him for the enforcement of any claim for compensation nor as respects any settlement thereof by said employe.

Section 61. [340] Illegitimate minor children of deceased putative father shall be entitled to compensation in the same respect as a legitimate minor child of said decedent, when it is proved to the satisfaction of the Commission that the father has, during his lifetime, acknowledged said child or children to be his and has regularly contributed to its or their support and maintenance for a reasonable period of time prior to his death.

Section 62. [341]* In case death occurs more than two years after the date of the receiving of any injury such death shall be prima facie presumed not to be due to such injury.

Section 63. [342]* In case death proximately results from the injury within a period of two (2) years, the benefits shall be in the amounts and to the persons following:

(a) If there be no dependents, compensation shall be limited to the expenses provided for medical, hospital and funeral of deceased, together with such sums as may have accrued or been paid to deceased during his lifetime for disability.

(b) If there are wholly dependent persons at the time of death, the payment shall be fifty per cent (50%) of the average weekly wages, subject to the limitations of this Act as to maximum and minimum weekly amounts, and to continue for the remainder of the period from the date of the death, and not to exceed six (6) years from the date of the injury, and not to amount to more than a maximum of Seven Thousand Ninety-eight Dollars (\$7,098.00).

(c) If there are partly dependent persons at the time of the death, the payment shall not be to exceed fifty per cent (50%) of the average weekly wages, subject to the limitations of the minimum and maximum weekly amount and to continue for such portion of six (6) years after the date of the injury as shall be required to pay, at the said weekly rate, the total amount awarded by the Commission to be paid to such partial dependent or partial dependents.

Section 64. [343]* If death occurs to an injured employe, other than as a proximate result of accident before disability indemnity ceased, and the deceased leaves a person or persons wholly dependent upon him for support, death benefits shall be as follows:

(a) Where the accident proximately caused permanent total disability, the death benefit shall consist of the unpaid and unaccrued portion of the permanent total disability benefit which

the employe would have received had he lived until he had received compensation at his regular rate for a period of six years.

(b) Where the accident proximately caused permanent partial disability, the death benefit shall consist of the unpaid and unaccrued portion of the permanent partial disability benefit which the employe would have received had he lived.

Section 65. [344]* If death occurs to an injured employe, other than as a proximate result of the accident, before disability indemnity ceases, and the deceased leaves a person or persons partially dependent upon him for support, death benefit shall be as follows:

(a) Where the accident proximately caused permanent total disability, the death benefit shall consist of that proportion of the unpaid and unaccrued portion of the permanent total disability benefit which the employe would have received had he lived until he had received the sum of Five Thousand Four Hundred Seventy-five Dollars (\$5,475.00) as the amount devoted by the deceased for the support of such person or persons for the year immediately prior to the accident bears to the total income of the person or persons during said year.

(b) Where the accident caused permanent partial disability, the death benefit shall consist of the proportion of the unpaid and unaccrued portion of the permanent partial disability benefit which the employe would have received if he had lived, as the amount devoted by the deceased to the support of such person or persons, for the year immediately prior to the accident, bears to the total income of the person or persons during said year.

Section 66. [345] Death benefits, under the provisions of this Act, to dependents who are non-residents of the United States at the time of the death of the injured employe, shall be one-fourth of the amount or amounts provided herein. Compensation and benefits, as provided by this Act, may be paid direct to the injured employe, or to the dependents of any deceased employe, in domestic exchange or in the exchange of the country wherein such claimant may reside, or may, at the direction of the Commission, be paid to any Consul, Vice-Consul, or Consular Agent, duly accredited to the consular district within which such claimants reside, for transmittal to such claimants, and the receipt of such consular agents shall in such cases be received as evidence of the payment of such compensation and benefits, or payment may be made in such other manner as the Commission shall in its discretion order.

Section 67. [346] Death benefits shall be paid to such one or more of the dependents of the decedent for the benefit of all the dependents entitled to such compensation as may be determined by the Commission who may apportion the benefits among such dependents in such manner as it may deem just and

equitable. Payment to a dependent subsequent in right may be made, if the Commission deems it proper, which payment shall operate to discharge all other claims therefor. The dependents or persons to whom benefits are paid shall apply the same to the use of the several beneficiaries thereof, according to their respective claims upon the decedent for support in compliance with the finding and direction of the Commission.

Section 68. [347] In all cases of death where the dependents are one or more minor children, it shall be sufficient for the widow or a friend to make application and claim on behalf of said minor children. The Commission, for the purpose of protecting the rights and interests of any dependent who it may deem incapable of fully protecting his or her own interests, may provide for the manner and method of safeguarding the payments due such dependent or dependents in such manner as it may see fit.

Section 69. [348] Payment of death benefits to one or more dependents shall protect and discharge to that extent all compensation under this Act, unless and until any other person claiming to be a dependent shall have given the Commission notice of his claim and until the Commission shall have notified the employer or his insurance carrier of such claim. In such case the Commission shall determine the respective rights of the said rival claimants, and thereafter such death benefits shall be paid to such dependents as it may find so entitled, under the provisions of this Act.

ACCIDENT BENEFITS

Section 70. [349] If the accident causes disability, a disability indemnity shall be payable as wages, upon the 15th day after the injured employe leaves work as the result of the injury and thereafter regularly but not less frequently than once in each calendar month, unless otherwise ordered by the Commission, subject, however to the following limitations:

(a) If the period of disability does not last longer than seven days from the day the employe leaves work as a result of the injury, no disability indemnity whatever shall be recoverable except the disbursement in this Act provided for medical, surgical, nursing and hospital services, apparatus and supplies; nor in any case unless the Commission has actual knowledge of the injury or is notified thereof within the period specified in this Act.

(b) If the period of disability lasts longer than six weeks from the day the injured employe leaves work as the result of the injury disability indemnity shall be recoverable from the day the injured employe leaves work as aforesaid.

Section 71. [350] In case of temporary disability of more than seven days duration, the employe shall receive fifty per cent (50%) of his average weekly wages so long as such disability is total, not to exceed a maximum of Twenty-two Dollars and Seventy-five Cents (\$22.75) per week and not less than a minimum of Ten Dollars (\$10.00) per week.

Section 72. [351] In case of injury resulting in temporary partial disability, the employe shall receive fifty per cent (50%) of the impairment of his earning capacity during the continuance thereof, not to exceed the maximum sum of Twenty-two Dollars and Seventy-five Cents (\$22.75) per week, or the aggregate sum of Two Thousand Nine Hundred Fifty-seven Dollars and Fifty Cents (\$2,957.50).

Section 73. [352]* In case an injury results in a loss set forth in the following schedule, the injured employe shall, in addition to compensation to be paid for temporary disability, receive compensation for the period as specified, to-wit:

The loss of an arm at the shoulder.....	208 weeks
The loss of forearm at the elbow.....	139 weeks
The loss of a hand at the wrist.....	104 weeks
The loss of a thumb and the metacarpal bone thereof....	50 weeks
The loss of a thumb at the proximal joint.....	35 weeks
The loss of a thumb at the second or distal joint.....	18 weeks
The loss of an index finger and the metacarpal bone thereof.....	26 weeks
The loss of an index finger at the proximal joint.....	18 weeks
Loss of an index finger at the second joint.....	13 weeks
Loss of an index finger at the distal joint.....	9 weeks
Loss of a second finger and the metacarpal bone thereof.....	18 weeks
Loss of a middle finger at the proximal joint.....	13 weeks
Loss of a middle finger at the second joint.....	9 weeks
Loss of a middle finger at the distal joint.....	5 weeks
Loss of a third or ring finger and the metacarpal bone thereof.....	11 weeks
Loss of a ring finger at the proximal joint.....	7 weeks
Loss of a ring finger at the second joint.....	7 weeks
Loss of a ring finger at the distal joint.....	4 weeks
Loss of a little finger and the metacarpal bone thereof..	13 weeks
Loss of a little finger at the proximal joint.....	9 weeks
Loss of a little finger at the second joint.....	9 weeks
Loss of a little finger at the distal joint.....	4 weeks
Loss of a leg at the hip joint or so near thereto as to preclude the use of an artificial limb.....	208 weeks
Loss of a leg at or above the knee, where the stump remains sufficient to permit the use of an artificial limb.....	139 weeks

The loss of a foot at the ankle.....	104 weeks
The loss of a great toe with the metatarsal bone thereof.....	26 weeks
The loss of a great toe at the proximal joint.....	18 weeks
The loss of a great toe at the second or distal joint.....	9 weeks
The loss of any other toe with the metatarsal bone thereof.....	11 weeks
The loss of any other toe at the proximal joint.....	4 weeks
The loss of any other toe at the second or distal joint....	4 weeks
The loss of an eye by enucleation (including disfigure- ment resulting therefrom).....	139 weeks
Total blindness of one eye.....	104 weeks
Total deafness of both ears.....	139 weeks
Total deafness of one ear.....	35 weeks
Where workman prior to injury has suffered a total loss of hearing in one ear and as a result of the accident loses total hearing in remaining ear.....	139 weeks

(a) The Commission shall determine the time when temporary disability terminates as to injuries coming under any provision of this section.

(b) For the purpose of this schedule, permanent and complete paralysis of any member as the proximate result of accidental injury shall be deemed equivalent to the loss thereof.

(c) Whenever amputation is made between any two joints mentioned in this schedule (except amputation between the knee and the hip joint) the resulting loss shall be estimated as if the amputation had been made at the joint nearest thereto. In case of the amputation of any portion of the bone of the distal joint of any finger, thumb or toe, the amount paid therefor shall be the amount allowed for amputation at said distal joint.

(d) The amounts specified in this section are all subject to the limitations as to weekly maximum and minimum benefits provided herein, for injuries causing temporary total disability.

(e) When an injured employee sustains two or more injuries coming under this schedule, the disabilities specified herein shall be added and the injured employe shall receive the sum total thereof; provided, that where the injury results in the loss or partial loss of the use of the index finger and thumb of the same hand, or of more than two digits of any one hand or foot, the disability may, in the discretion of the Commission, be compensated on the basis of the partial loss of use of said hand or foot, measured respectively from the wrist or ankle.

(f) Where an injury causes the loss of use or partial loss of use of any member or members specified in the foregoing schedule, the Commission may determine the disability suffered

and the amount of compensation to be awarded, by awarding compensation which shall bear such relation to the amount stated in the above schedule for the loss of a member or members as the disabilities bear to the loss produced by the injuries named in the schedule and such amount shall be in addition to compensation for temporary disability, or the Commission may award compensation under the permanent partial disability section of this statute as the Commission in its discretion may determine from the particular facts in each case.

Section 74. [353]* When an accident causes injury to the teeth of an employe, he shall in addition to receiving compensation for disability and the medical, surgical and hospital services provided herein, be entitled with the prior approval and consent of the Commission to receive such dental treatment and services as may reasonably be necessary to repair and alleviate the effects of the injury, not to exceed \$100.00 in value.

Section 75. [354]* If any employe is seriously permanently disfigured about the head or face, the Commission may allow, in addition to all other compensation benefits provided herein, such sum for compensation on account thereof as it may deem just, not exceeding \$500.00.

Section 76. [355]* Where an employe has previously suffered the loss, or total loss of use of, one hand, one arm, one foot, one leg, or the vision of one eye, and as a result of an accident arising out of and in the course of his employment he suffers the loss, or total loss of use, of another hand, arm, foot, leg or the vision of an eye, the loss of the second member shall prima facie constitute total and permanent disability as defined in Section 356, Chapter 97, 1935 Colorado Statutes Annotated, but the employer, or if insured, his insurance carrier, shall be liable only for the compensation payable for the member lost in the second accident. Provided, however, that in addition to such compensation and after the completion of the payments therefor, the employe shall continue to receive compensation at his established compensation rate until death, out of a special fund to be known as "SUBSEQUENT INJURY FUND" and created for such purpose in the following manner:

For every compensable injury resulting in death wherein there are no persons either wholly or partially dependent upon the deceased, the employer, or if insured, his insurance carrier, shall pay to the Industrial Commission of Colorado the sum of Five Hundred Dollars (\$500.00) to be deposited with the State Treasurer as custodian into the "SUBSEQUENT INJURY FUND."

If an employe entitled to additional benefits as in this Section provided, shall obtain employment while receiving com-

pensation from the "SUBSEQUENT INJURY FUND," he shall be compensated out of said Fund at the rate of one-half of his average weekly wage loss, subject to the maximum and minimum provisions of the Workmen's Compensation Act, during such period of employment.

In case payment is, or has been made, under the provision of this Section and dependency later is shown, or if payment is made by mistake, or inadvertence, or under such circumstances that justice requires a refund thereof, the Industrial Commission is hereby authorized to refund such payment to the employer, or if insured, his insurance carrier.

Section 77. [356]* In cases of permanent total disability, the award shall be fifty per cent of the average weekly wages of the insured employe and shall continue until death of such person so totally disabled but not in excess of the weekly maximum and not less than the weekly minimum benefits specified herein for injuries causing temporary total disability.

The loss of both hands or both arms or both feet or both legs or both eyes or of any two thereof, by injury in or resulting from the same accident, shall prima facie constitute total and permanent disability to be compensated according to the provisions of this section; provided, however, that where the disability comes under this section and where the employer or the Commission obtains suitable employment for such disabled person which he can perform and which in all cases shall be subject to the sole approval of the Commission, the disabilities set out in this paragraph shall not constitute total disability during the continuance of the Commission's approval of said employment but such partial disability as may be determined by the Commission after a finding of the facts.

Section 78. [357] Where an accident causes injury resulting in permanent partial disability (except the sustaining of any one of the injuries specifically covered by Sections 352, 353, 354 and 355 of this chapter), injured employe shall be deemed to be permanently disabled from the time he is so declared by the Commission and from said time shall be entitled to compensation for permanent partial disability in addition to any compensation theretofore allowed. In determining permanent partial disability, the Commission shall ascertain in terms of percentage the extent of general permanent disability which the accident has caused, taking into consideration not only the manifest weight of evidence, but the general physical condition and mental training, ability, former employment and education of the injured employe. The Commission shall then determine the injured employe's expectancy of life from recognized expectancy tables and such other evidence relating to his expectancy as may be presented; it shall then ascertain the total amount which said em-

ploye would receive during the balance of his expectancy if permanently totally disabled at not more than the maximum, not less than the minimum weekly indemnity specified in this Act for temporary total disability and shall then take that percentage of the total sum so arrived at as is indicated by the percentage of general permanent disability found to exist in the manner as hereinabove set forth, not to exceed in any event, however, the aggregate sum of Five Thousand Nine Hundred and Fifteen Dollars (\$5,915.00). Said sum to be paid at a weekly rate not more than the maximum nor less than the minimum herein specified for injuries causing total disability.

Provided that at any time, and from time to time, during the period for which compensation has been awarded for either permanent total or permanent partial disability, upon application of any party in interest, the Commission shall require such injured employe to be examined by a physician, or physicians, and upon petition from any such interested party, supported by a showing that the disability of such injured employe has undergone a change in degree since the entry of such award the case shall be reopened and the compensation theretofore awarded shall be modified, terminated or continued as the evidence may require.

Section 79. [358]* Where an injured employe sustains an injury covered by Sections 73, 74, 75 and 76 herein, but in addition thereto receives other injuries which are sufficient in their nature to alone cause temporary total disability, said employe shall receive in addition to the amounts specified in said schedule, compensation for temporary total disability as long as said disability may be found to exist as a result of said other injuries.

Section 80. [359]* An employe in order to be entitled to compensation for hernia must clearly prove: first, that its appearance was accompanied by pain; second, that it was immediately preceded by some accidental strain suffered in the course of the employment. If an employe, after establishing his right to compensation for hernia as above provided, elects to be and is operated therefor within a reasonable time as fixed by the Commission, he shall be entitled to medical, surgical, nursing and hospital treatment and supplies and apparatus as in this Act provided irrespective of the time limit therefor fixed. In case the employe does not elect to be so operated and the hernia becomes strangulated after the date fixed by the Commission for said operation the results from said strangulation will not be compensated.

Section 81. [360]* Whenever, in the case of injury, the right to compensation under this Act would exist in favor of an employe, he shall upon the written request of his employer, or the insurer carrying such risk, submit himself from time to time, to examination by a physician or surgeon, who shall be provided and paid for by the employer, or insurer and shall likewise sub-

mit to examination from time to time by any regular physician selected and paid for by said Commission, or a member or examiner thereof. The employe shall be entitled to have a physician provided and paid for by himself present at any such examination. So long as the employe, after such written request of the employer or insurer, shall refuse to submit himself to such examination, or shall in any way obstruct the same, his right to collect or to begin or to maintain any proceeding for the collection of compensation shall be suspended; and if he shall refuse to submit to such examination, after direction by the Commission, or any member or examiner thereof, or shall, in any way obstruct the same, his right to weekly indemnity which shall accrue and become payable during the period of such refusal or obstruction, shall be barred. If any employe shall persist in any unsanitary or injurious practice which tends to imperil or retard his recovery or shall refuse to submit to such medical or surgical treatment as is reasonably essential to promote his recovery, the Commission may, in its discretion, reduce or suspend the compensation of any such injured employe. Any physician who shall make, or be present at any such examination may be required to testify as to the results thereof. Any physician having attended an employe in a professional capacity may be required to testify before the Commission when it shall so direct. A physician will not be required, however, to disclose confidential communications imparted to him for the purpose of treatment and which are unnecessary to a proper understanding of the case. In all cases of injury, the employer or insurer, as the case may be, shall have the right in the first instance to select the physician who shall attend said injured employe, provided, however, that if the services of a physician are not tendered at the time of injury, the employe shall have the right to select his own physician and may upon the proper showing to the Commission procure its permission at any time to have a physician of his own selection attend him, and in any nonsurgical case the employe with such permission in lieu of medical aid, may procure any non-medical treatment recognized by the laws of this State as legal, the practitioner administering such treatment to receive such fees therefor under the medical provisions of this Act as may be fixed by the Commission.

GENERAL PROVISIONS

Section 82. [361] At any time after six months have elapsed from the date of injury, the Commission may, in the exercise of its discretion, after five days' prior notice to the parties, order payment of all or any part of the compensation awarded in a lump sum, or in such manner as it may determine to be for the best interests of the parties concerned, and its discretion so exercised shall be final and not subject to review.

When payment in a lump sum is ordered, the Commission shall fix the amount to be paid based on the present worth of partial payments, considering interest at four per cent (4%) per annum, and less deductions for the contingencies of death and re-marriage.

The aggregate of all lump sums granted to a claimant who has been found and declared by the Commission to be permanently and totally disabled, shall not exceed Seven Thousand Ninety-eight Dollars (\$7,098.00).

Section 83. [362]* The compensation provided for herein shall be reduced 50% :

(a) Where injury is caused by the wilful failure of the employe to use safety devices provided by the employer.

(b) Where injury results from the employe's wilful failure to obey any reasonable rule adopted by the employer for the safety of the employe.

(c) Where injury results from the intoxication of the employe.

Section 84. [363]* Notice of an injury, for which compensation and benefits are payable, shall be given by the employer to the Commission within ten days after the injury, and in case of the death of any employe, resulting from any such injury, the employer shall give immediate notice thereof to said Commission. If no such notice is given by the employer, as required by this Act, such notice may be given by any person. Any notice required to be filed by an injured employe, or if deceased, by his dependents, may be made and filed by anyone on behalf of such claimant and shall be considered as done by such claimant if not specifically disclaimed or objected to by such claimant in writing filed with the Commission within a reasonable time. Such notice shall be in writing and upon forms prescribed by the Commission for that purpose and served upon the Commission be delivering to, or by mailing by registered mail, two copies thereof, addressed to the Commission at its office in Denver, Colorado. Upon receipt of such notice from a claimant the Commission shall immediately mail one copy thereof to said employe, his agent or insurance carrier.

The Commission shall have jurisdiction at all times to hear and determine and make findings and awards on all cases of injury for which compensation or benefits are provided in this Act. The right to compensation and benefits, as provided by this Act, shall be barred unless within six months after the injury, or within one year after death resulting therefrom, a notice claiming compensation shall be filed with the Commission. This

limitation shall not apply to any claimant to whom compensation has been paid, or where it is established to the satisfaction of the Commission within two years after the injury or death that a reasonable excuse exists for the failure to file such notice claiming compensation, and the employer's rights have not been prejudiced thereby, and the furnishing of medical, surgical or hospital treatment by the employer shall not be considered payment of compensation or benefits within the meaning of this section.

Section 85. [364]* Any disability beginning more than five years after the date of accident shall be conclusively presumed not to be due to the accident.

Section 86. [365] Claims for compensation or benefits due under this Act shall not be assigned, released or commuted except as provided in this Act, and shall be exempt from all claims of creditors and from levy, execution and attachment or other remedy or recovery or collection of a debt, which exemption may not be waived.

The power given in any power of attorney or other authority from any injured employe or the dependents of any killed employe, purporting to authorize any other person to receive, be paid or receipt for any compensation benefits awarded any such claimant shall be wholly void, illegal and of no force and effect.

Section 87. [366] If an employe entitled to compensation under this Act be injured or killed by the negligence or wrong of another not in the same employ, such injured employe, or in case of death, his dependents, shall before filing any claim under this Act, elect in writing whether to take compensation under this Act or to pursue his remedy against such other. Such elections shall be evidenced in such manner as the Commission may by rule or regulation prescribe. If such injured employe, or in case of death, his dependents, elect to take compensation under this Act, the awarding of compensation shall operate as and be an assignment of the cause of action against such other to the Industrial Commission of Colorado if compensation be payable from the State Compensation Insurance Fund, and otherwise to the person, association, corporation, or insurance carrier liable for the payment of such compensation; however, said insurance carrier shall not be entitled to recover any sum in excess of the amount of compensation for which said carrier is liable under this Act to the injured employe, but to that extent said carrier shall be subrogated to the rights of the injured employe against said third party causing the injury; if the injured employe elects to proceed against such other, the State Compensation Insurance Fund, person, association, corporation or insurance carrier as the case may be, shall contribute only the deficiency, if any, between

the amount of the recovery against such other person actually collected, and the compensation provided by this Act in such case. Such a cause of action assigned to the Commission may be prosecuted or compromised by it. A compromise of any such cause of action by the employer or his dependents at an amount less than the compensation provided for by this Act shall be made only with the written approval of the Commission, if the deficiency of compensation would be payable from the State Compensation Insurance Fund, and otherwise with the written approval of the person, association, corporation, or insurance carrier, liable to pay the same. Whenever an employe is killed by the negligence or wrong of another not in the same employ and the dependents of such employe entitled to compensation under this Act are minors, such election to take compensation and the assignment of the cause of action against such other and such notice of election to pursue a remedy against such other shall be made by such minor, or shall be made on his behalf by a parent of such minor, or by his next friend or duly appointed guardian, as the Commission may determine by rule in each case.

Section 88. [367] The right of compensation granted by this Act and any awards made thereunder shall have the same preference or lien without limit of amount against the assets of the employer or his insurer or both as is now or hereafter may be allowed by law for a claim for unpaid wages for labor.

Every employer or insurance carrier of an employer shall pay interest at the rate of eight per cent per annum upon all sums not paid upon the date fixed by the award of the Commission for the payment thereof; provided, that upon application and satisfactory showing to the Commission of the valid reason therefor, said Commission may, upon such terms or conditions as said Commission may determine, relieve such employer or insurer from the payment of interest after the date of its order therefor; and proof that payment had been offered or tendered of the amount fixed to the person or persons designated by the award, shall be such sufficient valid reason.

Section 89. [368] Any employer subject to the terms and provisions of this Act who fails to insure or to keep the insurance required by this Act in force or who allows the same to lapse or fails to effect a renewal thereof, shall not continue any of his business operations while such default in effective insurance continues. The Commission in its own name as party plaintiff may institute the proper action to enjoin any such employer from continuing his business operations during any such default.

Section 90. [369] Unless previously authorized by the Commission, no lien shall be allowed nor any contract be enforceable for any attorney's fees, contingent or otherwise for serv-

ices rendered for the enforcement or collection of any claim for compensation or other proceedings under the Workmen's Compensation Act, and then only as provided by rules of the Commission.

Section 91. [370] The Commission may, in its discretion, at any time, any provisions in this Act to the contrary notwithstanding, by unanimous consent of all the members thereof, and with the approval of a majority of the State Auditing Board, compute and require to be paid to it to be held by it in trust, an amount equal to the present value of all unpaid compensation or other benefits in any case, computed at the rate of 4% per annum. Such action may be taken after a finding by the Commission as to the insolvency, threatened insolvency, or any other condition or danger which may cause the loss of, or which has delayed or may impede, hinder or delay prompt payment of compensation or benefits by any insurance carrier or employer. The action and finding of the Commission shall not be subject to review nor shall the Commission be required to give any notice of hearing or hold any hearing prior to taking such action or making its findings as aforesaid. The order of the Commission requiring said payment shall be valid, effective and in force from and after the approval thereof by the State Auditing Board.

All moneys so paid in shall constitute a separate trust fund, and after any such payment is so ordered the employer or insurance carrier shall thereupon be discharged from any further liability under such award, for which payment is made, to the extent of the payment made, and the payment of the award shall then be assumed to the extent of payment made by the special trust fund so created.

If, for any reason, a beneficiary's right to the compensation awarded and ordered paid into said special trust fund, ceases, lapses, or in any manner terminates by virtue of the terms and provisions of this Act so that a surplus not surviving or accruing to any other beneficiary remains in said trust fund of the amount ordered paid into it on behalf of the beneficiary, the insurance carrier or employer who has made said payments shall be entitled to a refund of the present value of said surplus, if any, computed at the rate of 4% per annum. Any portion of the special trust fund may, pursuant to resolution of the Commission, be invested in any securities of the State of Colorado or of the United States of America.

PROCEDURE

Section 92. [371] Any dispute or controversy concerning compensation under this Act shall be submitted to the Commission in the manner and with the effect as provided herein.

Section 93. [372] The employer, or if insured, his insurance carrier, shall in writing, within twenty-five (25) days after knowledge of an injury to an employe, notify the Commission and the injured employe, or if deceased, his dependents, whether liability is admitted or contested, but for the purpose of this section such knowledge on the part of the employer, if insured, shall not be deemed knowledge on the part of his insurance carrier. Provided, however, that where the employer's report of accident shows that the employe is temporarily disabled seven days or less and medical attention as provided by Section 330, Chapter 97, 1935 Colorado Statutes Annotated, if required, has been afforded at the expense of the employer or the insurance carrier, then no admission or denial of liability need be filed until the employer, or if insured, his insurance carrier, has knowledge of or notice of claim for compensation benefits and then within fifteen (15) days from the date of such knowledge or notice. If such notice is not filed as herein provided, the employer, or if insured, his insurance carrier, as the case may be, shall become liable to the claimant, if successful in his claim for compensation, for one (1) day's compensation for each day's failure to so notify. If the employer, or if insured, his insurance carrier, admits liability, such notice shall specify the amount, to whom, the period and disability for which compensation will be paid, and payment thereon shall be made forthwith. Upon proper showing in writing made within said time fixed therefor the Commission may extend the time for filing such admission of liability, or notice of contest, but not exceeding ten (10) days at any one time. Hearings may be set to determine any matter, but if any liability is admitted, payments shall continue according to admitted liability, provided, that no receipt or settlement shall be final unless in conformity with the provisions of this Act and the rules and regulations of the Commission, nor until such receipt or settlement has been approved by the Commission.

Section 94. [373] Hearings shall be held by the Commission upon its own motion or upon the application of any party interested therein. The Commission shall cause reasonable notice of such hearing to be given to each party interested, by service upon him personally or by mailing a copy thereof to him at his last known postoffice address, at least ten days before such hearing. Such hearings may be adjourned from time to time in the discretion of the Commission and may be held at such place or places as the Commission shall designate. All parties in interest shall have the right to be present at any hearing, in person or by attorney or by any other agent and to present such testimony as may be pertinent to the controversy before the Commission and shall have the right to cross examine. The Commission may receive as evidence and use as proof of any fact in dispute the following matters, in addition to sworn testimony presented at open hearings:

- (1) Reports of attending or examining physicians.
- (2) Reports of investigators appointed by the Commission.
- (3) Reports of employers, including copies of time sheets, book accounts or other records.
- (4) Hospital records in the case of an injured or deceased employe.

Provided, however, that the Commission may cause an examination to be made of the person of the injured employe, or without notice take testimony or inspect the premises where the injury occurred or inspect the time books, payrolls or other records of the employer. All ex parte evidence received by the Commission shall be reduced to writing and any party in interest shall have the opportunity to examine and rebut the same by cross examination or by further evidence.

Section 95. [374] Hearings arising under this Act may be held before the Commission or any referee of the Commission or any Commissioner as referee when said Commissioner has been especially appointed by the Commission to hold any such hearing. The Commissioner (Commission) shall appoint one or more referees, and any referee shall have power and authority to call, preside at, and conduct hearings, including the power to issue subpoenas. After the conclusion of every hearing the referee shall make a summary order allowing or denying said claim, without being required to make specific findings of fact; if compensation benefits be granted it shall be sufficient to specify the amount or amounts thereof, the disability for which compensation benefits are granted, by whom and to whom such benefits shall be paid and the method and time of such payments. Such order of the referee shall be in writing and a copy of such order shall be furnished to each of the parties in interest, the original of which shall be a part of the records in said case. Said order shall be the final award of the Commission, unless a petition for review is filed as in this Act provided.

Section 96. [375] The Commission may refer any case to any District or County Judge or other person in this State, as special referee for the purpose of taking evidence, and such special referee, after notice to the parties in interest may hold hearings and issue subpoenas for such purpose and shall, in case such hearing is held by him, reduce all evidence so taken to writing, certify to and return the same to the Commission, and such evidence may be used by the Commission or any referee of the Commission in making or entering the findings and award of the Commission. The Commission may, after notice to the parties in

interest, refer the taking of any evidence to any commission, court or board administering in another state the Compensation Laws thereof, and such commission, court or board of such other state shall, after notifying the parties in interest of the time and place of holding such hearing, hold hearings and take such evidence in the same manner and by the officers as authorized by the laws of such state and all such proceedings shall be certified and return thereof made as prescribed by the Industrial Commission of Colorado.

Section 97. [376] Any party in interest who is dissatisfied with the order entered by the referee may petition to review the same and the referee may re-open said case, or may amend or modify said order, and such amended or modified order shall be a final award unless objection be made thereto by further petition for review. In case said referee does not amend or modify said order, he shall refer the entire case to the Commission, and the Commission shall thereupon review the entire record in said case, and, in its discretion, may take or order the taking of additional testimony, and shall make its findings of fact and enter its award thereon. The award of said Commission shall be final unless a petition to review same shall be filed by an interested party. Every petition for review shall be in writing and shall specify in detail the particular errors and objections. Such petition must be filed within fifteen days after the entry of any referee's order or award of the Commission unless further time is granted by the Referee or the Commission within said fifteen days, and, unless so filed, said order or award shall be final. All parties in interest shall be given due notice of the entry of any referee's order or any award of the Commission, and said period of fifteen days shall begin to run only after such notice, and the mailing of a copy of said order or award addressed to the last known address of any party in interest shall be sufficient notice.

Section 98. [377] No action, proceeding or suit to set aside, vacate or amend any findings, order or award of the Commission, or to enjoin the enforcement thereof, shall be brought unless the plaintiff shall have first applied to the Commission for a review as herein provided. Such action, proceeding or suit must be commenced within twenty days after the final finding, order or award entered by the Commission upon such review.

Section 99. [378] Any person in interest, including the State Compensation Insurance Fund, being dissatisfied with any such finding, order or award of the Commission issued or promulgated by virtue of the authority conferred in this Act, may commence an action in the District Court in and for the county wherein the injury was sustained or in the District Court in and for the City and County of Denver against the Commission as

defendant to modify or vacate the same on the grounds herein specified in which action any adverse party shall also be made a defendant, provided, however, that said State Compensation Insurance Fund has the consent of one or more of the members of said Commission for the purpose of bringing said action, in which case the State Compensation Insurance Fund by that name and title may commence and prosecute (acting through its manager) such suit to modify or vacate the finding, order or award of the Commission, and shall be authorized to employ an attorney to represent such State Compensation Insurance Fund in such litigation.

Section 100. [379] All such actions shall have precedence over any civil cause of a different nature pending in such Court, and the District Court shall always be deemed open for the trial thereof, and the same shall be tried and determined by the District Court in manner as provided for other civil actions.

Section 101. [380] In such action a copy of the complaint, which shall state the grounds upon which the review is sought, shall be served with the summons. The Commission shall within twenty days after the service of the complaint make return to said Court of all documents and papers on file in the matter, and of all testimony taken therein, and certified copies of all its findings, orders and awards, which return shall be deemed its answer to said complaint. Such return of the Commission shall constitute the Judgment Roll in such action and it shall not be necessary to settle a bill of exceptions in order to make such return part of the record of such court in such action. Such action may be thereupon brought on for hearing before said Court on such record by either party upon notice and in the manner as provided in said Court in other civil actions, subject, however, to the provisions of law for changing of the place of trial or the calling in of another judge.

The record of said Commission so filed in said Court shall be returned to said Commission after the final disposition of said case by the District or Supreme Court.

Section 102. [381] If upon trial of such action it shall appear that all issues arising in such action have not theretofore been presented to the Commission in the petition filed as provided in this Act, or that the Commission has not theretofore had an ample opportunity to hear and determine any issues raised in such action, or has for any reason, not in fact heard and determined the issues raised, the Court shall, before proceeding to render judgment, unless the parties to such action stipulate to the contrary, transmit to the Commission a full statement of such issue or issues not adequately considered, and shall stay further proceedings in such action until such issues are heard by the Commission and returned to said Court.

Upon receipt of such statement, the Commission shall hear and consider the issues not theretofore heard and considered, and may alter, affirm, modify, amend or rescind its finding, order or award complained of in said action, and it shall report its action thereon to said Court within a reasonable time after its receipt of the statement from the Court.

The Court shall thereupon order such amendment or other proceeding as may be necessary to raise the issues as presented by such modification of the finding, order or award as may have been made by the Commission upon the hearing, if any such modification has in fact been made, and shall thereupon proceed with the trial of such action.

Section 103. [382] Upon such hearing, the Court may affirm or set aside such order or award; but only upon the following grounds:

(a) That the Commission acted without or in excess of its powers;

(b) That the finding, order or award was procured by fraud;

(c) That the findings of fact by the Commission do not support the order or award.

Section 104. [383] Any action commenced in court under this section to set aside or modify any order or award of the Commission shall be brought to trial within thirty days after issue shall be joined, unless continued on order of the Court for good cause shown. No continuance shall be for longer than thirty days at one time.

Section 105. [384] Trial shall be to the Court without a jury and upon the record of the Commission returned to said Court. Upon the trial of any such action the Court shall disregard any irregularity or error of the Commission unless it be made affirmatively to appear that the party complaining was damaged thereby.

Section 106. [385] It shall be the duty of the Clerk of the District Court, without Order of Court or application of the Commission, to transmit the record in any case to the Commission within twenty-five days after the Order or Judgment of the Court, unless in the meantime a writ of error addressed to the District Court shall be obtained from the Supreme Court for the reviewing of such Order or Judgment. In that event, he shall so return it immediately upon receipt of remittitur from the Supreme Court, unless the Order of the Supreme Court requires further action by the District Court, and then within twenty-five days after such further action.

Section 107. [386] Upon setting aside of any order or award, the Court may recommit the controversy and remand the record in the case to the Commissioner for further hearing or proceedings; or it may order said Commission to enter the proper award upon the findings, as the nature of the case shall demand; provided, however, that in no event shall such order for award for a greater amount of compensation than allowed by this Act, or in any manner conflict with the provisions thereof.

Section 108. [387] The Commission or any party who may consider himself aggrieved by a judgment entered upon the review of any such order or award, may have question of law only reviewed summarily by the Supreme Court, by writ of error, as provided by law, and said cause shall be advanced upon the calendar of the Supreme Court, and a final decision rendered within sixty days from date of issuance of the writ. It shall not be necessary for said Commission or any party aggrieved by said action to execute, serve or file any undertaking in order to obtain such a writ of error.

Section 109. [388] No fee shall be charged by the clerk of any court for the performance of any official service required by this Act. On proceedings to review any order, or award, costs as between the parties shall be allowed, or not in the discretion of the Court, but no costs shall be taxed against said Commission. In any action for the review of any order or award, and upon any review thereof by the Supreme Court, it shall be the duty of the District Attorney of the County wherein said action is pending, or of the Attorney General, if requested by the Commission, to appear on behalf of the Commission, whether any other party defendant should have appeared or be represented in the action or not.

Section 110. [389]* Upon its own motion on the ground of error, mistake or a change in condition, the Commission, at any time within six years from the date of accident in cases where no compensation has been paid; or, at any time within two years after the date last payment becomes due and payable or within six years from the date of accident, whichever is longer, in cases where compensation has been paid, and after notice of hearing to the parties interested, may review any award and on such review, may make an award ending, diminishing, maintaining, or increasing compensation previously awarded, subject to the maximum and minimum provided in this Act, and shall state its conclusions of fact and rulings of law, and shall immediately send to the parties a copy of the award. No such review shall affect such award as regards any moneys already paid. The Commission shall have power to review any case otherwise barred by this Section within a period of one year from the date of approval of this Act.

Section 111. [390] The Commission, or any agent, deputy or referee designated by it shall have power and authority to issue subpoenas, to compel the attendance of witnesses or parties, and the production of books, papers or records, and to administer oaths. Any person who serves a subpoena shall receive the same fee as the sheriff. Each witness who is subpoenaed on behalf of the Commission, and who appears in obedience thereto shall receive for his attendance the fees and mileage provided for witnesses in civil cases in the District Court, which shall be audited and paid from the State Treasury in the same manner as other expenses are audited and paid, upon the presentation of proper voucher approved by the Commission.

The Commission may, in its discretion, assess the cost of attendance and mileage of witnesses subpoenaed by either party to any proceeding, against the other party to such proceeding, when in its judgment the necessity of subpoenaing such witness arises out of the raising of any incompetent, irrelevant or sham issues by such other party.

Section 112. [391] Any person who shall wilfully fail or neglect to appear and testify or to produce books, papers or records, as required by such subpoena duly served upon him, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars nor more than one hundred dollars, or imprisoned in the county jail not longer than thirty days for each such offense, or both such fine and imprisonment. Each day such person shall so refuse or neglect shall constitute a separate offense.

Section 113. [392] The District Court of the county wherein such person resides, or District Court of the City and County of Denver, upon application of the Commission or its agent, shall issue an order compelling the attendance and testimony of witnesses and the production of books, papers or records before such Commission or any such agent.

Section 114. [393] The Commission or any party may, in any investigation or hearing, cause the depositions of witnesses residing within or without the State to be taken in the manner prescribed by law for like depositions in civil actions in district courts. All such depositions shall be taken upon commission issued by the Commission and shall be taken in accordance with the laws and rules of court covering depositions in civil cases in the District Courts of this State.

Section 115. [394] A full and complete record shall be kept of all proceedings had before the Commission on any hearing and all testimony shall be taken down and transcribed by a stenographer appointed by the Commission.

Section 116. [395] A transcribed copy of the evidence and proceedings or any specific part thereof, of any investigation or

hearing taken by a stenographer appointed by the Commission, being certified by such stenographer to be a true and correct transcript of the testimony on the investigation or hearing of a particular witness, or a specific part thereof, carefully compared by him from his original notes, and to be a correct statement of the evidence and proceedings had on such investigation or hearing so purporting to be taken and subscribed, may be received as evidence by the Commission and by any Court with the same effect as if such stenographer were present and testified to the facts so certified. Copy of such transcript shall be furnished on demand to any party upon the payment of 10 cents per folio to the stenographer so furnishing such transcript.

Section 117. [396] If any employer or insurer, or any officer or agent of either, or any employe, or any other person shall violate any provision of this Act, or shall do any act prohibited thereby, or shall fail or refuse to perform any duty lawfully enjoined, within the time prescribed by the Commission, for which no penalty has been specifically provided, or shall fail, neglect, or refuse to obey any lawful order made by the Commission or any judgment or decree made by any court as provided by this Act, for each such violation, failure or refusal, such employer or insurer, or any officer or agent of either, or any employe or any person shall be punished by a penalty of not more than one hundred dollars for each such offense.

Section 118. [397] Every day during which any employer or insurer or officer or agent of either or any employe, or any other person shall fail to comply with any lawful order of the Commission or shall fail to perform any duty imposed by this Act, shall constitute a separate and distinct violation thereof; provided, however, that in any action which may be brought to enforce the same, or to enforce any penalty provided for in this Act, such violations shall be considered cumulative and may be joined in such action.

Section 119. [398] All penalties provided for in this Act, except fines in cases of misdemeanor, shall be collected in a civil action brought against the employer, or insurer or any officer or agent of either, or any employe or any other person as the case may be, in the name of and by the Commission, and all such penalties, when collected, shall be applicable to the expense of the Commission, in addition to all sums which may be appropriated for its use.

Section 120. [399] Upon the request of the Commission, the Attorney General or the District Attorney of any district, or any attorney at law in the regular employ of the Commission, shall institute and prosecute the necessary actions or proceedings for the enforcement of any of the provisions of this Act or award or order of the Commission or for the recovery of any

money due the State Compensation Insurance Fund, or any penalty herein provided, and shall defend in like manner all suits, actions or proceedings brought against the Commission or any member thereof in his official capacity.

Section 121. [400] If, for the purpose of obtaining any order, benefit, award or compensation or payment under the provisions of this Act, either for himself or for any other person, anyone wilfully makes under oath a false statement or representation, he shall be guilty of perjury and punished accordingly, and he shall forfeit all right to compensation under this Act upon conviction of such offense.

STATE INSURANCE COMPENSATION FUND

Section 122. [401] There is hereby established a fund, to be known as the State Compensation Insurance Fund, for the benefit of injured and the dependents of killed employes, which shall be administered in accordance with the following provisions, without liability on the part of the State, beyond the amount of said Fund, constituted as provided in this Act.

Section 123. [402] The Commission is hereby vested with full power, authority and jurisdiction over the State Compensation Insurance Fund and may do and perform any and all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of any power, authority or jurisdiction over said Fund in the administration thereof under the provisions of this Act, as fully and completely as the governing body of a private insurance company might or could do, subject, however, to all the provisions of this Act.

Section 124. [403] The Commission shall have full power and authority and it shall be its duty to fix and determine the rates to be charged by the State Compensation Insurance Fund for compensation insurance, and to manage and conduct all business and affairs in relation thereto, all of which business and affairs shall be conducted in the name of the Commission, and in that name, without any other name or title, the Commission may:

(a) Sue and be sued in all the courts of the State and in actions arising out of any act, deed, matter or thing made, omitted, entered into, done or suffered in connection with the State Compensation Insurance Fund, the administration, management or conduct of the business or affairs relating thereto.

(b) Make and enter into contracts of insurance with employers as herein provided, and such other contracts or obligation relating to the State Compensation Insurance Fund as are authorized or permitted under the provisions of this Act, but the Commission shall not, nor shall any officer or employe

thereof be personally liable in his private capacity for or on account of any act done or omitted or contract or other obligation entered into or undertaken in an official capacity, in good faith and without intent to defraud in connection with the administration, management or conduct of the State Compensation Insurance Fund, its business or other affairs relating thereto.

(c) Contract with physicians, surgeons and hospitals for medical and surgical treatment, services and supplies, crutches and apparatus, and the care and nursing of injured persons entitled to benefits from said Fund, and may contract for medical, surgical, hospital and nursing services and supplies in excess of the amount and period otherwise limited herein, whenever said Commission may determine that the contracting of such extra medical, surgical, hospital and nursing services and supplies might tend to reduce the period of disability for which said Fund would be liable for the payment and compensation.

Section 125. [404] The State Compensation Insurance Fund shall be a continuing fund and shall consist of all premiums received and paid into said Fund for compensation insurance, all property and securities acquired by and through the use of moneys belonging to said Fund and all interest earned upon moneys belonging to said Fund and deposited or invested as herein provided. Said Fund shall be applicable to the payment of the salaries of the employes of the Fund and to its other operating expenses, and to the payment of losses sustained or liabilities incurred under the contracts or policies of insurance issued by said State Compensation Insurance Fund in accordance with the provisions of this Act.

Section 126. [405] The Commission shall from time to time classify the places of employment of employers insured in the State Compensation Insurance Fund into classes in accordance with the nature of the business in which they are engaged and the probable hazard of risk of injury to their employes. It shall determine the amount of the premiums which such employers shall pay to said State Compensation Insurance Fund, and may prescribe in what manner such premiums shall be paid and may change the amount thereof both in respect to any or all of such employers from time to time, as circumstances may require, and the condition of their respective plants, establishments or places of work in respect to the safety of their employes may justify, but all such premiums shall be levied on a basis that shall be fair, equitable and just as among such employers.

Section 127. [406] It shall also be its duty to divide each of such classes under said classification into as many subclasses as may be necessary, upon such terms and conditions as will enable it to determine the risks and fix the rates of premium of the different employers in the same class of employment, with

respect to the conditions of said places of employment as regards the several requirements upon which the rates of premium of risks are based and determined, as provided in this Act.

Section 128. [407] It shall be the duty of the Commission in the exercise of the powers and discretion conferred upon it by this Act, ultimately to fix and maintain for each class and subclass of occupation, the lowest possible rates of premium consistent with the maintenance of a solvent State Compensation Insurance Fund, and the creation and maintenance of a reasonable surplus after the payment of legitimate claims for injury and death, that may be authorized to be paid from the State Compensation Insurance Fund for the benefit of injured and dependents of killed employees.

Section 129. [408] Such rates shall take no account of the extent to which the employes in any particular establishment have or have not persons dependent upon them for support; nor of whether such employes have dependents who are non-residents of the United States; nor of whether such employes are married or single; nor the age of any such employes. The rates so made shall be that percentage of the payroll of any employer which, on the average, shall produce a sufficient sum:

(a) To carry all claims to maturity; that is to say, the rates shall be based upon the "reserve" and not upon the "assessment" plan;

(b) To produce a reasonable surplus as provided in this Act, and to cover the catastrophe hazard, and to insure the payment to employes and their dependents of the compensation herein provided.

(c) In determining the amount of reserve to be laid aside to meet deferred payments according to awards, such reserve shall be ascertained by finding the present worth of such deferred payments calculated at a rate of interest not higher than four per cent per annum and such calculations shall be made according to a table of mortality not lower than the American Experience Table of Mortality and, in the discretion of the Commission, by such other and further methods as will result in the establishment of adequate reserves.

Section 130. [409] The Commission shall keep an accurate account of the money paid in premiums by each of the several classes and subclasses of occupations or industries, and the disbursements on account of injuries and death of employes thereof; and it shall also keep an account of the money received from each individual employer and the amount disbursed from the State Compensation Insurance Fund on account of injuries and death of the employes of such employer; provided, that the State Compensation Insurance Fund, including such portions of said Fund as may be derived from premiums paid by the State, and its political sub-divisions, shall be one fund, indivisible.

It is the intention that the amounts raised for such State Compensation Insurance Fund shall ultimately become neither more nor less than to make said Fund self-supporting, and the premiums, or rates levied for such purpose shall be subject to readjustment from time to time by the Commission, as may become necessary.

Section 131. [410] The Commission shall set aside such proportion as it may deem necessary, of the earned premiums paid into the State Compensation Insurance Fund, as a contribution to the surplus of the Fund; provided, that until the surplus of the Fund shall amount to the sum of Five Hundred Thousand (\$500,000) Dollars, at least ten per cent of the earned premiums paid into the State Compensation Insurance Fund shall be so set aside.

Section 132. [411] The Commission may, in its discretion, amend at any time the rate or rates for any class or classes, subclass or subclasses; provided further, that no contract of insurance between the State Compensation Insurance Fund and any employer shall be in effect until a policy, or binder has been actually issued by the Commission and the premium therefor paid as and when required by this Act; and provided further, that after the inspection of the premises of any employer, or after considering the experience of such employer, the Commission may quote with respect to his risk a rate higher or lower than that indicated by its manual as applicable to his risk. Not less often than once a year the Commission shall tabulate the earned premiums paid by policyholders of the State Compensation Insurance Fund, by classes and subclasses, and shall also tabulate the losses incurred by the Fund by classes and subclasses. Should the experience of the Fund show a balance to the credit of the policyholders of any class or subclass after the above mentioned amounts have been credited to the surplus fund, and after payment of all amounts which have fallen due because of operating expenses, injury or death, and after setting aside proper reserves, then the Commission shall distribute such credit balance to the policyholders of such classes as have a balance to their credit in proportion to the premium paid by each such policyholder during the preceding insurance period and in proportion to the credit balance earned by the class or subclass; provided, however, that in the event any such policyholder fails to renew his policy in the State Compensation Insurance Fund for the period following the period in which said dividends were earned, he shall not be entitled to said credit dividends; and provided further, that in the event an employer actually discontinues business, his policy shall be canceled and the dividend, if any, when ascertained, returned to him.

Section 133. [412] If any employer shall be in arrears for more than twenty days in any payment required to be made by him to the State Compensation Insurance Fund as provided in this Act, he shall by virtue of such arrearage be in default of such payment and any policy issued to him by said Fund shall thereupon be canceled without notice as of the effective or renewal date of said policy. In the event cancellation of policy is made as herein provided and the State Compensation Insurance Fund is required to make any expenditures for the benefits provided by this Act for any accident causing injury or death within said twenty-day period, said Fund shall be entitled to reimbursement from the employer for all amounts so paid which may be collected by said Fund in a civil action brought against the employer; provided, however, that the employer shall be primarily liable to any injured employe or the dependents of a killed employe for the payment of the compensation and benefits provided by this Act during said twenty-day period.

Section 134. [413] In the event the amount of premium collected by the Fund from any employer at the beginning of any policy period, as ascertained and calculated by using the estimated expenditure of wages for the period of time covered by such premium payments as a basis, shall differ from the earned premium based upon the actual wage expenditure for such policy period, an adjustment of the amount of such premium shall be made at the end of such policy period and the actual amount of such premium shall be determined in accordance with the amount of actual expenditure of wages for such period; and, in the event such actual wage expenditure for such period is less than the amount on which such estimated premium was collected, then such employer shall be entitled to have the amount of the difference in premium repaid to him or credited on succeeding premium payments, and should the earned premium, where ascertained as aforesaid, exceed in amount the premium so paid by such employer at the beginning of each such policy period, such employer shall upon being advised of the true amount of such premium due, forthwith pay to said State Compensation Insurance Fund an amount equal to the difference between the amount actually found to be due and the amount so paid by him at the beginning of said policy period.

Section 135. [414] Every employer insured in the State Compensation Insurance Fund shall pay into the State Compensation Insurance Fund in advance the amount of premium determined and fixed by the Commission for the ensuing period. The amount of the premium to be paid by every such employer at the rates fixed and established by the Commission for said

State Compensation Insurance Fund shall be on the basis of the annual expenditure of money by said employer for the services of persons engaged in his employment. The amount of premium to be so paid by each such employer shall be determined by the classification, rules and rates made and published by the Commission. Payment shall be made within the time fixed by this Act and a receipt or certificate certifying that such payment has been made shall be mailed to such employer by the Commission, which receipt or certificate shall be prima facie evidence of the payment of such premium.

Section 136. [415] The amount of money to be contributed by the State itself, and by each county, city, town, irrigation or school district, or other taxing district of the State, shall be determined and fixed by said Industrial Commission by any of the methods herein provided for the determination of premiums and rates for private employers; provided, however, that the Commission shall make such readjustment of premiums heretofore paid in by public employers and of premiums now due from public employers under the prior Statute, after the same are actually paid in, as it may deem equitable and just.

Section 137. [416] The officials of the State, county, city, town, irrigation or school district or other taxing district of the State, who are charged by law with the duties of raising and appropriating funds of each such subdivision for the payment of expenditures authorized on behalf of each such subdivision, shall cause to be raised and appropriated sufficient moneys for the payment of any sum of money required to purchase compensation insurance from said Fund for any such subdivision and the officials who are charged with the duty of issuance and payment of the warrants of each such subdivision, shall pay same when due; provided, however, the Commission shall communicate to the General Assembly within the first ten days of each regular session thereof, an estimate of the aggregate amount of money necessary to be contributed by the State during the two years next ensuing as its proper payments due to said Fund. Provided, further, that the State Highway Department of Colorado shall pay to the State Compensation Insurance Fund from the funds available to said Department, premiums for workmen's compensation insurance upon its employes, engaged in maintenance or construction work other than engineering or supervision furnished by said department. Provided, further, that each County Superintendent of Schools shall, on or before the first day of June of each year, furnish the Commission on form prescribed, a statement showing the estimated number of employes and the total amount to be expended as wages or salaries by each school district during the year beginning the next succeeding first day of July. Upon receiving such statement the

Commission shall compute and shall notify each County Superintendent of Schools the amount of premium due the State Compensation Insurance Fund from each school district under his jurisdiction. Each County Superintendent of Schools shall then immediately notify the proper official of each district of the amount due and direct that a warrant in payment be drawn upon the proper fund of such district, and said County Superintendent of Schools shall withhold his certification of all apportionments of general school funds, or other funds, from any district which has not complied with the provisions of this Act.

Section 138. [417] All officials of the State, county, city, town, irrigation or school district or other taxing district of the State who are charged by law with the duty of keeping or preparing any or all of the books or records of any such subdivision shall upon request furnish to the Industrial Commission of Colorado such information as may be required by the Commission relative to the expenditure of money by any such subdivision for the services of any and all persons in its employ.

It shall be the duty of the Public Examiner of the State of Colorado to audit and examine, at least once a year, all of the books, records and other documents of every public employer as hereinabove set forth as far as they relate to the wage expenditure or payroll of any and all such public employers during the year preceding said examination or audit, and said Public Examiner shall furnish to the Commission in form as prescribed by it a verified statement of the total wage expenditure of each and all such subdivisions for the period covered by said examination and audit.

Section 139. [418] The Commission may secure reinsurance covering the catastrophe hazard with respect to any risk or risks carried by the State Compensation Insurance Fund, and the State Treasurer shall pay the premium for such reinsurance from the State Compensation Insurance Fund in the manner provided by this Act for other disbursements from said Fund.

Section 140. [419] The State Treasurer shall be the custodian of the State Compensation Insurance Fund and all disbursements therefrom shall be paid by him upon warrants drawn in accordance with law upon vouchers issued by the Commission, upon order of the Commission. In every case occurring heretofore or hereafter in which a warrant shall have been drawn in accordance with law against the State Treasurer upon vouchers issued by the Industrial Commission for payment of any sum of money from the State Compensation Insurance Fund, and a period of two years shall have elapsed since the signing of such warrant during which no person entitled thereto shall have appeared to claim such warrant, or to claim funds so authorized to be paid from the hands of the State Treasurer, such

warrant may in the discretion of the Commission be posted for cancellation, and thereafter cancelled and set aside. In every such case in which it is proposed to cancel any such warrant the Commission shall cause a notice to be drawn in duplicate, with a description of said warrant containing the amount, number, date of issuance, and name of payee, and shall cause one copy of said notice to be posted in a conspicuous place which is open to the public in the office of the State Treasurer, and one copy to be mailed to the last known address of the payee. If at the end of one month after the posting and mailing of such notice such warrant shall not be claimed, or the person entitled thereto shall appear to claim the funds authorized to be paid in said warrant, the said warrant may be cancelled as above provided.

The State Treasurer shall thereupon transfer any such funds held to the credit of, or for the payment of, such warrant back to the credit of the State Compensation Insurance Fund. If at any time within six (6) years after such transfer of funds application shall be made for the re-issuance of such warrant, the same may be re-issued, provided that the claim which it represents appears to be valid and still outstanding. Such re-issued warrant shall in any such case be made payable from the moneys on deposit in the State Compensation Insurance Fund.

This section shall apply to warrants issued previous to the date on which this section went into effect, but in every such case the period of limitation shall be the same as if the warrant had been issued on the same day on which this section went into effect. The powers and discretion herein granted the Commission and the State Treasurer shall obtain in all cases relating to the warrants drawn on the State Compensation Insurance Fund, anything to the contrary in any other statute notwithstanding.

Section 141. [420] The Commission shall in writing authorize and direct the State Treasurer to invest any portion of the State Compensation Insurance Fund not needed for immediate use, including its surplus and reserves or any portion thereof, as may be determined by the Commission, at market price, in any warrants or bonds of the State of Colorado or of the United States of America, or in the general obligation bonds of any county, city or town or school district in the State of Colorado, the assessed valuation of which county, city, town or school district in the year next preceding the year in which bonds of such county, city, town or school district may be purchased shall equal or exceed One Million Dollars (\$1,000,000). Payment for such warrants or bonds, as above described, purchased by the Commission for investment shall be made in the same manner as provided by law for disbursement from said State Compensation Insurance Fund, and such warrants or bonds when purchased shall be deposited with the State Treasurer as Custodian of said

State Compensation Insurance Fund. All interest earned upon such portion or portions of the Fund as may be deposited or invested shall be collected by the State Treasurer and placed to the credit of such Fund; provided, however, that none of the funds belonging to the State Compensation Insurance Fund shall be used for any other purposes whatsoever save those of the said Fund. Upon direction of the Commission, with the approval of the State Auditing Board, the State Treasurer shall sell or dispose of such portion of the investment of said Fund at market price as may be directed.

Section 141a. [421] From and after the passage of this article the interest earned during any fiscal year, on any and all investments of the State Compensation Insurance Fund, or so much of said interest as shall be necessary, shall be used in paying the salaries of the manager and other employes of said fund and the traveling, contingent and incidental expenses in administering said funds for such fiscal year in accordance with such appropriation therefor as shall be made by the general assembly in the general appropriation bill, and said expenses shall be paid by the State Treasurer as other expenses of the Industrial Commission of Colorado are paid; provided, however, that no part of said fund shall be used except interest. (Repealed by implication.) See Sec. 44 [323].

Section 142. [422] The State Treasurer shall give a separate and additional bond in such amount as may be fixed by the Commission, with sureties to be approved by the Governor, conditioned for the faithful performance of his duties as custodian of the State Compensation Insurance Fund and as custodian of all the bonds, warrants, investments and moneys of, or belonging to, said Fund, subject to all provisions of law governing bonds of the State Treasurer, and the premium on said bonds shall be paid out of the earnings of the State Compensation Insurance Fund.

Section 143. [423] The State Compensation Insurance Fund shall be open to visitation by the Insurance Commissioner at all reasonable times, and the Insurance Commissioner may require from the Commission reports as to the condition of such Fund, as required by law to be made by other insurance carriers doing business in this State, so far as applicable to said Fund. A thorough examination of said Fund shall be made whenever the Industrial Commission and the Insurance Commissioner deem it necessary, but not less often than once in every two years. Such examination shall be made by a competent, fair and impartial examiner, selected by agreement of the Insurance Commissioner and the Commission, and it shall be an Actuary of recognized standing and free from any connection with any interest opposed to the State Compensation Insurance Fund.

Section 144. [424] Any employer who intentionally misrepresents to the Commission the amount of payroll or wage expenditure upon which any premium under this Act is based shall be deemed guilty of a misdemeanor and shall be punished by a fine of not more than \$500.00 or jail sentence of not more than thirty days, or both such fine and imprisonment.

Section 145. [425] The Commission shall prepare and furnish to employers at the expense of the State all such blanks as may be necessary to carry out the terms and provisions of this Act in connection with the operation and maintenance of the State Compensation Insurance Fund.

Section 146. [426] The Commission shall cause to be prepared proper schedules showing its classification, rates, and regulations which shall be effective at such time or times as may be ordered by the Commission; said classifications, rates and regulations shall be published by posting a copy thereof on the bulletin board in the offices of said Commission.

RATIFICATION OF PRIOR ACTS AND PROCEEDINGS AND CONTINUANCE OF JURISDICTION

Section 147. [427]* The manner, mode and method of proceeding of the Industrial Commission of Colorado in the hearing and disposition of claims, contested and non-contested, arising under Chapter 179 of the Session Laws of Colorado of 1915, and the Amendments thereto of 1917, is hereby ratified, confirmed and validated.

Section 148. [428]* Nothing contained in this Act shall be construed to limit, interfere with, disturb or render ineffective in any degree, any matter, proceeding or transaction pending before, or done or performed under the provisions of Chapter 179 of the Session Laws of 1915 and all Acts amendatory thereof, by the Industrial Commission of Colorado or any department thereof including the State Compensation Insurance Fund, or to affect any right accrued or accruing or to accrue under said Acts, but each and every part thereof are hereby expressly saved and continued under the jurisdiction of said Industrial Commission of Colorado with full power, authority and jurisdiction and with the right and duty in said Commission to dispose of the same.

PROCEDURAL PROVISIONS RETROACTIVE

Section 149. [429]* The compensation provisions of this Act, except the procedural provisions shall not apply to any injury sustained prior to the taking effect hereof.

EXTRA-TERRITORIAL PROVISIONS

Section 150. [430] Any employe who has been hired outside of this state, and his employer, shall be exempted from the provisions of the Workmen's Compensation Act of Colorado while such employe is temporarily within this state doing work for his employer if such employer has furnished workmen's compensation insurance coverage under the workmen's compensation or similar laws of a state other than Colorado, so as to cover such employe's employment while in this state; provided the extra-territorial provisions of this Act are recognized in such other state and provided employers and employes who are covered in this state are likewise exempted from the application of the workmen's compensation or similar laws of such other state. The benefits under the Workmen's Compensation Act or similar laws of such other state shall be the exclusive remedy against such employer for any injury, whether resulting in death or not, received by such employe while working for such employer in this state.

Section 151. [431] A certificate from the duly authorized officer of the Industrial Commission or similar department of another state certifying that the employer of such other state is insured therein and has provided extra-territorial coverage insuring his employes while working within this state shall be prima facie evidence that such employer carries compensation insurance.

Section 152. [432] If an employe who has been hired or is regularly employed in this state receives personal injury by accident arising out of and in the course of such employment outside of this state he, or his dependents in case of his death, shall be entitled to compensation according to the laws of this state. This provision shall apply only to those injuries received by the employe within six months after leaving this state, unless prior to the expiration of such six months period the employer has filed with the Industrial Commission of Colorado notice that he has elected to extend such coverage a greater period of time.

Section 153. [433] As used in this Act, the term "state" shall be construed to include any state or territory of the United States, the District of Columbia, and any province of Canada.

Section 153a. [434] This subdivision shall be known and be deemed to be and become a part of the Workmen's Compensation Act of Colorado.

SAFETY AND ACCIDENT PREVENTION

Section 154. [435] The Industrial Commission of Colorado is hereby empowered to promote and encourage the development in industry of the use of safety devices, safety methods, and the continuous study and improvement thereof, and the said Commission is hereby given jurisdiction to enforce the provisions of this act.

(a) For the purpose of paying the necessary expense of the Industrial Commission of Colorado in the execution of this Act, every person, partnership, association, corporation, whether organized under the laws of this state, or of any other state or county, every mutual company or association, and every other insurance carrier, including the State Compensation Insurance Fund, insuring employers in this state against liability for personal injury to their employes, or death caused thereby, under the provisions of the Workmen's Compensation Act of Colorado, shall, as hereinafter provided, pay a tax upon the premiums received, whether in cash or notes, in this state, or on account of business done in this state, for such insurance in this state, at the rate of one-half of one per cent of the amount of such premiums, which tax shall be assessed and collected as hereinafter provided; provided, however, that such insurance carriers shall be credited

with all cancelled or returned premiums actually refunded during the year on such insurance, and provided further that any insurance company which is liable for the tax on premiums provided for in Section 14, Chapter 87, Volume 3, 1935 Colorado Statutes Annotated shall be entitled to a credit on the tax provided for in said section for the full amount of the tax provided for in this Act.

(b) Every such insurance carrier shall, on the first day of July, 1941, for the period between the effective date of this Act and said date, and semi-annually thereafter, make a return, verified by affidavits of its president and secretary, or other chief officers or agents, to the Industrial Commission of Colorado, stating the amount of all such premiums and credits during the period covered by such return. Every insurance carrier required to make such return shall file the same with the Industrial Commission of Colorado within 30 days after the close of the period covered thereby, and shall at the same time pay to the Industrial Commission of Colorado a tax of one-half of one per cent on each One Hundred Dollars (\$100.00) of such premiums ascertained as provided in subsection (a) hereof, less return premiums on cancelled policies.

(c) Every employer carrying his own risk as a self-insurer under the provisions of the Workmen's Compensation Act of Colorado, shall, under oath, report to the Commission his payroll in such form as may be prescribed by the Industrial Commission, and at the times herein provided for premium reports by insurance companies in subsection (b) hereof. The Commission shall assess against such payroll a tax for the purposes of this Act, computed by taking one-half of one per cent ($\frac{1}{2}$ of 1%) of the basic premiums chargeable against the same, or most similar industry or business, taken from the manual insurance rates for compensation insurance then in force in this state, and upon receipt of notice from the Industrial Commission of Colorado of the tax so assessed, every such self-insurer shall within thirty (30) days of the receipt of such notice pay to the Industrial Commission of Colorado the tax so assessed.

Section 155. [436] If any such insurance carrier, or self-insurer shall fail or refuse to make the return required by this Act, the said Industrial Commission of Colorado shall assess the tax against such insurance carrier or self-insurer at the rate herein provided for on such amount of premium as it may deem just, and the proceedings thereon shall be the same as if the return had been made.

Section 156. [437] If any such insurance carrier or self-insurer shall withdraw from business in this state before the tax shall fall due as herein provided, or shall fail or neglect to pay such tax, the Industrial Commission of Colorado shall at once proceed to collect the same; and it is hereby empowered and authorized to employ such legal processes as may be necessary

for that purpose. Suit shall be brought by the Industrial Commission of Colorado in any of the courts of this state having jurisdiction.

Section 157. [438] This Act shall be known, and deemed to be and become, a part of the Workmen's Compensation Act of Colorado, and the Industrial Commission of Colorado in the enforcement of this Act shall have all of the powers granted to it in the Workmen's Compensation Act, and any insurance carrier or self-insurer who violates any of the provisions of this Act, or fails to pay the tax imposed herein, shall be deemed guilty of violation of the Workmen's Compensation Act of Colorado, and subject to the penalties therein prescribed.

Section 158. [439] All moneys collected by the Industrial Commission of Colorado pursuant to the provisions of this Act shall be deposited with the State Treasurer, and all disbursements therefrom shall be paid by him on warrants drawn in accordance with law.

Section 159. [440] All funds received by or for the Industrial Commission of Colorado under the provisions of this Act shall be devoted solely to defray the expense of promoting and encouraging the adoption in industry of safety devices, standard safety methods, and the continuous study and improvement thereof, including the salaries of any employees, fees of experts, lecturers, and teachers appointed or employed in accordance with law.

Section 160. [441] The Industrial Commission shall cause a study to be made of standard and recognized practice and safety methods in industry, may cause employees charged with the administration of this Act to travel to other states to attend conventions where safety methods are discussed and studied, may use the proceeds of said Fund to hold safety conventions in this state and provide for the expense of exhibits, prizes, lectures, conferences, and in general take any necessary step or steps to acquaint employers and employees with the latest means, measures and devices available to promote safety and reduce the hazards of industry.

Section 161. [442] If at the end of any fiscal year there remains unexpended any moneys derived pursuant to this Act in excess of Five Thousand Dollars (\$5,000.00) the said excess moneys shall be transferred by the State Treasurer to the general revenue fund of the State, provided, however, that if and whenever the tax herein provided for in any year shall exceed the sum of Twenty Thousand Dollars (\$20,000.00) any amount in excess of Twenty Thousand Dollars (\$20,000.00) shall thereupon be transferred by the State Treasurer to the general revenue fund of the State.

MORTALITY TABLE, §3, CH. 63, C. S. A. 1935

Completed Age	Expectation	Completed Age	Expectation
10.....	48.72	53.....	18.79
11.....	48.08	54.....	18.09
12.....	47.44	55.....	17.40
13.....	46.82	56.....	16.72
14.....	46.16	57.....	16.05
15.....	45.50	58.....	15.39
16.....	44.85	59.....	14.74
17.....	44.19	60.....	14.09
18.....	43.53	61.....	13.47
19.....	42.87	62.....	12.86
20.....	42.20	63.....	12.26
21.....	41.53	64.....	11.68
22.....	40.85	65.....	11.10
23.....	40.17	66.....	10.54
24.....	39.49	67.....	10.00
25.....	38.81	68.....	9.48
26.....	38.11	69.....	8.98
27.....	37.43	70.....	8.48
28.....	36.73	71.....	8.00
29.....	36.03	72.....	7.54
30.....	35.33	73.....	7.10
31.....	34.62	74.....	6.68
32.....	33.92	75.....	6.28
33.....	33.21	76.....	5.88
34.....	32.50	77.....	5.48
35.....	31.78	78.....	5.10
36.....	31.07	79.....	4.74
37.....	30.35	80.....	4.38
38.....	29.62	81.....	4.04
39.....	28.90	82.....	3.71
40.....	28.18	83.....	3.39
41.....	27.45	84.....	3.08
42.....	26.72	85.....	2.77
43.....	25.99	86.....	2.47
44.....	25.27	87.....	2.19
45.....	24.54	88.....	1.93
46.....	23.80	89.....	1.69
47.....	23.08	90.....	1.42
48.....	22.36	91.....	1.19
49.....	21.63	92.....	.98
50.....	20.91	93.....	.80
51.....	20.20	94.....	.64
52.....	19.49	95.....	.50

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**COLORADO
OCCUPATIONAL DISEASE
DISABILITY ACT**



**ISSUED 1947 BY THE
INDUSTRIAL COMMISSION OF COLORADO**

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DISABILITY ACT



ISSUED 1947 BY THE
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COLORADO OCCUPATIONAL DISEASE DISABILITY ACT

AN ACT RELATING TO COMPENSATION FOR DISABILITY FROM OCCUPATIONAL DISEASE AND PROVIDING FOR THE ADMINISTRATION THEREOF BY THE INDUSTRIAL COMMISSION OF COLORADO.

Section 1. Short Title This act shall be known and may be cited as the "Colorado Occupational Disease Disability Act."

Section 2. Administered by Industrial Commission. This act shall be administered by the Industrial Commission of Colorado as hereinafter provided.

Section 3. Act Applies to All Employers and Employees Subject to Workmen's Compensation Act of Colorado Except Where Rejected as Provided in this Section. Every employer subject to the Workmen's Compensation Act of Colorado shall be subject to the provisions of this act unless, prior to the effective date hereof, he shall file with the commission a notice in writing to the effect that he rejects or elects not to accept the provisions of this act and shall cause printed notices thereof to be kept posted as provided in the case of election to reject or not to accept the Workmen's Compensation Act of Colorado by Section 299, Chapter 97, 1935 Colorado Statutes Annotated. Any employer subject to the provisions of this act may withdraw from its provisions and reject the same or having rejected this act may thereafter become subject to its provisions in the same manner and under the same conditions as provided for rejection or acceptance of the Workmen's Compensation Act of Colorado by Section 296, Chapter 97, 1935 Colorado Statutes Annotated. Every employee shall be subject to the provisions of this act if his employer shall be subject to this act and shall have complied with the provisions hereof regarding insurance, **provided however**, that an employee may elect to reject this act in the same manner and under the same conditions as provided by Section 297, Chapter 97, 1935 Colorado Statutes Annotated for the rejection by an employee of the Workmen's Compensation Act of Colorado.

Section 4. Definitions. Wherever used in this act,

(a) "Commission" means the Industrial Commission of Colorado.

(b) "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease as defined

in this act from performing any work for remuneration or profit. "Disability," "disabled," "total disability," "totally disabled" or "total disablement" shall be synonymous with "disablement."

(c) "Compensation" means the payments and benefits provided for in the Workmen's Compensation Act of Colorado subject to the conditions and limitations contained in this act.

(d) "Occupational Disease" means only the diseases enumerated and specified in Section 9 of this act.

(e) "Silicosis" means a disease of the lungs, due to breathing air containing uncombined silicon dioxide (SiO_2) dust, characterized anatomically by generalized nodular fibrotic changes throughout both lungs which are demonstrable by X-ray examination or by autopsy and resulting from any process or occupation involving the inhalation of silicon dioxide (SiO_2) dust.

(f) "Asbestosis" means a disease of the lungs, due to breathing air containing asbestos dust, characterized anatomically by generalized diffuse fibrotic changes throughout both lungs, demonstrable by X-ray examination or by autopsy and resulting from any process or occupation involving the inhalation of asbestos dust.

(g) "Injurious exposure" and "Harmful quantities" where used in this act shall be construed as synonymous terms and shall mean that concentration of toxic material which would, independently of any other cause whatsoever (including the previous physical condition of the claimant) produce or cause the disease for which claim is made. Determinations made under this subsection by the Industrial Commission of Colorado shall not be conclusive on either the District or Supreme Courts.

Section 5. Disablement or Death from Occupational Disease to be Treated as an Injury by Accident. Subject to the limitations, conditions and provisions of this act, the disablement or death of an employee occurring after the effective date of this act as the result of an occupational disease as hereinafter listed and defined shall be treated as if such disablement or death were an injury by accident within the provisions of the Workmen's Compensation Act of Colorado, and the employee suffering such disablement or, in case of death, his dependents shall be entitled to compensation as hereinafter provided in this act.

Section 6. Act Not Retroactive. This act shall not apply to cases of occupational disease in which the last injurious exposure to the hazards of such disease occurred before this act shall have taken effect.

Section 7. Insurance. The payment of compensation under the provisions of this act shall be secured by the employer in one of the ways specified in Section 300, Chapter 97, 1935 Colorado Statutes Annotated.

Section 8. Compensation Exclusive Remedy. In all cases where the employer and employee are subject to the provisions of this act, and where the employer has complied with the provisions of this act regarding insurance, the liability of the employer under this act shall be exclusive, and shall be in place of any and all other civil liability whatsoever, at common law or otherwise, to such employee or to his spouse, children, parents, dependents, next of kin, personal representatives, guardian or any others on account of any disease or injury to health, or on account of death from any disease or injury to health, in any way contracted, sustained or incurred by such employee in the course of or because of or arising out of his employment, except only an injury compensable as an injury by accident under the provisions of the Workmen's Compensation Act of Colorado.

Section 9. Occupational Diseases Listed. The following diseases only shall be deemed to be occupational diseases, and compensation as provided in this act shall be payable for disability or death of an employee resulting from such diseases and from no others:

1. Poisoning by aldehyde compounds.
2. Poisoning by cyanogen or its compounds.
3. Poisoning by chlorine, iodine, fluorine, bromine, or their compounds.
4. Chrome poisoning.
5. Poisoning by arsenic or its compounds.
6. Poisoning by antimony or its compounds.
7. Poisoning by cadmium or its compounds.
8. Poisoning by lead or its compounds.
9. Poisoning by manganese or its compounds.
10. Poisoning by mercury or its compounds.
11. Poisoning by selenium or its compounds.
12. Poisoning by tellurium or its compounds.
13. Poisoning by vanadium or its compounds.
14. Poisoning by phosphorus compounds.
15. Poisoning by sulfur compounds.
16. Poisoning by carbon monoxide.
17. Poisoning by nitrogen oxides or nitric acid.
18. Poisoning by toxic hydrocarbons including benzol or its derivatives; toluol, zylol, or the nitro, nitroso, and amino derivatives of these substances; and other organic solvents.
19. Methanol poisoning.
20. Silicosis as herein defined.
21. Asbestosis as herein defined.

Section 10. Conditions of Liability. An employer shall not be liable for compensation or other benefits under the provisions of this act for disability or death resulting from the diseases specified in Section 9 except where the following conditions are shown to exist:

(a) There is a direct causal connection between the conditions under which the work was performed and the occupational disease, and the disease can be seen to have followed as a natural incident of the work and as a result of the exposure occasioned by the nature of the employment and can be fairly traced to the employment as a proximate cause and does not come from a hazard to which workmen would have been equally exposed outside of the employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. The disease need not have been foreseen or expected but after its contraction must appear to have had its origin in a risk connected with the employment, and to have flowed from that source as a natural consequence. The burden of proof shall be upon the claimant to establish each and every such fact by competent medical evidence.

(b) Claim for compensation has been filed with the Commission in writing within the time fixed by the appropriate subdivision of Section 11 of this act.

(c) In the case of **disability** from a **disease other than silicosis or asbestosis**, the disablement has resulted within one hundred twenty (120) days from the date of the employee's last injurious exposure to such disease while actually working for the employer against whom compensation is claimed.

(d) In the case of **death** from a **disease other than silicosis or asbestosis**, the death has resulted within one year from the date of the employee's last injurious exposure to such disease while actually working for the employer against whom compensation is claimed, except in those cases where death results during a period of continuous total disability from an occupational disease other than silicosis or asbestosis for which compensation has been paid or awarded, and in such cases compensation shall be paid if such death results within three years from the date of the employee's last injurious exposure to such disease while actually working for the employer against whom compensation is claimed.

(e) In the case of **disability** from **silicosis or asbestosis**, the disablement has resulted within two years from the date of the employee's last injurious exposure to such disease while actually working for the employer against whom compensation is claimed.

(f) In the case of **death** from **silicosis or asbestosis**, the death has resulted within two years from the date of the

employee's last injurious exposure to such disease while actually working for the employer against whom compensation is claimed, except in those cases where death results during a period of continuous total disability from silicosis or asbestosis for which compensation has been paid or awarded, and in such cases compensation shall be paid if such death results within five years from the date of the employee's last injurious exposure to such disease while actually working for the employer against whom compensation is claimed.

(g) In the case of either **disability** or **death** from **silicosis** or **asbestosis**, the employee during the ten years immediately preceding disablement has been exposed to **harmful quantities** of silicon dioxide (SiO_2) dust or asbestos dust for a total period of not less than five years in this state, **provided however**, that if the employee shall have been employed by the same employer during the whole of a five-year period of such exposure, his right to compensation against such employer shall not be affected by the fact that he has been employed during any part of such period outside of this state.

Section 11. Limitation upon Time for Filing Claim—Rights Barred if not Filed within Time Limits. The right to compensation under this act for disability or death from an occupational disease shall be forever barred unless written claim is filed with the commission within the time in this section hereinafter provided:

(a) If the claim is made by an employee and is based upon a disease other than **silicosis** or **asbestosis** the claim must be filed within **sixty days** after the date of disablement from such disease, **except** in the case of poisoning from **benzol or its derivatives** when the claim must be filed within **ninety days** after the date of disablement.

(b) If the claim is made by an employee and is based upon **silicosis** or **asbestosis** the claim must be filed within **one year** after the date of disablement from such disease.

(c) If the claim is made by a dependent or dependents of an employee and is based upon **death** resulting from any **occupational disease** the claim must be filed within **six months** after the date of death of such employee.

Section 12. Employee's Willful Misconduct or Willful Self-Exposure. Notwithstanding anything herein contained, no employee or dependent of any employee or other person shall be entitled to receive compensation for disability or death from an occupational disease when such disability or death, wholly or in part, was caused by the willful misconduct or willful self-exposure of such employee or by his disobedience to such reasonable rules and regulations as may be adopted by the employer, and which rules and regulations have been and are kept posted in conspicuous places in and about the premises of the employer, or

otherwise brought to the attention of such employee. As used in this section, **willful self-exposure** shall be conclusively presumed where any of the following occur:

(a) An employee or applicant for employment shall fail or omit truthfully to state in writing to the best of his knowledge in answer to any inquiry made by the employer, the place, duration and nature of his previous employment.

(b) An applicant for employment shall fail or omit truthfully to state in writing to the best of his knowledge in answer to any inquiry made by the employer, whether or not he had been previously disabled, laid off or compensated in damages or otherwise, because of any physical disability.

(c) An employee or applicant for employment shall fail or omit truthfully to give in writing to the best of his knowledge in answer to any inquiry made by the employer, full information about the previous status of his health, previous medical and hospital attention and exposure to tuberculosis.

(d) An employee or applicant for employment shall fail or refuse to submit to medical or X-ray examination when requested so to do by the employer at the employer's expense.

(e) An employee shall willfully fail to use safety devices provided by the employer or where the occupational disease results from the intoxication of the employee.

Section 13. Last Employer Liable — Exception. Where compensation is payable for an occupational disease, the employer in whose employment the employee was last injuriously exposed to the hazards of such disease, and the insurance carrier, if any, on the risk when such employee was last so exposed under such employer, shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier, **provided however**, that in the case of silicosis or asbestosis the only employer and insurance carrier liable shall be the last employer in whose employment the employee was last exposed to harmful quantities of silicon dioxide (SiO_2) dust or asbestos dust on each of at least sixty days or more, and the insurance carrier, if any, on the risk when the employee was last so exposed under such employer.

Section 14. Compensation Benefits for Disability—Occupational Diseases Other than Silicosis or Asbestosis. Subject to the provisions of Section 17 of this act, an employee entitled to compensation under this act for disability resulting from an occupational disease other than silicosis or asbestosis shall be paid compensation during the continuance of such disability, whether temporary or permanent, at the same weekly rate and in the same manner and to the same extent as in the case of temporary total disability resulting from an injury by accident under the Workmen's Compensation Act of Colorado, except

that no compensation shall be payable for the first thirty days of disability unless such disability is of sixty days' duration or longer, in which such event compensation shall be payable from the beginning of disablement, the date of the last injurious exposure of such employee while actually working for the employer against whom compensation is claimed to be considered as the date of accident for the purpose of such computation, **provided however**, that no compensation shall be payable for partial disability, and that the aggregate amount of payments for total disability shall in no event exceed the sum of four thousand three hundred and seventy-five dollars (\$4,375.00).

Section 15. Compensation Benefits for Death — Occupational Diseases Other than Silicosis or Asbestosis. Subject to the provisions of Section 17 of this act, the compensation benefits to which the dependents of an employee shall be entitled under this act for death resulting from an occupational disease other than silicosis or asbestosis shall be in the aggregate not to exceed the difference between the total sums paid to the employee for total disability resulting from such disease as provided in Section 14 of this act and the sum of four thousand three hundred and seventy-five dollars (\$4,375.00), such compensation benefits to be paid in the same manner, to the same persons, at the same weekly rate, and to be subject to the same conditions as to termination or reduction as in the case, under the Workmen's Compensation Act of Colorado, of death resulting from an injury by accident.

Section 16. Compensation Benefits for Disability or Death from Silicosis or Asbestosis. The compensation benefits to which an employee or his dependents shall be entitled under this act for disability or death resulting from silicosis or asbestosis shall be the same as the compensation benefits to which an employee or his dependents shall be entitled for disability or death resulting from an occupational disease other than silicosis or asbestosis under the provisions of Sections 14 and 15 of this act, **provided however**, that no compensation shall be payable for partial disability from silicosis or asbestosis and **provided further**, that the compensation payable for total disability from silicosis or asbestosis shall be subject to the following limitations as to the total amounts payable during a transitory period following the effective date of this act: If disablement occurs or, in case of no claim for prior disablement, if death occurs in the calendar month in which this act becomes effective, the total compensation for disability and death shall not exceed the sum of five hundred dollars (\$500). If the disablement occurs or, in case of no claim for prior disablement, if death occurs during the next calendar month, the total compensation for disability and death shall not exceed the sum of five hundred and fifty dollars (\$550). Thereafter, the total amount of compensation for disability and death

shall increase at the rate of fifty dollars (\$50) per month, the aggregate payable in each case to be limited according to the foregoing formula for the month in which disablement occurs or, in case of no claim for prior disablement, in which death occurs. Such progressive increase in the limits upon the total amount of compensation payable for disability and death shall continue until the limit upon compensation benefits specified in Sections 14 and 15 of this act for disability and death resulting from an occupational disease other than silicosis or asbestosis has been reached, and thereafter the total aggregate of compensation benefits for disability and death resulting from silicosis or asbestosis shall be the same as provided in Sections 14 and 15 of this act for disability and death resulting from an occupational disease other than silicosis or asbestosis.

Section 17. When Occupational Disease is Complicated with or is Aggravated by Other Diseases—Exception. When an occupational disease is complicated with or is aggravated by any other disease or infirmity not itself compensable, or when disability or death from any other cause not itself compensable, is complicated with or is aggravated, prolonged, accelerated or in any wise contributed to by an occupational disease, the compensation payable under this act shall be reduced and limited to such proportion of the disability as is caused by the occupational disease, **provided however**, that if it be found impossible to separate the causes of disability, then and in that event no compensation whatever shall be payable, and **provided further**, that in the case of disability or death from **silicosis or asbestosis complicated with tuberculosis of the lungs**, the provisions of this section shall not apply with respect to such complication, and compensation shall be payable as provided in Section 16 of this act for disability or death from uncomplicated silicosis or asbestosis.

Section 18. Termination of Compensation—Reopening Award. Payment of compensation for disablement shall cease upon the termination of the disablement. An application to terminate compensation awarded may be made to the commission by any person in interest or the termination may be decided by the commission upon its own motion. Where the disablement has terminated and within one year thereafter, or in case of silicosis or asbestosis within two years, the disablement shall recur as a result of the occupational disease for which an award has been made, the commission may order resumption of compensation if claim therefor be made within sixty days after the recurrence of the disablement.

Section 19. Dependency Determined as of Date when Disability Commenced. No compensation for death from an occupational disease shall be payable to any person whose

dependency relationship to the deceased arose subsequently to the beginning of the first compensable disability save only in the case of after-born children from a marriage existing at the beginning of such disability.

Section 20. Medical Benefits. In the event of an employee's disablement from an occupational disease, he shall be entitled to receive from the employer, in addition to all other compensation payable under this act, such medical service, hospitalization and medicines as may be reasonably required not exceeding in value of the sum of five hundred dollars (\$500), **provided however**, that when the disablement results from silicosis or asbestosis the employee shall be entitled to no benefits under this section unless the commission shall find from the facts that there are substantial prospects that the condition of such employee will be materially improved by medical treatment, and **provided further**, that the payment of medical service, hospitalization and medicines shall not be construed as the payment of compensation, nor shall such payments in any manner be construed as an admission of liability.

The commission shall have the power to establish a schedule fixing the fees for which all medical and hospital treatment rendered to employees under this section shall be compensated.

Section 21. Funeral and Burial Benefits. In the event of death resulting from an occupational disease, the employer shall pay in one lump sum within thirty days after ordered so to do by the commission, and to such person as the commission may order, the sum of one hundred and twenty-five dollars (\$125) for the employee's funeral and burial expenses, such payment to be in addition to all other compensation payable under this act.

Section 22. Medical Examinations and Treatment—Refusal to Submit to. Any employee claiming the right to receive compensation under this act shall upon the written request of his employer, or the insurer carrying such risk, submit himself at any time and from time to time, to examination by a physician or surgeon, who shall be provided and paid for by the employer, or insurer, and shall likewise submit to examination from time to time by any physician or surgeon selected and paid for by the commission. The employee shall be entitled to have a physician or surgeon provided and paid for by himself present at any such examination. So long as the employee, after such written request by the employer or insurer, shall refuse to submit himself to any such examination, or shall in any way obstruct the same, his right to collect or to maintain any proceedings for the collection of compensation under this act shall be suspended, and if he shall refuse to submit to such examination after direction by the commission, or any member or referee thereof, or shall in any way obstruct the same, his right to compensation which shall accrue

and become payable during the period of such refusal or obstruction shall be barred and credit given to the employer for payments which otherwise would have been payable. If any employee shall persist in any unsanitary or injurious practice which tends to imperil or retard his recovery, his compensation payments shall be suspended during the period thereof. If he shall refuse to submit to such medical or surgical treatment as is reasonably essential to promote his recovery, his compensation payments shall be suspended entirely. Any physician who shall make or be present at any such examination may be required to testify as to the results thereof, and any physician who has attended the employee in a professional capacity may be required to testify before the commission when it shall so direct. Such physician shall be required to disclose confidential communications imparted to them which may be necessary to a proper understanding of the case. Subject to the contrary direction of the commission in any particular case, the employer shall have the right to select a physician who shall attend and treat an employee and the employer shall not be liable to pay for the services of any other physician or surgeon, **provided however**, that if the employer does not tender the services of a physician after knowledge that the employee is suffering from an occupational disease and has filed claim therefor with the commission, the employee shall have the right to select his own physician, and in such case the employer shall be liable to pay for the services of the physician or surgeon so selected by the employee.

Section 23. Autopsy in Death Claims. At any time after the death of an employee, if it appears that a controversy may exist or arise in regard to the cause of death or the existence of any occupational disease, the commission or any member or referee thereof shall order an autopsy when requested so to do by the employer or insurance carrier, and the right to compensation under this act shall be barred upon the refusal of any dependent of such employee to permit such autopsy when so ordered. The person requesting the autopsy shall pay the cost thereof and shall have the right to select the physician who shall make the autopsy. Any interested person may at his own expense designate a duly licensed physician to attend such autopsy. The findings of the physician performing the autopsy may be filed with the commission and if so filed shall be competent evidence in any proceeding under this act for compensation on account of the disability or death of such employee. Where an autopsy has been performed pursuant to the provisions of this section no cause of action shall lie against any person, firm or corporation for requesting or participating in such autopsy.

Section 24. Medical References by the Commission. The Director or Executive Secretary of the Colorado State Board of Health, the Dean of the School of Medicine of the University of Colorado and the President of the Colorado State Medical Society shall jointly submit to the commission, within thirty days after the effective date of this act, and on or before the first day of January in each succeeding calendar year, a list of five or more licensed physicians in good professional standing each of whom shall have had substantial and adequate experience in the diagnosis, care and treatment of silicosis and asbestosis including the interpretation of X-ray films thereof, and a separate list of ten or more licensed physicians in good professional standing each of whom shall have had substantial and adequate experience in the diagnosis, care and treatment of the occupational diseases other than silicosis and asbestosis set forth in Section 9 of this act. If a medical fact be controverted in any proceeding pending before the commission under this act, the commission may direct the examination of the claimant and the filing of a report thereon by any one or more of the physicians whose names appear upon the then current list appropriate to the occupational disease in question, including such X-ray examination and such pathological examinations and tests as in their opinion may be necessary for the purpose of determining diagnosis, disablement, causal relationship to the employment, and the nature and type of medical treatment, hospitalization and other care required. The cost of such examinations shall be paid as other expenses of the commission.

Section 25. Disabled Employee Desiring to Leave the State of Colorado—Notice. Any disabled employee who desires to leave the State of Colorado shall notify the commission in writing of his desire and intention so to do. The commission, after the receipt of such notification, shall notify the employer, or if insured the insurance carrier, who within ten days thereafter shall file in writing with the commission an election as to whether or not such employer or insurance carrier desires to have the disabled employee submit to a medical and X-ray examination. If the election be for an examination, the employee shall submit himself without delay to such physician or physicians as may be designated by the employer or insurance carrier, and upon the completion of such examination, the employer or insurance carrier shall immediately notify the commission. After first considering such reports or other evidence as may be submitted by the parties, but in no event prior to receipt of notice of completion of medical examination if the employer or insurance carrier shall elect to have an examination, the commission in its discretion may enter an order permitting such employee to leave the State of Colorado. If the employee shall fail to notify the commission of his desire to leave the State of Colorado as herein provided, or shall refuse to submit to medical and X-ray

examination when the employer or insurance carrier shall elect to have such examination, or shall leave the State of Colorado without obtaining the written consent of the commission as herein provided, no compensation shall be allowed or paid to the employee during his absence from the state. Upon the reasonable request of the employer, or if insured the insurance carrier, the commission shall order any disabled employee who may be outside of the State of Colorado, whether with or without the consent of the Commission, to return at his own expense to the locality in which he was employed at the time of disablement for further examination or treatment, and in the event of noncompliance with such order, no further payments of compensation shall be allowed by the commission or paid by the employer or insurance carrier.

Section 26. Waiver of Compensation by Employee Affected by Occupational Disease but Not Disabled. Where an employee, though not actually disabled, is found upon competent medical and X-ray examination to be affected by an occupational disease, he may with the approval of the commission waive in writing compensation for any aggravation of his condition that may result from his continuing in his hazardous occupation. The commission shall make reasonable rules and regulations relative to the form, execution and filing of such waivers.

Section 27. Agreements to Waive Compensation Void—Settlement. Except as otherwise provided in Section 26 of this act, no agreement by an employee to waive his rights to compensation under this act shall be valid. An agreement between an employer and his employee or the dependents of an employee for the settlement of a claim arising under this act shall be valid only if approved in writing by the commission.

Section 28. Written Notice to be Given Employer of Contraction of Occupational Disease and of Death Therefrom—Giving of Notice Does Not Avoid Necessity of Filing Claim. Written notice of the contraction of an occupational disease shall be given to the employer by the affected employee or by someone on his behalf within thirty days after the first distinct manifestation thereof, and in the event of death from such occupational disease, written notice thereof shall be given to the employer within thirty days after such death. Failure to give either of such notices shall be deemed waived unless objection is made at a hearing on the claim prior to any award or decision thereon. Actual knowledge by an employer in whose employment an employee was last injuriously exposed to an occupational disease of the contraction of such disease by such employee and of his exposure to the conditions causing it shall be deemed notice of its contraction. If the notice or notices herein required shall not be given as herein provided and within the time herein fixed,

the commission may reduce the compensation that would otherwise have been payable in such manner and to such extent as the commission may deem just, reasonable and proper under the existing circumstances. Compliance with the provisions of this section respecting notice shall not avoid the necessity of filing, nor relieve from the effect of failure to file, written claim with the commission in the manner and within the time or times prescribed by the provisions of sections 10, 11 and 29 of this act.

Section 29. Claims to be Filed with Commission in Triplicate. Claims under this act shall be filed with the commission in triplicate, and immediately after such filing the commission shall forward one of such triplicate copies by mail to the employer and one to the insurance carrier.

Section 30. Rules and Regulations. The commission shall have the power to adopt rules and regulations relative to the exercise of its powers and duties under this act, and in the adoption and publication of such rules and regulations it shall proceed in the same manner and be subject to the same limitations as provided for the exercise of its rule-making power under the Workmen's Compensation Act of Colorado.

Section 31. Provisions of Workmen's Compensation Act of Colorado to Apply to this Act with Certain Exceptions. Except as hereinafter provided, all of the provisions of the Workmen's Compensation Act of Colorado shall apply, insofar as they may be pertinent and applicable and not inconsistent with the provisions of this act, to the administration of this act and to all rights and proceedings under this act. Sections 280, 281, 282, 294, 298, 309, 310, 330, 334, 338, 341, 342, 343, 344, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 372, 389, 427, 428, and 429 of Chapter 97, 1935 Colorado Statutes Annotated, shall not apply to the provisions of this act, nor to any rights or proceedings under this act.

Section 32. Constitutionality Clause—If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Section 33. Effective Date—This act shall take effect and be in force on and after January 1, 1946.

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