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Workmen's Compensation Laws



PASSED BY THE
Twentieth General Assembly
of the State of Colorado

1915

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SENATE BILL NO. 99.

BY SENATORS EATON, KNAUSS, CANDLISH AND LEWIS
AND MESSRS. DRAKE, SCHMIDT AND O'ROURKE.

AN ACT

TO DETERMINE AND DEFINE THE RELATIONS BETWEEN EMPLOYER AND EMPLOYEE, PROVIDING FOR SAFE AND HYGIENIC CONDITIONS AND FOR COMPENSATION FOR ACCIDENTAL INJURY TO OR DEATH OF EMPLOYEES; FOR INSURANCE OF SUCH COMPENSATION; ESTABLISHING AN INDUSTRIAL COMMISSION, PRESCRIBING ITS POWERS, AND PROVIDING FOR REVIEW OF ITS PROCEEDINGS; MAKING AN APPROPRIATION TO CARRY OUT THE PROVISIONS OF THIS ACT; PROVIDING PENALTIES FOR VIOLATION OF THIS ACT; REPEALING ALL ACTS AND PARTS OF ACTS IN CONFLICT WITH THIS ACT, AND DECLARING THIS ACT TO BE NECESSARY FOR THE IMMEDIATE PRESERVATION OF PUBLIC PEACE, HEALTH AND SAFETY.

Be it Enacted by the General Assembly of the State of Colorado:

Section 1. The Industrial Commission of Colorado created by the act of the General Assembly of Colorado, which commission for the purpose of this Act shall be a body politic and corporate under the name prescribed by said Act, shall enforce and administer the provisions of this Act and wherever the word commission is used in this Act it shall be construed to mean the Industrial Commission of Colorado. 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.

Section 2. The term "Commission" when used in this Act shall mean The Industrial Commission of Colorado.

Section 3. Unless the context otherwise requires, a word used in this Act in the singular number shall also include the plural.

Section 4. The following terms as used in this Act shall be construed and have the following meaning, unless otherwise specifically defined in the context:

(a) The term "order" shall mean and include any decision, classification, rate, rule, regulation, direction, requirement or standard of the Commission, or any other determination arrived at or decision made by such Commission.

(b) The term "place of employment" shall mean and include every place whether indoors or out or underground, and the premises appurtenant thereto, 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, and 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.

(c) The term "employment" shall mean and include any trade, occupation or process of manufacture, or any method of carrying on such trade, occupation, or process of manufacture in which any person may be engaged, except as otherwise expressly provided in this Act.

(d) The term "employer" shall mean and include :

I. The state, and each county, city, town, irrigation and school district therein, and all public institutions and administrative boards thereof.

II. Every person, association of persons, firm and private corporation (including any public service corporation), personal representatives, assignee, trustee and receiver, who has four (4) or more persons regularly 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 employee, for which compensation under this Act may be claimed, shall, in the manner provided in this Act, have elected to become subject to the provisions of this Act and who complies with the provisions hereof respecting insurance, and who shall not, prior to such accident, have effected a withdrawal of such election in the manner provided in this Act.

III. 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 employees regularly 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 provided herein, in which event he and his employees shall be subject to and entitled to all the provisions of this Act.

IV. The provisions of this act shall not apply to common carriers engaged in interstate commerce, nor to their employees.

(e) The term "employee" shall mean and include:

I. Every person in the service of the state, or of the county, city, town, irrigation or school district therein, or of any public institution or administrative board thereof, under any appointment or contract of hire, express or implied, except an elective official of the state, or of any county, city, town, irrigation or school district therein, or of any public institution or administrative board thereof. Policemen and firemen shall be deemed em-

ployees, within the meaning of this paragraph; provided, that any policeman or fireman claiming compensation under this act shall have deducted from such compensation any sum which such policeman or fireman may receive from any pension or any benefit fund to which the municipality may contribute.

II. Every person in the service of any other 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 who are legally permitted to work under the laws of this state (who, for the purposes of this act, shall be considered the same, and shall have the same power of contracting with respect to their employment, as adult employees), but not including any person whose employment is but casual, or who is expressly excluded from this act or whose employment is not in the usual course of trade, business, profession or occupation of his employer.

(f) The following shall be conclusively presumed to be solely and wholly dependent for support upon a deceased employee:

I. The widow only if living with the deceased, or actually dependent, wholly or partially, upon him at the time of his accident.

II. The widower only if incapable of self support, and actually dependent, wholly or partially, upon deceased at the time of her accident.

III. A child or children under the age of eighteen years, (or over said age, if physically or mentally incapacitated from earning) actually dependent upon the parent with whom he is, or they are, living at the time of the death of such parent, there being no surviving and dependent parent. In case there is more than one child thus dependent, the death benefit shall be divided between such dependents in such proportion as may be determined by the commission after considering the ages of such dependents, and other facts bearing upon such dependency.

IV. In all other cases, questions of entire or partial dependency shall be determined in accordance with the facts, as the same may be at the time of the accident to the employee; and in such other cases, if there is more than one person wholly dependent, the death benefit shall be divided equally among them; and persons partially dependent, if any, shall receive no part thereof; but if there is no one wholly dependent, and there is more than one person partially dependent, the death benefit shall be divided among them, according to the relative extent of their dependency.

V. No person shall be considered a dependent unless a member of the family of the deceased employee, or one who bears to him the relation of surviving spouse, or lineal descendant, or ancestor, or brother or sister. A child, within the meaning of this act, shall include a posthumous child, and a child legally adopted prior to the injury.

VI. Questions as to who constitute dependents, and the extent of their dependency shall be determined as of the dates as herein provided and their right to any death benefit shall become fixed as of such time, irrespective of any subsequent change in conditions, and the death benefit shall be directly payable to the dependent or dependents entitled thereto, or their legal representatives; provided, notwithstanding, that when a right to a death benefit shall have become fixed, it shall cease upon the happening of any one of the following contingencies:

(1) Upon the marriage of the widow or widower.

(2) When a child reaches the age of eighteen years, unless said child at such time is physically or mentally incapacitated from earning.

(3) Upon the death of any dependent.

VII. Death benefits under this act to dependents who are non-residents of the United States shall be one-third of the amount which a dependent who is a resident of the United States might receive; provided, that in no event shall death benefits to dependents who are non-residents of the United States exceed the aggregate sum of one thousand dollars.

VIII. No dependent of an injured employee shall be deemed, during the life of such employee, a party in interest to any proceeding by him for the enforcement or collection of any claim for compensation, nor as respects the compromise thereof by such employee.

(g) The average weekly wage of the injured person at the time of the injury shall be taken as the basis upon which to compute the benefits; such average weekly earnings shall be one fifty-second (1-52) of the average annual earnings of the employee.

I. The average weekly earnings for all employees shall be taken at not less than the minimum nor more than the maximum provided in this act. Between said limits, said average annual earnings shall be determined as follows:

II. If the injured employee has worked in the employment in which he was working at the time of the accident, whether for the same employer or not, during substantially the whole of the year immediately preceding his injury, his average annual earnings shall consist of three hundred times the average daily wage or salary which he has earned in such employment during the days when so employed.

III. If the injured employee shall not have worked in such employment during substantially the whole of such immediately preceding year, his average annual earnings shall consist of the average daily wage or salary which such employee shall have earned in such employment during days when so employed, multiplied by the number of days that he shall have worked in all employments during said year.

(h) In cases where the foregoing methods of arriving at the average annual earnings of the injured employee cannot rea-

sonably and fairly be applied, such average annual earnings shall be taken at such sum as, having regard to the previous earnings of the injured employee, and of other employees of the same or most similar class, working in the same or most similar employment, in the same or a neighboring locality shall reasonably represent the average annual earning capacity of the injured employee at the time of the accident, in the employment in which he was working at such time.

I. If an employee is a minor, and is permanently disabled, his weekly earnings shall be determined on the basis of the earnings that such minor, if not disabled, would probably earn. If it is established that the injured employee was of such age and experience when injured as that under natural conditions his wages would be expected to be increased, the fact may be considered in arriving at his average weekly wage.

II. The fact that an employee 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 annual earnings shall be such sum as will reasonably represent his average annual earning capacity at the time of the later injury, in the employment in which he was working at such time, and shall be arrived at according to, and subject to, the limitations of the provisions of this section.

(i) The weekly loss in wages referred to in this act shall consist of such percentage of the average weekly earnings of the injured employee, computed according to the provisions of this act, as shall fairly represent the proportionate extent of the impairment of his earning capacity in the employment in which he was working at the time of the accident and other suitable employments, the same to be fixed as of the time of the accident, but to be determined in view of the nature and extent of the injury.

(j) The term "safe" or "safety" as applied to an employment or place of employment, shall mean such freedom from danger to the life, health and safety of employees, and such reasonable means of notification, egress and escape in case of fire, as the nature of the employment will reasonably permit.

Section 5. In an action to recover damages for a personal injury sustained within this state by an employee on and after the 1st 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 employee, 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 employee where such want of care was not wilful.

Section 6. 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 5 of this act; nor shall such employer be subject to any other liability whatsoever for the death of or personal injury to any employee, 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 or of personal injury to any such employee are hereby abolished except as in this Act provided.

Section 7. If an employer has elected to and has complied with the provisions of this Act, and an action is brought against such employer to recover damages for personal injuries or death sustained by an employee 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, upon page 115 of the session laws of 1913, had not been enacted.

Section 8. 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 or death accidentally sustained on and after August 1st, 1915, shall obtain in all cases where the following conditions concur:

I. Where, at the time of the accident, both employer and employee are subject to the provisions of this Act.

II. Where, at the time of the accident, the employee is performing service arising out of and in the course of his employment.

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

Section 9. Such election on the part of any employer including the employer of private domestic servants, farm and ranch laborers or of three or less employees may be made by filing with the Commission a written statement to the effect that he accepts the provisions of this act, the filing of which statement shall operate to subject such employer to the provisions of this Act for the term of one (1) year from the date of filing such statement, and thereafter, without further act on his part, for successive terms of one year each, unless such employer shall, at least sixty days prior to the expiration of such first or any succeeding year, file in the office of said commission a notice in writing to the effect that he desires to withdraw his election to be subject to the provisions of this Act.

II. On and after August 1, 1915, every employer of four or more employees, 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 that date, such employer shall have filed with the Commission a notice in writing to the effect that he elects not to accept the provisions of this Act; and the employer shall have the right to withdraw his election at the time and in the manner above specified.

Provided, That any employer commencing business subsequent to August 1st, 1915, may make his election not to become subject to the provisions of this Act at any time prior to becoming an employer of four or more employees, in a common employment, exclusive of private domestic servants and farm and ranch laborers, by giving written notice as above provided. Such employer may withdraw from the provisions of said sections of this Act at the expiration of one year, or at the expiration of any succeeding year, in the manner provided in this Act.

III. Every employer, whether electing to accept or reject the provisions of this Act, shall cause printed notice thereof to be posted in and about his place of employment in a conspicuous manner and in sufficient places frequented by his employees, as to reasonably notify such employees that he is or is not, as the case may be, subject to the provisions of this Act, and shall likewise cause similar notice to be given of the filing of any change of such election on his part.

Section 10. Any employer electing to become subject to the provisions of this Act, shall secure compensation to his employees in one of the following ways:

1. By insuring and keeping insured the payment of such compensation in the state compensation insurance fund, or,

2. 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 a corporation or mutual corporation the employer shall forthwith file with the Commission, in form prescribed by it, a notice specifying the name of such insurance corporation or mutual corporation together with a copy of the contract or policy of insurance.

3. By furnishing satisfactory proof to the Commission of his financial ability to pay such compensation direct to his employees as hereinafter provided.

Section 11. Every insurance corporation or mutual corporation, except the State Compensation Insurance Fund as administered by the Industrial Commission of Colorado, 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 basic rates and schedules, if a system of schedule rating be in use, none of which shall take effect until the Commission shall have approved the same as adequate for the risks to which they respectively apply. The Commission may withdraw its approval of any premium rate or schedule made by any insurance corporation or mutual corporation if, in its judgment, such premium rate or schedule is inadequate to provide the necessary reserves.

Every contract for the insurance of compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this Act, and all provisions thereof in such insurance policy inconsistent with the provisions of this Act shall be void.

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 employee, and in the event of his death, to his dependents, to pay the compensation, if any, for which the employer is liable; that, as between the employee 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 orders, findings, decisions or awards rendered against the employer under the provisions of this Act.

Such policy must also provide that the employee shall have a first lien upon any amount which shall become owing on account of such policy to the employer from the insurance carrier and that in case of the legal incapacity or inability of the employer to receive the said amount and pay it over to the employee or his dependents, the said insurance carrier may and shall pay the same directly to the said employee or his dependents, thereby discharging to the extent of such payment the obligations of the employer to the employee, and such policy shall not contain any provisions relieving the insurance carrier from payment when the employer becomes insolvent or is discharged in bankruptcy, or otherwise, during the period that the policy is in operation or the compensation remains owing.

Section 12. Any employee may become subject to the provisions of this Act, and shall be deemed to have accepted, and shall be subject to the provisions thereof if at the time of the accident upon which liability is claimed:

(a) His employer is subject to the provisions of this Act, when the employee has actual notice thereof; and if,

(b) Such employee shall not, at the time of entering into his contract of hire, expressed or implied with such employer, have given to his employer notice in writing that he elects not to be subject to the provisions of this Act; or,

(c) Without giving such notice, shall have remained in the service of such employer for seven days after such employer has filed with the Commission his election as in this Act provided and has become subject hereto; Provided, the notices required by this Act shall have been posted in and about the place of employment of such employer as required by law, in which event said employee shall be conclusively presumed to have actual notice thereof.

Section 13. 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 employee 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 employee than as provided in this Act, and shall be an acceptance of all the provisions of this Act, and shall bind the employee himself and, for compensation for his death, shall bind his personal representatives, his widow and next kin, as well as the employer, and those conducting his business during bankruptcy or insolvency.

Section 14. Every employer shall keep a record of all injuries, fatal or otherwise, received by his employees 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 to the Commission upon blanks to be procured from the Commission for that purpose. Such report shall contain the name and nature of the business of the employer, the location of his establishment or place of work, the name, address and occupation of the injured employee, and shall state the time, the nature and cause of injury and such information as may be required by the Commission. Any employer who refuses or neglects to make any report required by this section, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than five hundred dollars for each such offense.

Section 15. The Commission, or its agents, may enter any place of employment for the purpose of collecting facts and statistics, examining the provisions made for the health, protection and safety of the employees, and bringing to the attention of every employer any law or any rule, order or requirement of the Commission, and any failure on the part of any employer to comply therewith.

Section 16. All books, records and payrolls of employers, showing or reflecting in any way upon the amount of wage expenditure of such employers, and other data, facts 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, the 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.

Any employer who shall refuse to admit the Commission or its duly authorized agents to such place of employment for such purposes shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars.

Section 17. Every employer shall furnish the Commission, upon request, all information required by it to accomplish the purposes of this Act. In the month of January and July of each year, every employer shall prepare and mail to the Commission, at its main office in the city of Denver, Colorado, a statement containing the following information, viz: The number of employees employed during the preceding six months period; the number of such employees employed at each kind of employment; and the aggregate amount of wages paid to such employees, which information shall be furnished on a blank or blanks to be prepared by the Commission; and it shall be the duty of the Commission to furnish such blanks to such employers, free of charge, upon request therefor. Every employer receiving from the Commission any blanks, with directions to fill out the same, shall cause the same to be properly filled out so as to answer fully and correctly all questions therein propounded, and to give all the information therein sought, or if unable to do so, he shall give in writing good and sufficient reason for such failure. The commission may require that the information herein required to be furnished shall be verified under oath and shall be returned to the Commission within the period fixed by it or by law. The Commission or any person employed by it for that purpose, shall have the right to examine, under oath, any employee or employer, or the officer, agent or employee thereof, for the purpose of ascertaining any information which such employer or employee is required by this Act to furnish to the Commission. Any person who shall fail or refuse to furnish to the Commission the semi-annual statement herein required, or shall fail or refuse to furnish such other information as may be required by the Commission under authority of this Act, shall, if an employer, be punished by a fine of two hundred dollars, and if an employee, be punished by a fine of twenty-five dollars.

Section 18. The information contained in the semi-annual report provided for in the preceding section, and such other information as may be furnished to the Commission by employers in pursuance of the provisions of this act, shall be for the exclusive use and information of said Commission in the discharge of its official duties and shall not be open to the public nor be used in any court, in any action or proceeding pending therein, unless the Commission is a party to such action or proceeding; but the

information contained on said report may be tabulated and published by the department in statistical form, for the use and information of other state departments and the public. Any person in the employ of the Commission who shall divulge any information secured by him in respect to the transactions, property or business of any employer to any person other than the Commission, shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, and shall thereafter be disqualified from holding any appointment or employment with the Commission.

Section 19. In case of failure or refusal of any person to comply with the order of the Commission or 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, the district judge of the county in which the person resides, on application of the Commission or any agent appointed by it, shall compel obedience by attachment proceedings or for contempt, as in the case of disobedience of the requirements of subpoena issued from such court on a refusal to testify thereon.

Section 20. 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 and injured employees, which shall be administered in accordance with the following provisions, without liability on the part of the state beyond the amount of said fund, collected as provided in this Act.

Section 21. If any employer shall be in arrears for more than five 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 the amounts due from him shall be collected by civil action against him in the name of the Commission as plaintiff; and it shall be the duty of the Commission to certify to the attorney general of the state the names and residences of all employers known to the Commission to be in default for such payments for a longer period than five days, and the amount due from each such employer, and it shall then be the duty of the attorney general forthwith to bring, or cause to be brought against each such employer a civil action in the proper court for the collection of such amount so due and the same when collected, shall be paid into the State Compensation Insurance Fund. While such default continues, such employer shall not be entitled to the benefits of this Act. Such employer's compliance with the provisions of this Act requiring payments to be made to the state compensation insurance fund shall date from the time of the payment of said money to the State Compensation Insurance Fund, and his right to the benefits of the provisions of this Act shall be determined accordingly.

Section 22. The State Compensation Insurance Fund shall be a continuing fund and shall consist of all premiums received and paid into the 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 losses sustained on account of compensation and benefit insurance in accordance with the provisions of this Act.

Section 23. 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.

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:

I. Sue and be sued in all the courts of the state in all 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.

II. Make and enter into contracts of insurance with employers as herein provided, and such other contracts or obligations 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 employee thereof, be personally liable in its private capacity for or on account of any act performed 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.

III. Contract with physicians, surgeons, and hospitals for medical and surgical treatment and the care and nursing of injured persons entitled to benefits from said fund.

IV. 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 direc-

tion of the Commission. The actuary shall receive such salary as may be agreed upon by the Commission.

V. The Commission shall have power, with the approval of the State Auditing Board, to employ during their pleasure such deputies, experts, statisticians, accountants, actuaries, inspectors, clerks and other employees 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 employees, except experts and actuaries in the employ of the Commission, shall have been for four 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.

VI. All deputies, statisticians, accountants, actuaries, clerks, experts and all other employees of the Commission shall receive such compensation as may be fixed by law or by the Commission, in conjunction with the state auditing board, and their salaries so fixed, as aforesaid, shall be paid monthly from the funds appropriated for the use of the Commission, after being approved by the Commission, and the state auditing board.

All expenses incurred by the Commission pursuant to the provisions of this Act, including the actual and necessary traveling expenses and other expenses and disbursements of the Commission, its officers and employees, incurred while on business of the Commission, shall be paid from funds appropriate 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, and is authorized to procure such additional furniture and supplies as may be necessary for such purposes, to be paid for in the same manner as other expenses authorized by this Act.

Section 24. 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 25. 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 in operative, illegal or void for any omission of a technical nature in respect thereto.

Section 26. The Commission shall 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 or risk of injury to their employees under existing conditions. It

shall determine the amount of the premiums or assessments which such employers shall pay to said State Compensation Insurance Fund, and may prescribe when and in what manner such premiums and assessments 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 employees may justify, but all such premiums or assessments shall be levied on a basis that shall be fair, equitable and just as among such employers.

Section 27. It shall also be its duty to divide each of such classes under said classification into as many sub-classes 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 28. 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 sub-class 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; and, in order that said objects may be accomplished the Commission shall observe the following requirements in classifying occupations and fixing the rates of premium for the risks of the same:

It shall determine and base all rates of premium for said classes and sub-classes and all revisions thereof, upon the following conditions and considerations:

(a) The condition of the place of employment as regards health, safety and protection against accident, and the means and methods of caring for injured persons;

(b) Total payroll, and number of employees in each of said classes and sub-classes;

(c) The loss ratio developed by the sub-class, and by the class as a whole;

(d) The earned premium exposure of the sub-class, and of the class as a whole;

(e) The character of hazard of the sub-class and of the class as a whole;

(f) The number and nature of accidents experienced by the sub-class, and the class as a whole;

(g) The number and nature of accidents experienced by the individual employers;

(h) A reasonable regard for the accident experience of each such employer, and his employees.

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

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

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

Section 29. The Commission shall keep an accurate account of the money paid in premiums by each of the several classes and sub-classes of occupations or industries, and the disbursements on account of injuries and death of employees 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 employees of such employer.

Ten per cent. of all the money paid into the State Compensation Insurance Fund shall be set aside for the creation of a surplus fund until such surplus fund shall amount to the sum of five hundred thousand dollars, after which time the sum of five per cent. of all money paid into the State Compensation Insurance Fund shall be credited to such surplus fund, until such time as, in the judgment of the Commission, such surplus shall be sufficiently large to guarantee a state compensation insurance fund from year to year.

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 assessments levied for such purpose shall be subject to readjustment from time to time by the Commission as may become necessary.

Section 30. The Commission shall adopt rules and regulations with respect to the collection, maintenance and disbursement of the State Compensation Insurance Fund; one of which rules shall provide that in the event the amount of premium collected from any employer at the beginning of any period of six months, 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 actual wage expenditure for such six months period, that an adjustment of the amount of such premium shall be made at the end of such six months period and the actual amount of such premium shall be determined in accordance with the amount of the actual expenditure of wages for said period; and, in the event such actual wage expenditure for said period is less than the amount on which such estimated premium was collected, then such employer shall be entitled to have the amount of such difference credited on succeeding premium payments, and should such actual premium, when ascertained as aforesaid, exceed in amount the premium so paid by such employer, at the beginning of such six months period, such employer shall upon being advised of the true amount of such premium due, forthwith pay to the state treasurer an amount equal to the difference between the amount actually found to be due and the amount paid by him at the beginning of said six months period.

Section 31. The Commission shall, on or before August 1st, 1915, issue in proper form for distribution, a schedule of rates of premiums to be paid to the State Compensation Insurance Fund by the employers of the several classes and sub-classes, based and determined as in this Act provided, which rates shall control and govern for the period ending December 31st, 1915.

On the first day of January, 1916, and semi-annually thereafter, a readjustment of the rates shall be made for each of the several classes and sub-classes of occupation or industry which, in the judgment of the Commission, have developed an average loss ratio in accordance with the experience of the Commission in the administration of the law as shown by the accounts kept as provided herein.

Should any such accounting show a balance remaining to the credit of any class of occupation or industry, after the above mentioned amounts have been credited to the surplus fund, and after the payment of all awards for injury or death, lawfully chargeable against the same, the premium rate for such class or subclass shall be reduced; and, each individual member of such class or sub-class who has been a subscriber to the State Compensation Insurance Fund for a period of six months or longer prior to the time of such readjustment, and whose premium or premiums so paid to the State Compensation Insurance Fund and to the surplus fund thereof exceeds the amount of the disbursements from the State Compensation Insurance Fund on account of injuries or death to his employees during such period, shall be entitled to a credit on the installment or installments of premium next due from him, the amount of which credit shall be such proportion of said balance as the amount of his prior paid premiums sustains to the whole amount of said premiums paid by the class or sub-

class to which he belongs since the last readjustment of rates, based and determined as provided in this Act.

Section 32. Any employer who intentionally misrepresents to the Commission the amount of payroll upon which the premium under this Act is based, shall pay into the State Compensation Insurance Fund the sum of ten times the amount of the difference in premium paid and the amount such employer should have paid, and shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars.

Section 33. The Commission shall prepare and furnish at the expense of the state, blank forms of application for benefits or compensation from the State Compensation Insurance Fund, notices to employers, proofs of injury or death, or medical attendance, or employment and wage earnings, and such other blanks as may be deemed proper and advisable, and it shall be the duty of employers to constantly keep on hand a sufficient supply of such blanks, that the same may be readily available.

Section 34. The Commission shall cause to be printed in proper form for distribution to the public proper schedules showing its classification, rates, regulations and rules of procedure, which shall be printed and ready for distribution at least thirty days prior to the date the same are due by law to go into effect, and shall furnish the same to any person upon application therefor, and the fact that such classification, rates, regulations and rules of procedure are printed and ready for distribution to all who apply for the same, shall be a sufficient publication of the same as required by this Act.

Section 35. All general orders shall take effect upon their publication in the semi-annual manual or schedule of rates, rules and regulations issued by the commissioner.

Section 36. It shall be the duty of all officers and employees of the state, the counties and municipalities, upon 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 employees, and it shall also be their duty to make to such 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 such Commission thereunder, and particularly such 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 employees, and the hazard of risk of such places of employment.

Section 37. Whenever the Commission shall learn, or upon petition by any person be informed, that any employment or place of employment is not safe, it shall proceed summarily with or with-

out notice to make such investigation as may be necessary to determine the matter complained of, as the same may affect the hazard or risk of insurance.

Section 38. For the purpose of making any investigation with regard to any employment or place of employment, the Commission shall have power to appoint, by an order in writing, any deputy or any other competent person as an agent whose duties shall be prescribed in such order.

In the discharge of his duties such agent 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.

The Commission may conduct any number of such investigations contemporaneously through different agents, and may delegate to such agents the taking of all testimony bearing upon any investigation or hearing. The decision of the Commission shall be based upon his examination of all testimony and records. The recommendations made by such agents shall be advisory only and shall not preclude any further investigation, or the taking of further testimony, if the Commission so order.

Section 39. Annually on or before the 15th day of December, the Commission shall make a report to the governor for the preceding fiscal year, which shall include a statement of the number of awards made by it and a general statement of the causes of accidents leading to the injuries for which the awards were made, a detailed statement of the disbursements from the State Compensation Insurance Fund, the amount credited to the reserve fund, and the condition of the respective funds, together with any other matters which the Commission deems proper to call to the attention of the governor, including any recommendations it may have to make, and it shall be the duty of the Commission from time to time to publish and distribute among employers and employees, such general information as to the business transacted by the State Compensation Insurance Fund as in its judgment may be useful.

Section 40. Every employer, insured in the State Compensation Insurance Fund shall contribute to it in proportion to the annual expenditure of money by said employer for the service of persons engaged in such employment, and the hazard or risk of his employment and place of employment, the amount of such payments and the method of making the same to be determined as in this Act provided.

Section 41. Except as hereinafter provided, every employer insured in the State Compensation Insurance Fund shall, in the month of September, 1915, and semi-annually thereafter during January and July of each year, pay into the State Compensation Insurance Fund, in advance, the amount of premium determined and fixed by the Commission for the employment or occupation of such employer for the ensuing period, the amount of which premium to be so paid by each such employer to

be determined by the classifications, rules and rates made and published by the Commission; and such employer shall semi-annually thereafter pay such further sum of money into the State Compensation Insurance Fund as may be ascertained to be due from him by applying the provisions of this Act and rules and rates of the Commission. Such payment shall be made within the time fixed by the Commission and a receipt or certificate certifying that such payment has been made shall immediately be mailed to such employer by the Commission, which receipt or certificate shall be prima facie evidence of the payment of such premium. Notwithstanding anything in this Act, any employer accepting the provisions thereof, who shall file with the Commission a statement showing his intentions to pay the compensation and benefits herein provided, and furnishing satisfactory proof to the Commission of his solvency, and financial ability to pay the same, and furnish security if the Commission in its discretion deems such security necessary, may on permission granted by the Commission, be permitted to make such payments direct to his employees and their dependents as they may be entitled to receive the same under the provisions of this Act.

Any employer so receiving such permission or who shall insure with any stock or mutual corporation as provided in this Act, shall, during his prompt compliance with the provisions of this Act, and the payment by him of the compensation and benefits therein provided, be relieved from making the payments herein required to be made to the State Compensation Insurance Fund, and shall have the benefits of all the provisions of this Act, as though said employer paid premiums into the State Compensation Insurance Fund as provided by this Act. Such employer shall cause notice of such fact to be given his employees in the manner provided for notice by employers accepting or rejecting the provisions of this Act.

Section 42. An employer, liable under the provisions of this Act, to pay compensation shall insure payment of such compensation in any company authorized to insure such liability in this State or in the State Compensation Insurance Fund, unless such employer shall be exempted from such insurance by the Commission. The Commission shall, from time to time, require further statement of financial ability of such employer to pay compensation, and may, upon ten (10) days' notice in writing, revoke its order granting such exemption, in which case such employer shall immediately insure his liability.

Section 43. 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, unless otherwise provided by law, a sum equal to one per centum of the amount of money expended by the state, and by each county, city, town, irrigation or school district, or other taxing district respectively,

during the last preceding fiscal year, for the service of all persons in their employ, who are subject to the provisions of this Act.

Section 44. In the month of September, 1915, the auditor of state shall draw his warrant on the state treasurer, in favor of said treasurer or custodian of the State Compensation Insurance Fund, and for deposit to the credit of said fund, for a sum equal to one per centum of the amount of money expended by the state, during the last preceding six months, for the service of persons in its employ, who are subject to the provisions of this Act, which said sums are hereby appropriated and made available for such payments; and there after in the months of January and July of each year, such sums of money shall in like manner be paid into the State Compensation Insurance Fund; and it shall be the duty of the Commission to communicate to the General Assembly on the first day 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 proportion of the State Compensation Insurance Fund.

Section 45. By the 15th day of July, 1915, and in the month of December of each year, the state auditor shall prepare a list for each county of the state, showing the amount of money expended by each township, city, town, village, irrigation or school district, or other taxing district therein, for the service of persons in their employ during the fiscal year last preceding the time of preparing such lists; and file a copy of such list with the clerk and recorder of the county for which such list is made, and copies of all such lists with the state treasurer. Such lists shall also show the amount of money due from the county itself and from each city, town, irrigation or school district and other taxing districts thereof, as its power contribution to the State Compensation Insurance Fund and the aggregate sum due from the county and such taxing districts located therein; provided, however, that should the Commission on or before the first day of December in any year, certify to the state auditor that sufficient money is in the State Compensation Insurance Fund to the credit of any county or counties to provide for the payment of compensation to the injured and to the dependents of killed employees of such county or counties, and the several taxing districts therein for the ensuing year, the state auditor shall not prepare and file with the county clerks and the state treasurer said list or lists for such county or counties specified in such certificate; and it shall be the duty of the Commission to make and file such certificate with the state auditor whenever in its judgment there is sufficient money in the State Compensation Insurance Fund to the credit of any county or counties to provide for the probable disbursement required to be made to the injured and to the dependents of killed employees of such county or counties and the several taxing districts therein for the ensuing year.

Section 46. During the month of September, 1915, and in January and July of each year following the filing with him of the lists mentioned in the last preceding section hereof, the clerk and recorder of each county shall issue his warrant in favor of the state treasurer on the county treasurer of his county for the aggregate amount due from such county and from the taxing districts therein, to the State Compensation Insurance Fund, and the county treasurer shall pay the amount called for by such warrant from the county treasury, and the county clerk and recorder shall charge the amount so paid to the county itself and the several taxing districts therein as shown by such lists; and the state treasurer shall immediately on receiving such money, convert the same into the State Compensation Insurance Fund.

Section 47. In October, 1915, and in February of each year thereafter the state treasurer shall certify to the Commission the amount of money that has been paid to him for credit to the State Compensation Insurance Fund as provided in this Act and the amount paid by the state itself, and by each county, city, town, irrigation or school district therein, and at the same time shall certify to the Commission the name of such as may have made default in the payments thereinbefore provided, and the respective amounts for which they are in default. When any default is made in the payment of the sums hereinbefore required to be contributed to the State Compensation Insurance Fund, or when any official fails, neglects or refuses to perform any act or acts required to be performed by him with reference to the making of such payments, it shall be the duty of the Commission forthwith, to institute the proper proceedings in court to compel such payment or payments to be made. The Commission shall keep a separate account of the money paid into the State Compensation Insurance Fund by the state and by its political sub-divisions as hereinbefore provided, and the disbursements made therefrom on account of the injuries to and death of public employees, subject to the provisions of this Act.

Section 48. Provided, any county, city, town, village, irrigation district, school district or other taxing district therein desiring to be exempted from insuring its liability for compensation shall make application to the Commission, showing its solvency and financial ability to pay such compensation, whereupon the Commission, by written order, may make such exemption. The Commission may from time to time require further statement of financial ability of such employer to pay compensation and may upon thirty days' notice in writing, revoke its order granting such exemption, in which case such employer shall immediately insure its liability.

Section 49. The Commission shall disburse the State Compensation Insurance Fund to such employees, of such employers as have paid into said fund the premiums applicable to the classes to which they belong, who met with accidents arising out of and in the course of their employment, wheresoever such injuries have oc-

curred, or to their dependents in case death has ensued, and shall furnish such medical, surgical, nurse and hospital care and attention or funeral expenses as are provided by this Act. The Commission shall have full power to adopt rules and regulations with the respect to furnishing such medical and hospital service and medicine, as provided for in Section 50, to injured employees entitled thereto, out of the State Compensation Fund, and the same shall be paid for as in this Act provided for compensation and benefits.

Section 50. Every employer, regardless of his method of insurance, shall furnish such medical, surgical and hospital treatment, medicines, medical and surgical supplies, crutches and apparatus, as may be reasonably needed at the time of the injury and thereafter during the disability, but not exceeding thirty days and one hundred dollars in value, to cure and relieve from the effects of the injury; provided, that medical, surgical and hospital treatment, payment for which is provided for in any plan in force between an employer and his employees at the time of the enactment of this Act or which is thereafter agreed to by employer and employee, shall be deemed a full compliance with the requirements of this section, and shall be received by the employee in full accord and satisfaction thereof.

Section 51. If the deceased employe leaves no person dependent upon him for support, and the accident proximately causes death, the death benefit shall consist of the reasonable expenses of his burial, not exceeding one hundred dollars (\$100.00).

Death benefit shall be paid in monthly installments corresponding in amount to fifty (50) per cent. of the average weekly earnings of the employe until otherwise ordered by the Commission.

Section 52. If the accident causes disability, a disability indemnity shall be payable as wages upon the twenty-ninth day after the injured employee 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 three weeks from the day the employee leaves work as the result of the injury, no disability indemnity whatever shall be recoverable except the disbursement in this Act provided for medical, nurse and hospital services and medicines; 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 three weeks from the day the employee leaves work as the result of injury, no disability indemnity shall be recoverable for the first three weeks of disability.

A workman in order to be entitled to compensation for hernia must clearly prove: (1) That the hernia is of recent origin, (2)

that its appearance was accompanied by pain, (3) that it was immediately preceded by some accidental strain suffered in the course of the employment, and (4) that it did not exist prior to the date of the alleged injury. If a workman, after establishing his right to compensation for hernia as above provided, elects to be operated upon, a special operating fee of not to exceed fifty dollars shall be paid by the employer, the insurer, or the Commission, as the case may be. In case such workman elects not to be operated upon, and the hernia becomes strangulated in the future, the results from such strangulation will not be compensated.

Section 53. In case of temporary disability of more than three weeks' duration, the employee shall receive fifty per cent of his average weekly wages so long as such disability is total, not to exceed a maximum of eight dollars per week and not less than a minimum of five dollars per week, unless the employee's wages shall be less than five dollars per week, in which event he shall receive compensation equal to his average weekly wages.

Section 54. In case of injury resulting in partial disability, the employee shall receive fifty per cent of the impairment of his earning capacity during the continuance thereof, not to exceed a maximum of eight dollars per week, or a greater sum in the aggregate than two thousand and eighty dollars. In cases included in the following schedule, the disability in each case shall be deemed to continue for the period specified and the compensation so paid for such injury shall be as specified herein, to-wit:

The loss of one arm between the elbow and shoulder, 208 weeks;

The loss of a forearm at the lower half thereof, 104 weeks;

The loss of a hand, 104 weeks;

The loss of a palm where thumb remains, 70 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;

The loss of an index finger at the second joint, 13 weeks;

The loss of an index finger at the distal joint, 9 weeks;

The loss of a second finger and the metacarpal bone thereof, 18 weeks;

The loss of a middle finger at the proximal joint, 13 weeks;

The loss of a middle finger at the second joint, 9 weeks;

The loss of a middle finger at the distal joint, 5 weeks;

The loss of a third or ring finger and the metacarpal bone thereof, 11 weeks;

The loss of a ring finger at the proximal joint, 7 weeks;

The loss of a ring finger at the second joint, 7 weeks;

The loss of a ring finger at the distal joint, 4 weeks;

The loss of a little finger and the metacarpal bone thereof, 13 weeks;

The loss of a little finger at the proximal joint, 9 weeks;

The loss of a little finger at the second joint, 9 weeks;

The loss of a little finger at the distal joint, 4 weeks;

The loss of all the fingers of one hand where the thumb and palm remain, 52 weeks;

The loss of a leg at the hip joint, or so near thereto as to preclude the use of an artificial limb, 208 weeks;

The loss of a leg at or above the knee, where 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 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 all the toes of one foot, 35 weeks;

The loss of an eye by enucleation, 139 weeks;

Total blindness of one eye, 104 weeks;

Total deafness of both ears, 139 weeks;

Total deafness of one ear, 35 weeks;

Total deafness of the second ear, 104 weeks;

Other Relative Injuries: In all other cases, not otherwise specified in the foregoing schedule, the compensation shall bear such relation to the amount stated in the above schedule as the disabilities bear to those produced by the injuries named in the schedule, except

(a) **Facial Disfigurement:** If any employee is seriously, permanently disfigured about the face or head, the Commission may allow such sum for compensation on account thereof as it may deem just, not exceeding five hundred dollars.

(b) **Disability Through Infection:** When, by reason of infection or other cause not due to the neglect or misconduct of the injured employee, he is actually disabled longer than the time specified in the foregoing schedule for earning wages, compensation shall be paid such employee for such loss of wages within the limits otherwise provided.

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

(d) Amputation: Whenever an amputation is made between any two joints mentioned in this schedule (except amputations between the knee and hip joint) the resulting loss shall be estimated as if the amputation had been made at the joint nearest thereto.

(e) The amounts specified in this section are all subject to the limitation as to the maximum weekly amount payable as hereinbefore specified in this Act.

Section 55. In cases of permanent total disability, the award shall be fifty per cent. of the average weekly wages and shall continue until the death of such person so totally disabled but not to exceed a maximum of eight dollars per week and not less than a minimum of five dollars per week, unless the employee's average weekly wages are less than five dollars per week at the time of the injury, in which event he shall receive compensation in an amount equal to his average weekly wages.

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

Section 56. Whenever, in case of injury, the right to compensation under this Act would exist in favor of an employee, 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 duly authorized to practice medicine under the laws of this state, who shall be provided and paid for by the employer, or insurer and shall likewise submit 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 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. Physicians, will not be required, however, to disclose confidential communications communicated to them for the purpose of treatment and which are unnecessary to a proper understanding of the case.

Section 57. Any time after six months has elapsed from the date of the injury, the Commission may order payment in gross or in such manner as it may determine to be for the best interest of the parties concerned. When payment in gross is ordered, the Commission shall fix the gross amount to be paid based on the present worth of partial payments, considering interest at four per cent. per annum.

In case death proximately results from the injury within a period of two years, the benefits shall be in the amounts and to the persons following:

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

(2) If there are wholly dependent persons at the time of the death, the payment shall be 50 per cent. of the average weekly wages, subject to the limitations of this Act as to maximum weekly amount, and to continue for the remainder of the period from the date of the death and not to exceed six years after the date of the injury and not to amount to more than a maximum of two thousand five hundred dollars, nor less than a minimum of one thousand dollars.

(3) If there are partly dependent persons at the time of the death, the payment shall be fifty per cent. of the average weekly wages, subject to the limitations of this Act as to maximum amount, and to continue for all or such portion of the period of six years after the date of the injury, as the Commission in each case may determine and not to amount to more than a maximum of two thousand five hundred dollars.

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 wholly 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 the unpaid and unaccrued portion of the permanent total disability benefit which the employee would have received had he lived until he had received the sum of twenty-five hundred dollars.

(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 employee would have received if he had lived.

Section 58. If death occurs to an injured employee, either as a proximate result of the accident or otherwise, before disability indemnity ceases, and the deceased employee leaves no one wholly dependent upon him for support, but one or more persons partially dependent therefor, the death benefit shall not exceed four times the amount devoted by deceased during the year immediately preceding his death to the support of such dependents and shall be apportioned according to the percentage that 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 average annual earnings of the deceased; provided, that such death benefits shall not exceed in the aggregate, the difference between the amount of liability benefits received by deceased in his lifetime, and the sum of twenty-five hundred dollars.

Section 59. The benefits in case of death, 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.

In all cases of death where the dependents are a widow and one or more minor children, it shall be sufficient for the widow to make application to the Commission on behalf of herself and minor children; and in cases where all of the dependents are minors, the application shall be made by the guardian or next friend of such minor dependents.

Section 60. 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. In such case the Commission shall determine the respective rights of said rival claimants, and thereafter such death benefits shall be paid to such dependents as it shall so find entitled under the provisions of this Act.

Section 61. The compensation provided herein shall be reduced fifty per cent:

- (a) Where injury is caused by the wilful failure of the employee to use safety devices provided by the employer;
- (b) Where injury results from the employee's wilful failure to obey any reasonable rule adopted by the employer for the safety of the employee;
- (c) Where injury results from the intoxication of the employee;

Section 62. No claim to recover compensation under this Act shall be maintained unless, within thirty days after the occurrence of the accident which is claimed to have caused the injury or death, notice in writing, stating the name and address of the person injured, the time and place where the accident occurred, the nature and cause of the injury, and making a claim for compensation with respect to injury and signed by the person injured, or by some one in his behalf, or in case of death, by a dependent or some one on his behalf, stating also the names and addresses of each dependent, shall be served upon the Commission, either by delivering to, and leaving with it a copy of such notice, or by mailing to it by registered mail, a copy thereof, in a sealed and postpaid envelope, addressed to him at its office in Denver, Colorado. Such mailing shall constitute completed service; provided, however, that the failure to give any such notice or any defect or inaccuracy therein, shall not be a bar to a recovery under this Act, if it is found as a fact in the proceedings for the collection of the claim, that there was no intention to mislead the Commission, and that it was not, in fact, misled thereby, or that said claimants were non-residents; and provided, further, that if no such notice is given, and no payment of compensation has been made within one year from the date of the accident, the right to compensation therefor shall be wholly barred.

Section 63. Compensation before payment shall be exempt from all claims of creditors and from any attachment or execution, and shall be paid only to such employees or their dependents.

Section 64. No claim for compensation under this Act shall be assignable, but this provision shall not affect the survival thereof.

Section 65. The making of a claim for compensation under this Act, for the injury of or death shall operate as an assignment of any cause of action in court which the employee, or his legal representative, or others, may have against any other party, for such injury or death.

Section 66. The state treasurer shall be the custodian of the State Compensation Insurance Fund and all disbursements therefrom shall be paid by him upon warrants of the state auditor upon vouchers authorized by the Commission for benefits legally due to the person or persons designated in such vouchers, and

the state auditor is hereby authorized and directed to draw warrants upon the State Compensation Insurance Fund for payment thereof.

Section 67. The state treasurer is hereby authorized to deposit any portion of the State Compensation Insurance Fund not needed for immediate use, in the same manner and subject to all provisions of law with respect to the deposit of state funds by such treasurer; and all interest earned by such portion of the State Compensation Insurance Fund as may be deposited by the state treasurer in pursuance of authority herein given, shall be collected by him 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 purpose whatsoever.

Section 68. The state treasurer shall give a separate and additional bond in such amount as may be fixed by the governor, and with sureties to his approval, conditioned for the faithful performance of his duties as custodian of the State Compensation Insurance Fund, subject to all provisions of law governing bonds of state treasurer.

Section 69. The Commission shall have full power and authority to hear and determine all questions within its jurisdiction, and its finding award and order issued thereon shall be final, except as in this Act provided.

Any person affected by any finding, order or award of the Commission may petition for a hearing on the reasonableness of any such finding, order or award.

Such petition shall be verified, and shall specify the finding, order or award upon which a hearing is desired and every reason why such finding or order or award is considered unreasonable. The petitioner shall be deemed to have finally waived all objections to any irregularities and illegalities in the finding, order or award upon which a hearing is sought other than those set forth in the petition. All hearings of the Commission shall be open to the public.

Section 70. Any dispute or controversy concerning compensation under this Act, including any in which the State may be a party, shall be submitted to said Industrial Commission in the manner, and with the effect, provided herein. If the injured employee or his dependents, and the employer or his insurer reach an agreement in regard to compensation under this Act, a memorandum of the agreement shall be filed with the Commission, and, if approved by it, thereupon the memorandum for all purposes, shall be enforceable as are all the awards of the Commission. All such agreements shall be approved by the Commission. Such approval shall be given by the Commission only, when the terms thereof conform to the provisions of this Act.

Upon the filing with the Commission by any party in interest, of an application in writing stating the general nature of any claim as to which any dispute or controversy may have arisen, the Commission shall fix a time for the hearing thereof, which shall not be more than forty days after the filing of such application. The Commission shall cause reasonable notice of such hearing embracing a general statement of such claim, to be given to each party interested, by service of such notice on him personally or by mailing a copy thereof to him at his last known postoffice address at least ten days before such hearing. Such hearing may be adjourned from time to time in the discretion of the Commission, and hearings shall be held at such places as the Commission may designate. Either party 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 of cross-examination; provided, that the Commission may, with or without notice to either party, cause testimony to be taken, or an inspection of the premises where the injury occurred to be had, or the time books and payroll of the employer to be examined; the testimony so taken, and the results of any such inspection or examination, shall be reported to the Commission for its consideration upon final hearing. All *ex parte* testimony taken by the Commission shall be reduced to writing and either party shall have opportunity to examine and rebut the same on final hearing. The Commission or any agent designated by him 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.

Section 71. Each officer who serves such subpoena shall receive the same fee as a sheriff, and each witness who appears, in obedience to a subpoena, before the Commission or its agents, 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 vouchers approved by the Commission. No witness subpoenaed at the instance of a party other than the Commission or its agent shall be entitled to compensation from the state treasury unless the Commission shall certify that his testimony was material to the matter investigated.

Section 72. Any person who shall wilfully fail or neglect to appear and testify or to produce books, papers, and 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. Each day such person shall so refuse or neglect shall constitute a separate offense.

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, may issue an order compelling the attendance and testimony of witnesses and the production of books, papers and records before such Commission or any such agent.

Upon such hearing, if it shall be found that the finding, order or award complained of is unreasonable, the Commission shall substitute therefor such other finding, order or award as shall be just and reasonable, or may rescind such finding, order or award.

Section 73. The Commission or any party may, in any investigation, 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 74. A full and complete record shall be kept of all proceedings had before the Commission on any investigation and all testimony shall be taken down by a stenographer appointed by the Commission.

Section 75. A transcribed copy of the evidence and proceedings, or any specific part thereof, on any investigation, 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, of a particular witness, or of a specific part thereof, carefully compared by him with his original notes, and to be a correct statement of the evidence and proceedings had on such investigation, so purporting to be taken and subscribed, may be received as evidence by the Commission with the same effect as if such stenographer were present and testified to the facts so certified. A copy of such transcript shall be furnished on demand to any party upon the payment of the fees therefor as prescribed for transcripts in district courts.

Section 76. After final hearings by said Commission it shall make and file (1) its findings upon all facts involved in the controversy, and (2) its award, which shall state its determination as to the rights of the claimant. Pending the hearing and determination of any controversy before it the Commission shall have power to order the payment of such part of the compensation which the Commission concedes is or may fall due, as to which the claimant is entitled, and upon the final determination of the Commission as to the rights of the claimant, such payments so made shall be specified in and constitute a part of his finding and award.

The Commission on its own motion, on three days' notice to the parties interested, by mail or served personally, may modify or change his order, finding or award at any time within fifteen

days from the date thereof, if he shall discover any mistake therein.

Section 77. No action, proceeding or suit to set aside, vacate or amend any finding, 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 hearing thereon as provided in this Act, and unless such action, proceeding or suit shall have been commenced within sixty days after final decision by the Commission.

Section 78. Any person in interest 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 is defendant to modify or vacate the same on the ground that the same is unlawful or unreasonable, in which action the adverse party shall also be made a defendant.

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 79. In such action, a copy of the complaint, which shall state the grounds upon which a review is sought, shall be served with the summons. The Commission shall file its answer within twenty days after the service of the complaint. With its answer, the Commission shall make return to said court of all documents and papers on file in the matter, and of all testimony which may have been taken therein, and of its order, finding and award. Such return of the commissioner when filed in the office of the clerk of the district court shall constitute a 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. Said action may thereupon be brought on for hearing before said court upon such record by either party on ten days' notice to the other; subject, however, to the provisions of law for a change of the place of trial or the calling in of another judge.

Section 80. 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 of the 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 pro-

ceedings in such action for fifteen days from the date of such transmission, and may thereafter grant such further stays as may be necessary.

Upon receipt of such statement, the Commission shall hear and consider the issues not theretofore heard and considered, and may alter, 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 ten days from the receipt of the statement from the court for further hearing and consideration.

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 proceed with the trial of such action.

Section 81. Upon such hearing, the court may confirm or set aside such order, but only upon the following grounds:

- (1) That the Commission acted without or in excess of its powers;
- (2) That the finding, order or award was procured by fraud;
- (3) That the findings of fact by the Commission do not support the order or award;

Any action commenced in court under this section to set aside or modify any finding, order or award of the Commission shall be brought to trial 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.

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 claimant was damaged thereby.

The record in any case shall be transmitted to the Commission within twenty 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 review of such order or judgment.

Section 82. Upon setting aside of any finding, order or award, the court may recommit the controversy and remand the record in the case to the Commission for further hearing or proceedings; or it may enter the proper judgment upon the findings, as the nature of the case shall demand; provided, however, that in no event shall such judgment be for a greater amount of compensation than allowed by this Act, or in any manner conflict with the provisions thereof. An abstract of the judgment entered by the trial court upon the review of any order or award, shall be made by the clerk thereof upon the docket of said court, and a transcript of such abstract may be obtained as of any entry upon such docket.

Section 83. The Commission or any party who may consider himself aggrieved by a judgment entered upon the review of any such finding, order or award, may have questions 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 writ of error.

Section 84. No fees shall be charged by the clerk of any court for the performance of any official service required by this Act, except for the docketing of judgments, and for certified copies of transcripts thereof. On proceedings to review any finding, 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 finding, 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. Unless previously authorized by the Commission, no lien shall be allowed, nor any contract be enforceable for any contingent attorneys' fees for the enforcement or collection of any claim for compensation, where such contingent fee, inclusive of all attorneys' fees paid, or agreed to be paid, for the enforcement or collection of such claim, exceed fifteen per cent. of the amount at which claim shall be compromised, or of the amount awarded, adjudged or collected.

Section 85. If any employer or employee, as defined in this Act, or any other person shall violate any provisions 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, employee or other person shall be punished by a fine of not more than one hundred dollars for each such offense.

Section 86. Every day during which any employer, or officer or agent thereof, or any employee, 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 87. All penalties provided for in this Act shall be collected in a civil action brought against the employer or employee

as the case may be, in the name of the Commission, and all such penalties, when collected, shall be applicable to the expense of the Commission.

Section 88. Upon the request of the Commission, the attorney general, or under his direction, the district attorney of any district or county shall institute and prosecute the necessary actions or proceedings for the enforcement of any of the provisions of this Act, or for the recovery of any money due the State Compensation Insurance Fund, or any penalty herein provided for, arising within the district or county in which he was elected, and shall defend in like manner all suits, actions or proceedings brought against the Commission in his official capacity.

Section 89. 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, any one wilfully makes 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.

Section 90. For the purpose of carrying out the provisions of this Act, there is hereby appropriated out of any money in the state treasury not otherwise appropriated for the ordinary expenses of the departments of the state, the sum of twenty thousand dollars (\$20,000), or so much thereof as may be necessary for the payment of any premiums that may become due the State Compensation Insurance Fund in compliance with section forty-four of this Act; and the state auditor is hereby authorized and directed to draw his warrants on said fund upon certified vouchers of the Commission approved by the governor.

Section 91. All acts or parts of acts in conflict with the provisions of this Act, are hereby repealed; provided, that no right action now existing shall be affected by such repeal, and nothing contained in this Act shall be construed to affect the authority of the state board of health relative to the public health.

Section 92. If any part, section, sub-section, sentence, clause or phrase of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. The General Assembly hereby declares that it would have passed this Act and each part, section, sub-section, sentence, clause or phrase irrespective of the fact that any one or more other parts, section, sub-section, sentences, clauses or phrases be declared unconstitutional.

Section 93. It is hereby declared that this Act is necessary for the immediate preservation of the public peace, health and safety.

Section 94. In the opinion of the General Assembly an emergency exists; therefore, this Act shall take effect and be in force immediately after its passage.

HOUSE BILL NO. 177.

BY MESSRS. DRAKE AND SCHMIDT AND SENATORS
CANDLISH, LEWIS AND PEARSON.

AN ACT

TO DETERMINE AND DEFINE THE RELATIONS BETWEEN EMPLOYER AND EMPLOYEE, PROVIDING FOR SAFE AND HYGIENIC CONDITIONS AND FOR COMPENSATION FOR ACCIDENTAL INJURY TO OR DEATH OF EMPLOYEES; FOR INSURANCE OF SUCH COMPENSATION; ESTABLISHING AN INDUSTRIAL COMMISSION, PRESCRIBING ITS POWERS, AND PROVIDING FOR REVIEW OF ITS PROCEEDINGS; MAKING AN APPROPRIATION TO CARRY OUT THE PROVISIONS OF THIS ACT; PROVIDING PENALTIES FOR VIOLATION OF THIS ACT; REPEALING ALL ACTS AND PARTS OF ACTS IN CONFLICT WITH THIS ACT, AND DECLARING THIS ACT TO BE NECESSARY FOR THE IMMEDIATE PRESERVATION OF PUBLIC PEACE, HEALTH AND SAFETY.

Be it Enacted by the General Assembly of the State of Colorado:

Sec. 1. The term "Commission" when used in this Act shall mean the "Industrial Commission of Colorado."

Sec. 2. The term "Commissioner" when used in this Act shall mean one of the members of the Commission.

Sec. 3. Unless the context otherwise requires, a word used in this Act in the singular number shall also include the plural; and a word used in this Act in the masculine gender shall also include the feminine.

Sec. 4. The following terms as used in this Act, shall be construed and have the following meaning, unless otherwise specifically defined in the context:

(a) The term "place of employment" shall mean and include every place, whether indoors or out or underground, and the premises appurtenant thereto, 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, and where any person is directly or indirectly employed by another for direct or indirect gain or profit.

(b) The term "employment" shall mean and include any trade, occupation or process of manufacture, or any method of carrying on such trade, occupation, or process of manufacture in which any person may be engaged.

(c) The term "employer" shall mean and include:

I. The State, and each county, city, town, irrigation and school district therein, and all public institutions and administrative boards thereof.

II. Every person, association of persons, firm and private corporation (including any public service corporation), manager, personal representative, assignee, trustee and receiver, who has four (4) or more persons regularly 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.

III. 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 employees regularly in the same business, or in or about the same place of employment.

(d) The term "employee" shall mean and include every person in the service of the state or of any county, city, town, irrigation or school district therein, or of any public institution or administrative board thereof, and any other 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 who are legally permitted to work under the laws of this state, who, for the purposes of this Act, shall be considered the same, and shall have the same power of contracting with respect to their employment as adult employees.

(e) The term "order" shall mean and include any decision, rule, regulation, direction, requirement or standard of the commission, or any other determination arrived at or decision made by such Commission.

(f) The term "general order" shall mean and include such order of the Commission as applies generally throughout the state to all persons, employments or places of employment, under the jurisdiction of the Commission. All other orders of the Commission shall be considered special orders.

(g) The term "local order" shall mean and include any ordinance, order, rule or determination of any common council, board of aldermen, board of supervisors, board of trustees, or board of commissioners, of any county, town, city, or city and county operating under any general or special law of this state, or of the board of health of the state or any municipality therein, or any order or direction of any official of the state or municipality therein.

(h) The term "deputy" shall mean and include any person employed by the Commission designated as such deputy by the Commission, and who may be engaged in the performance of duties under the direction of the Commission.

(i) The term "safe" or "safety" as applied to an employment or place of employment, shall mean such freedom from

danger to the life, health and safety of employees, and such reasonable means of notification, egress and escape in case of fire, as the nature of the employment will reasonably permit.

Sec. 5. There is hereby created a board which shall be known as the "INDUSTRIAL COMMISSION OF COLORADO." Within thirty days after the passage of this Act the governor, by and with the consent of the senate, shall appoint one member whose term of office shall expire March 1, 1917, a second member whose term of office shall expire March 1, 1919, and a third member whose term of office shall expire March 1, 1921. Upon the expiration of each appointment, the governor shall appoint members of the Commission, by and with the advice and consent of the senate, for terms of six years each. Vacancies shall be filled in the same manner for unexpired terms. Not more than two of the Commissioners shall be members of the same political party. Not more than one of the appointees to such Commission shall be a person who, on account of his previous vocation, employment or affiliations, can be classed as a representative of employers, and not more than one of such appointees shall be a person who, on account of his previous vocation, employment or affiliations, can be classed as a representative of employees;

Each member of the Commission, before entering upon the duties of his office, shall take the oath prescribed by the constitution, and shall give good and sufficient bond running to the people of the State of Colorado, in the penal sum of ten thousand dollars, conditioned that he shall faithfully discharge the duties of his office and shall account for and pay over to the person entitled thereto, such moneys as shall come into his possession; said bond shall be signed by a surety company duly authorized to do business in this state, or by two or more individuals as surety or sureties and shall be subject to approval by the governor and shall then be filed with the secretary of state. If surety company bonds shall be furnished, the premium therefor shall be paid by the state as other expenses of the Commission are paid. In case of a vacancy, the remaining two members of the Commission shall exercise all the powers and authority of the Commission until such vacancy is filled. Each member of the Commission shall receive an annual salary of not to exceed four thousand dollars, and actual expenses necessarily incurred in the performance of his duties, which shall be in full for all services performed. The Commissioners shall devote their entire time to the duties of their office.

A majority of said commissioners shall constitute a quorum to transact business and for the exercise of any of the powers or authority conferred by this Act.

Sec. 6. The Commission shall have power, with the approval of the state auditing board, to employ during its pleasure such deputies, experts, statisticians, accountants, inspectors, clerks, and other employees as it 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. The commissioners, secretary, deputies, statisticians, accountants, inspectors, clerks, and all other employees, 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 skilled and efficient in the duties assigned to them, 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. The Commission shall employ and always maintain in the department a compensation actuary who shall be experienced and skilled and fully competent to perform the duties of the position, and to assist in or take charge of the practical operation of this Act under the general direction of the Commission. The actuary shall receive such salary as may be agreed upon by the state auditing board.

All deputies, statisticians, accountants, clerks, experts and all other employees of the Commission shall receive such compensation as may be fixed by law or by the Commission, acting in conjunction with the state auditing board. The salary or compensation of every person holding employment under the Commission shall be paid monthly from the funds appropriated for the use of the Commission, after being approved by the Commission, and the state auditing board.

All expenses incurred by the Commission pursuant to the provisions of this Act, including the actual and necessary traveling expenses and other expenses and disbursements of the commissioners, their deputies and employees, incurred while on business of the Commission, shall be paid from the 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.

Sec. 7. The Commission shall be known collectively as the "Industrial Commission of Colorado" and in that name may sue and be sued. It shall have a seal upon which shall be inscribed the words "INDUSTRIAL COMMISSION — COLORADO — SEAL." Its seal shall be affixed to all orders, awards, proceedings and copies thereof and to such other instruments as the Commission shall direct. All courts shall take judicial notice of said seal, and any copy of any record or proceeding of the Commission certified under said seal shall be received in all courts as evidence as if it were the original thereof.

Sec. 8. The Commission shall keep its office at the Capitol and shall be provided by the board of capitol managers or its successors with suitable rooms. The Commission is authorized to procure all necessary office furniture, stationery, books, periodicals, maps, instruments, apparatus and appliances and other necessary supplies and incur such other expenses as may be actual

and necessary, and the same shall be paid for in the same manner as other expenses authorized by this Act. The Commission or a commissioner may hold sessions at any place other than the Capitol when the convenience of the Commission or the parties interested requires.

Sec. 9. Within thirty days after the passage of this Act, the Commission shall meet at the Capitol and organize in the manner herein provided. The governor shall be ex-officio chairman of the Commission, and the secretary of state shall be ex-officio secretary thereof. The secretary shall appoint an assistant secretary, at a salary of not to exceed \$2,500 per annum. It shall be the duty of the secretary to keep a full and correct record of all proceedings of the Commission, to issue all necessary processes, writs, warrants, orders, awards, and notices and to perform all other duties as the Commission may prescribe. He shall also have supervision of the collection of data, information concerning matters covered by the provisions of the Act, and make such reports thereon as the Commission may direct.

A majority of said commissioners shall constitute a quorum to transact business and for the exercise of any of the powers or authority conferred by this Act.

The sessions of the Commission shall be open to the public and shall stand and be adjourned without further notice thereof on its record. All of the proceedings of the Commission shall be shown on its record, which shall be a public record, and all voting shall be by the calling of each member's name by the secretary, and each member's vote shall be recorded on the proceedings as the same is cast.

Sec. 10. Subject to the provisions of this Act, the Commission may adopt its own rules of procedure and may change the same from time to time in its discretion.

Sec. 11. It shall also be the duty of the Commission, and it shall have the power, jurisdiction and authority:

(a) To appoint advisors, who shall, without compensation, assist the Commission in the execution of its duties;

(b) To inquire into and supervise the enforcement, as far as respects relations between employer and employee, of the laws relating to child labor, laundries, stores, factory inspection, employment of females, employment offices and bureaus, mining, both coal and metalliferous, fire escapes and means of egress from places of employment and all other laws protecting the life, health, and safety of employees in employments and places of employment;

(c) To investigate, ascertain, declare and prescribe safety devices, safeguards or other means or methods of protection best adapted to tender safe the employees of every employment and place of employment, as may be required by law.

(d) To ascertain and fix such reasonable standards and to prescribe, modify and enforce such reasonable orders for the adoption of safety devices, safeguards and other means or methods of protection to be as nearly uniform as possible, as may be necessary to carry out all laws relative to the protection of the life, health, safety and welfare of employees in employments and places of employment.

(e) To ascertain, fix and order such reasonable standards, rules or regulations as provided by law, for the construction, repair and maintenance of places of employment, as shall render them safe.

(f) 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 all investigations and hearings; to alter or amend the same from time to time in its discretion; such rules and regulations shall not be effective until ten days after their publication. A copy of such rules and regulations shall be delivered to every citizen making application therefor, and a copy delivered with every notice of hearing;

(g) To license and supervise private employment agencies; to supervise state free employment agencies; to do all in its power to bring together employers seeking employees, and working people seeking employment. It shall investigate the extent and causes of unemployment in the state of Colorado and the remedies therefor, and it shall devise and adopt the most efficient means within its power to avoid unemployment, and to prevent involuntary idleness;

(h) Any county, city or town may enter into an agreement with the Commission for such period of time as may be deemed desirable for the purpose of establishing and maintaining local free employment offices, and it shall be lawful for any county, city or town to appropriate and expend the necessary money and to permit the use of public property for the joint establishment and maintenance of such offices as may be agreed upon;

(i) To collect, collate and publish statistical and other information relating to the work under its jurisdiction; annually, on or before the tenth day of December, to make a full report to the governor covering its work during the year preceding the first day of said month of December; to make public reports in its judgment necessary;

(j) The Commission shall cause to be printed, and, upon application, furnished, free of charge, to any employer or employee such blank forms as it shall deem requisite to facilitate or promote the efficient administration of this Act; it shall provide such proper record books or records as it shall deem required for the proper and efficient administration of this Act, all such records to be kept in the office of the Commission. It shall also cause to be printed in proper form for distribution to the public

proper pamphlets showing its orders, regulations and rules of procedure, and shall furnish the same to any person upon application therefor, and the fact that such orders, regulations and rules of procedure are printed ready for distribution to all who apply for the same, shall be a sufficient publication of the same as required by this Act.

(k) To administer and enforce all the provisions of law relating to compensation for accidental injury to and death of employees.

Sec. 12. All general orders shall take effect upon their publication in the regular pamphlets of rules and regulations issued by the Commission.

Special orders shall take effect as therein directed.

The Commission may, upon application of any person, grant such time as may be reasonably necessary for compliance with any order. Any person may petition the Commission for an extension of time, which the Commission shall grant if it finds such an extension of time necessary.

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.

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.

Sec. 13. Every employer shall exercise reasonable care and comply fully with all the requirements of law respecting health and safety and to furnish places of employment which shall be safe for employees therein and to furnish and use safety devices and safeguards, and to adopt and use methods and processes reasonably adequate to render such employment and places of employment safe, and to do every other thing reasonably necessary to protect the life, health and safety of such employees. Every employer and every owner of a place of employment now or hereafter constructed shall exercise reasonable care to so construct, repair or maintain such place of employment as to render the same safe, in accordance with the statutes of this state in such cases made and provided.

Sec. 14. Whenever the Commission shall learn, or upon petition by any person be informed, that any employment or place of employment is not safe, it shall proceed summarily with or without notice, to make such investigation as may be necessary to determine the matter complained of, in so far as the same may affect the provisions of this Act.

After investigation, the Commission shall call the attention of the commissioner of labor, or other officer authorized to inspect and regulate same, and shall order such changes as may be

necessary to render such employment or place of employment safe, and comply with the provisions of this Act.

Sec. 15. The Commission is vested with the power and jurisdiction to have such supervision of every employment and place of employment in this state as may be necessary adequately to ascertain and determine the conditions under which the employees labor, and the manner and extent of the obedience by the employer to all laws and all lawful orders requiring such employment and places of employment to be safe, and requiring the protection of the life, health and safety of every employee in such employment or place of employment, and to enforce all provisions of law relating thereto; and is also vested with power and jurisdiction to administer all provisions of this Act with respect to the relations between employer and employee and to do all other acts and things convenient and necessary to accomplish the purposes of this Act.

Sec. 16. It shall be the duty of all officers and employees of the state, the counties and municipalities, upon 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 employees; and it shall also be their duty to make to such 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 such 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 employees, and the conditions under which they labor.

It shall be the duty of the labor statistician of the bureau of labor statistics to collect, compile and report to the Commission such data, facts and information as shall come to his department or to the Commission concerning the relations between employer and employee and relating in any way to the provisions of this Act.

Sec. 17. For the purpose of making any investigation with regard to any employment or place of employment, or other matter contemplated by the provisions of this Act, the Commission shall have power to appoint, by an order in writing, any member of the Commission, any deputy or any other competent person as an agent whose duties shall be prescribed in such order.

In the discharge of his duties such agent 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.

The Commission may conduct any number of such investigations contemporaneously through different agents, and may dele-

gate to such agents 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 shall be advisory only and shall not preclude any further investigation, or the taking of further testimony, if the Commission so order.

Sec. 18. Every employer and employee shall furnish the Commission, upon request, all information required by it to accomplish the purposes of this Act, which information shall be furnished on blanks to be prepared by the Commission; and it shall be the duty of the Commission to furnish such blanks to such employer free of charge, upon request therefor. Every employer receiving from the Commission any blanks, with directions to fill out the same, shall cause the same to be properly filled out so as to answer fully and correctly all questions therein propounded, and to give all the information therein sought, or if unable to do so, he shall give in writing good and sufficient reasons for such failure. The Commission may require that the information herein required to be furnished be verified under oath and returned to the Commission within the period fixed by it or by law. The Commission, or any person employed by it for that purpose, shall have the right to examine, under oath, any employee or employer, or the officer, agent or employee thereof, for the purpose of ascertaining any information which such employer or employee is required by this Act to furnish to the Commission. Any employer or employee who shall fail or refuse to furnish such information as may be required by the Commission under authority of this Act, shall, if an employer, be deemed guilty of a misdemeanor and shall be punished by a fine of two hundred dollars, and if an employee shall be deemed guilty of a misdemeanor and shall be punished by a fine of twenty-five dollars.

Sec. 19. The information contained in the reports provided for in the preceding section, and such other information as may be furnished to the Commission, by employers in pursuance of the provisions of this Act, shall be for the exclusive use and information of said Commission in the discharge of its official duties and shall not be open to the public nor to be used in any court, in any action or proceeding pending therein, unless the Commission is a party to such action or proceeding; but the information contained in said report may be tabulated and published by the Commission in statistical form, for the use and information of other state departments and the public. Any person in the employ of the Commission who shall divulge any information secured by him in respect to the transactions, property or business of any employer to any person other than the Commission, shall be punished by a fine of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) and shall thereafter be disqualified from holding any appointment or employment with any department under the state.

Sec. 20. The Commission, or any member thereof, and, on being authorized in writing by the Commission, any other person, may, without any other warrant than this Act, at any reasonable time, enter any building, mine, mine workings, factory, workshop, place or premises of any kind, wherein, or in respect of which, any industry is carried on or any work is being or has been done or commenced, or any matter or thing is taking place, which has been made the subject of an investigation, hearing or arbitration by the Commission or the board, and inspect and view any work, material, machinery, appliance or article therein, and interrogate any persons in or upon any such building, mine, mine workings, factory, workshop, place or premise as aforesaid in respect of or in relation to any matter or thing hereinbefore mentioned; and any person who shall hinder or obstruct the Commission, or any such person authorized as aforesaid, in the exercise of any power conferred by this section, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars, nor more than one thousand dollars.

Sec. 21. All books, records and payrolls of employers, showing or reflecting in any way upon the amount of wage expenditure of such employers, and other data, facts 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 conditions of employment, and such other information as may be necessary for the uses and purposes of the Commission in its administration of the law.

Any employer who shall refuse to admit such Commission or its agents to such place of employment for such purposes shall be punished by a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00).

Sec. 22. Such Commission, or persons by it duly designated, shall not be bound by the usual common law or statutory rules of evidence or by any technical or formal rules of procedure, other than as herein or by the rules of the Commission provided; but may make such investigations in such manner as in its judgment are best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of this act.

Sec. 23. A full and complete record shall be kept of all proceedings had before or under the order of the Commission on any investigation and all testimony shall be taken down by a stenographer appointed by the Commission.

A transcribed copy of the evidence and proceedings, or any specific part thereof, or any investigation, 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, of a particular witness, or of a specific part thereof, carefully compared by him with his original notes, and to be a correct statement of the evidence and proceedings had on such investigation, so purporting to be taken and subscribed, may be received as evidence by the Commission with the same effect as if such stenog-

rapher were present and testified to the facts so certified. A copy of such transcript shall be furnished on demand to any party upon the payment of the fees therefor as prescribed for transcripts in district courts.

Sec. 24. The Commission or any party may in any investigation 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.

Sec. 25. In case of failure or refusal of any person to comply with the order of the Commission or subpoena issued by it or its agents, or on the refusal of a witness to testify to any matter regarding which he may be lawfully interrogated, or refuse to permit an inspection as provided in this Act, the district judge of the county in which the person resides, on application of the Commission or any agent appointed by it shall compel obedience by attachment proceedings as for contempt, as in the case of disobedience of the requirements of subpoena issued from such court on a refusal to testify thereon.

Each officer who serves such subpoena shall receive the same fee as a sheriff, and each witness who appears, in obedience to a subpoena before the Commission or its agent 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 vouchers approved by the Commission. No witness subpoenaed at the instance of a party other than the Commission or its agent shall be entitled to compensation from the state treasury unless the Commission shall certify that his testimony was material to the matter investigated.

Sec. 26. The Commission shall inquire into the general condition of labor in the principal industries in the state of Colorado and especially in those which are carried on in corporate forms; into existing relations between employers and employees; into the effect of industrial conditions on public welfare and into the rights and powers of the community to deal therewith; into the conditions of sanitation and safety of employees and the provisions for protecting the life, limb, and health of the employees; into relations existing between lessees of state lands and the state, as to production and royalties or rentals paid, and into the relations between said lessees and their employees with respect to wages paid and conditions of labor; into the growth of associations of employers and of wage earners and the effect of such associations upon the relations between employers and employees; into the extent and results of methods of collective bar-

gaining; into any methods which have been tried in any state or in foreign countries for maintaining mutually satisfactory relations between employees and employers; into methods of avoiding or adjusting labor disputes through peaceful and conciliatory mediation and negotiations; into the scope, methods, and resources of existing bureaus of labor and into possible ways of increasing their efficiency and usefulness. The Commission shall seek to discover the underlying causes of dissatisfaction in the industrial situation and take all necessary means and methods within the powers of such Commission as provided by law, to alleviate the same, and to report from time to time to the General Assembly such remedial legislation as in the judgment of the Commission may be advisable, with their recommendations thereon.

Sec. 27. The Commission shall do all in its power to promote the voluntary arbitration, mediation and conciliation of disputes between employers and employees, and to avoid the necessity of resorting to strikes, lockouts, boycotts, blacklists, discriminations and legal proceedings in matters of employment. In pursuance of this duty it may appoint temporary boards of arbitration, provide necessary expenses of such boards, order reasonable compensation not exceeding ten dollars per day for each member engaged in such arbitration, prescribe rules of procedure for such arbitration boards, conduct investigations and hearings, publish reports and advertisements, and do all other acts and things convenient or necessary to accomplish the purposes directed in this section.

Any investigation, inquiry or hearing may be undertaken or held by or before any commissioner, deputy, agent, or board of arbitration, or committee designated for that purpose by the Commission, and every finding, order, award or decision made by those so designated, pursuant to such investigation, inquiry or hearing, when approved and confirmed by the Commission, shall be and be deemed to be the finding, order, award or decision of the Commission.

Sec. 28. For the purpose of such investigations, hearings or arbitrations, the Commission, or any arbitration board appointed by the Commission, shall have all the powers of summoning before it, and enforcing the attendance of witnesses, of administering oaths, and of requiring witnesses to give evidence on oath, or on solemn affirmation, and to produce such books, papers or other documents or things as the Commission, or the board, deems requisite to the full investigation of the matters into which it is inquiring, as is vested in any court of record in civil cases.

Any members of the Commission, or the board, may administer on oath, and the Commission, or the board, may accept, admit and call for such evidence as in equity and good conscience it thinks fit, whether strictly legal evidence or not. Any

party to the proceedings shall be competent and may be compelled to give evidence as a witness.

Sec. 29. Employers and employees shall give at least thirty days' notice of an intended change affecting conditions of employment with respect to wages or hours; and, in every case where a dispute has been made the subject of an investigation, hearing, or arbitration by the Commission, or the board, until the dispute has been finally dealt with by such Commission, or board, neither of the parties nor the employees affected, shall alter the conditions of employment with respect to wages or hours, or on account of the dispute, do, or be concerned in doing, directly or indirectly, anything in the nature of a lockout or strike, or a suspension or discontinuance of work or employment; but the relationship of employer and employee shall continue uninterrupted by the dispute, or anything arising out of the dispute; but, if either party uses this or any other provision of this Act for the purpose of unjustly maintaining a given condition of affairs through delay, such party shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars.

Sec. 30. It shall be unlawful for any employer to declare or cause a lockout, or for any employee to go on strike, on account of any dispute prior to or during an investigation, hearing, or arbitration of such dispute by the Commission, or the board, under the provisions of this Act; provided, that nothing in this act shall prohibit the suspension or discontinuance of any industry or of the working of any persons therein for any cause not constituting a lockout or strike, or to prohibit the suspension or discontinuance of any industry or of the working of any persons therein which industry is not affected with a public interest; provided, further, that nothing in this Act shall be held to restrain any employer from declaring a lockout, or any employee from going on strike in respect to any dispute after the same has been duly investigated, heard, or arbitrated, under the provisions of this Act.

Sec. 31. Nothing in this Act shall be construed to make any findings, determination of the rights of said parties, decision or award of said Commission or of any board of arbitration appointed thereby upon the facts of such controversy, binding, conclusive or enforceable upon any of the parties thereto, or affected thereby, unless

(1) Such parties have agreed in writing prior to the commencement of any such investigation or arbitration, or during the continuance thereof, to accept and be bound by the terms of such findings, determination of rights, decision or award, and then only to the extent in such written agreement provided; or,

(2) Unless said parties shall agree to accept and be bound by such action of the Commission or board of arbitration after the same has been made known to them; provided, however, that

in either such instance, the findings, determination of rights, decision and award of said Commission or board of arbitration, when confirmed by formal order of said Commission, shall be and remain in full force and effect, according to the terms and for the time provided in such formal order of the Commission, and shall be binding, effective and enforceable upon the parties thereto, as any finding, order or award of the Commission under the provisions of this Act.

Sec. 32. Any employer declaring or causing a lockout contrary to the provisions of this Act shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1000.00) for each day or part of a day that such lockout exists.

Any employee, who goes on strike contrary to the provisions of this Act shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00) for each day or part of a day that such employee is on strike.

Sec. 33. Any person who incites, encourages, or aids in any manner any employer to declare or continue a lockout, or any employee to go or continue on strike, contrary to the provisions of this Act, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars (\$50.00), nor more than one thousand dollars (\$1000.00), or by imprisonment in the county jail for a term of not more than six months, or both such fine and imprisonment, in the discretion of the court.

Sec. 34. The Commission shall have full power and authority to hear and determine all questions within its jurisdiction, and its findings, award and order issued thereon shall be final, except as in this Act provided.

Any person affected by any finding, order or award of the Commission, may petition for a hearing on the reasonableness of any such finding, order or award.

Such petition shall be verified, and shall specify the finding, order or award upon which a hearing is desired and every reason why such finding, order or award is considered unreasonable. The petitioner shall be deemed to have finally waived all objections to any irregularities and illegalities in the finding, order or award upon which a hearing is sought other than those set forth in the petition. All hearings of the Commission shall be open to the public.

Sec. 35. Upon the filing with the Commission by any party in interest, of such petition, the Commission shall fix a time for the hearing thereof, which shall not be more than forty days after the filing of such application. The Commission shall cause reasonable notice of such hearing, embracing a general statement of such claim, to be given to each party interested, by service of

such notice on him personally or by mailing a copy thereof to him at his last known postoffice address at least ten days before such hearing. Such hearing may be adjourned from time to time in the discretion of the Commission, and hearings shall be held at such places as the Commission may designate. Either party shall have the right to be present at any hearing, in person or by attorney, or any other agent, and to present such testimony as may be pertinent to the controversy before the Commission, and shall have the right of cross-examination; provided, that the Commission may, with or without notice to either party, cause testimony to be taken, or an inspection or investigation to be made; the testimony so taken shall be reported to the Commission for its consideration upon final hearing. All ex parte testimony taken by the Commission shall be reduced to writing and either party shall have opportunity to examine and rebut the same on final hearing.

Upon such hearing, if it shall be found that the finding, order or award complained of is unreasonable, the Commission shall substitute therefor such other finding, order or award as shall be just and reasonable, or may rescind such finding, order or award.

Whenever at the time of the final determination upon such hearing it shall be found that further time is reasonably necessary for compliance with the finding, order or award of the Commission, the Commission shall grant such time as may be reasonably necessary for such compliance.

Sec. 36. After final hearings by said Commission, it shall make and file (1) its findings upon all the facts involved in the controversy, and (2) its award, which shall state its determination as to the rights of the parties. Pending the hearing and determination of any controversy before it, the Commission shall have power to make such reasonable orders concerning the subject matter thereof as may be necessary to give effect to the provisions of this Act.

The Commission, on its own motion, on three days' notice to the parties interested, by mail or served personally, may modify or change its order, finding or award at any time within fifteen days from the date thereof, if it shall discover any mistake therein.

Sec. 37. Any person in interest 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 ground that the same is unlawful, or unreasonable.

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 as other civil actions.

Sec. 38. No action, proceeding or suit to set aside, vacate or amend any finding, 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 hearing thereon as provided in this Act, and unless such action, proceeding or suit shall have been commenced within 60 days after final decision by the Commission; nor shall any injunction issue suspending or staying any order of the Commission except upon application of the District Court or a judge thereof, notice to the Commission and hearing thereon.

In such action, a copy of the complaint, which shall state the grounds upon which a review is sought, shall be served with the summons. The Commission shall file its answer within twenty days after the service of the complaint. With its answer, the Commission shall make return to said court of all documents and papers on file in the matter, and of all testimony which may have been taken therein, and of its order, finding and award. Such return of the Commission when filed in the office of the clerk of the district court shall constitute a 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. Said action may thereupon be brought on for hearing before said court upon such record by either party on ten days' notice to the other; subject, however, to the provisions of law for a change of the place of trial or the calling in of another judge.

Sec. 39. 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 of the 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 for fifteen days from the date of such transmission, and may thereafter grant such further stays as may be necessary.

Upon the receipt of such statement, the Commission shall hear and consider the issues not theretofore heard and considered, and may alter, modify, amend or rescind its findings, order or award complained of in said action, and shall report its action thereon to said court within ten days from the receipt of the statement from the court for further hearing and consideration.

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 proceed with the trial of such action.

Sec. 40. Upon such hearing, the court may confirm or set aside such order, but only upon one or more of the following grounds:

- (1) That the Commission acted without or in excess of its powers.
- (2) That the finding, order or award was procured by fraud.
- (3) That the findings of fact by the Commission do not support the order or award.
- (4) That the award does not do substantial justice to the parties.

Any action commenced in court under this section to set aside or modify any finding, 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.

Upon the trial of any such action the court shall disregard any irregularity or error of the Commission unless it be made to affirmatively appear that the claimant was damaged thereby.

The record in any case shall be transmitted to the Commission within twenty 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 review of such order or judgment.

Upon the setting aside of any finding, order or award, the court may recommit the controversy and remand the record in the case to the Commission for further hearing or proceedings; or it may enter the proper judgment upon the findings, as the nature of the case shall demand. An abstract of the judgment entered by the trial court upon the review of any order or award, shall be made by the clerk thereof upon the docket of said court, and a transcript of such abstract may be obtained as of any entry upon such docket.

Sec. 41. The Commission or any party aggrieved by a judgment entered upon the review of any such finding, order or award, may have questions 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 (60) 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 writ of error.

Sec. 42. No fees shall be charged by the clerk of any court for the performance of any official service required by this Act, except for the docketing of judgments, and for certified copies

of transcripts thereof. In proceedings to review any finding, 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 finding, 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 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.

Sec. 43. Any person who shall wilfully fail or neglect to appear and testify or to produce books, papers and records as required by subpoena duly served upon him, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00), or imprisoned in the county jail not longer than thirty days for each such offense.

The district court of the county wherein such person resides, or of the city and county of Denver, upon application of the Commission or its agent, may issue an order compelling the attendance and testimony of witnesses and the production of books, papers and records before such Commission or any such agent.

Sec. 44. If any employer or employee, or any other person shall violate any provisions 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, employee or other person shall be punished by a fine of not less than one hundred dollars for each such offense.

Sec. 45. Every day during which any employer or officer or agent thereof, or any employee, shall fail to comply with any lawful order of the Commission or to perform any duty imposed by this Act, shall constitute a separate and distinct violation thereof.

Sec. 46. All penalties provided for in this Act shall be collected in a civil action brought against the employer or employee as the case may be, in the name of the Commission, and all such penalties, when collected, shall be paid into the expense fund of such Commission and become a part thereof.

Sec. 47. Upon request of the Commission, the attorney general, or under his direction, the district attorney of any district or county, shall institute and prosecute the necessary action or proceedings for the enforcement of any of the provisions of this Act, or for the recovery of any money due the Commission, or any penalty herein provided for, arising within the district or

county in which he was elected, and shall defend in like manner all suits, actions or proceedings brought against the Commission.

Sec. 48. If, for the purpose of obtaining any order, benefit or award under the provisions of this Act, either for himself or for any other person, any one wilfully makes a false statement or representation, he shall be guilty of perjury and punished accordingly.

Sec. 49. There is hereby appropriated out of any money in the treasury, not otherwise appropriated, the sum of fifty thousand dollars or so much thereof as may be necessary to carry out the provisions of this Act for the current biennial period.

Sec. 50. All acts and parts of acts in conflict with the provisions of this Act, are hereby repealed, provided that no right of action now existing shall be affected by such repeal, and nothing contained in this Act shall be construed to affect the authority of the state board of health relative to the public health.

Sec. 51. If any part, section, sub-section, sentence, clause or phrase of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. The General Assembly hereby declares that it would have passed this Act and each part, section, sub-section, sentence, clause or phrase irrespective of the fact that any one or more other parts, sections, sub-sections, sentences, clauses or phrases be declared unconstitutional.

Sec. 52. It is hereby declared that this Act is necessary for the immediate preservation of the public peace, health and safety.

Sec. 53. In the opinion of the General Assembly, an emergency exists; Therefore, this Act shall take effect and be in force immediately after its passage.

HOUSE BILL NO. 604.

BY MESSRS. DRAKE AND SCHMIDT AND SENATORS
EATON AND KNAUSS.

AN ACT

TO PROVIDE MUTUAL INSURANCE FOR EMPLOYERS BY PROVIDING FOR THE ORGANIZATION OF CORPORATIONS ON THE MUTUAL PLAN, THEIR POWERS AND DUTIES AND THE REGULATION OF THEIR AFFAIRS, THE POWERS AND DUTIES OF THEIR DIRECTORS AND OFFICERS AND THE RIGHTS AND LIABILITIES OF ITS MEMBERS, AND THE PUNISHMENTS FOR VIOLATIONS OF THE PROVISIONS THEREOF, REPEALING ALL ACTS AND PARTS OF ACTS IN CONFLICT WITH THIS ACT AND DECLARING THIS ACT TO BE NECESSARY FOR THE IMMEDIATE PRESERVATION OF PUBLIC HEALTH, PEACE AND SAFETY.

Be it Enacted by the General Assembly of the State of Colorado:

Section 1. Any fifteen or more individuals, partnerships, associations or corporations who shall have associated themselves together by certificate or articles of incorporation in writing, may become, by complying with Sections 2 and 3 of this Act, a body corporate for the purpose of insuring the members of such corporation or company on the mutual plan against liability, loss or damage resulting from accident to or injury suffered by an employee or other persons and for which the person insured is liable, or the liability of the employer to pay compensation to his employes, or the compensation of employes under any workman's compensation law, or against liability, loss or damage caused by a truck, wagon or other vehicle propelled by steam, gas, gasoline, electricity, mechanical or other power or drawn by horses or mules, used in trade or manufacture and owned by any such person, to the property of another, for which loss or damage the person insured is liable.

Section 2. Said incorporators shall make, sign and acknowledge before some officer competent to take the acknowledgment of deeds, certificates in writing in which shall be stated: First, the corporate name, which shall include the word "mutual"; second, the objects for which the company shall be created, which objects may include any or all lines of insurance hereinbefore in this act specified; third, the term of the company's existence, not to exceed twenty years, which term, however, may be extended as provided in respect to other incorporations; fourth, the number of directors which shall be not less than three nor more than twenty-one, and the names of those who shall serve for the first year and until election of their successors; fifth, the name of the town or place, and the county, in which the principal office of the company shall be kept.

Section 3. One of said certificates of incorporation shall be filed in the office of the Secretary of State and one in the office of the recorder of deeds of the county designated by such certificate as the place where the principal office is to be kept.

Section 4. Whenever the certificate or articles of incorporation shall have been filed in the office of the Secretary of State, and the Secretary of State shall have issued the certificate of authority and received the fees, all as now provided by law in respect to corporations organized under the laws of this state, a copy of such certificate of incorporation certified by the Secretary of State shall be filed with the Commissioner of Insurance, who shall thereupon submit the same to the Attorney General of the State of Colorado for examination, and if found by him to be in accordance with the provisions of this act and not inconsistent with the constitution of this state, he shall so certify and deliver back the same to the commissioner, who thereupon, and in writing, shall license such company to open books to receive applications for insurance. No such company shall transact any business of insurance unless and until at least twenty employers employing not less than twenty-five hundred employes shall have applied for and agreed in writing to take insurance therein, covering the liability of such employers to their employes for accidents to or injuries suffered by such employes, nor until a list of such applicants with the number of employes of each, together with such other information as the Commissioner of Insurance may require, shall have been filed with the Commissioner, nor until the president and secretary of the company shall have certified under oath that every application in the list so filed is genuine and made with an agreement by every applicant that he will take the policy or policies applied for by him within thirty days of the granting of the license to the company by the Commissioner to issue policies, nor until the Commissioner being satisfied upon investigation that the list of applicants is genuine and that the required number of applicants will take the policies as applied for and within the time agreed as aforesaid, shall have issued a license to such company to issue policies, such license to be designated as class A; Provided, however, that the Commissioner of Insurance may in his discretion issue a license to a company wherein the 20 employers have less than 2500 of employees and more than 1000 employes when in his judgment the nature of the business and the hazards involved are such that the company can safely conduct a mutual insurance business with such limited number of employes, such license to be designated as Class B. Should the number of employers holding policies at any time fall below or be less than twenty or the number of employes to whom the company may be bound to pay compensation in case of accident fall below 2500 in a company licensed as Class A or below 1000 in a company known as Class B, no further policies shall be issued until other employers shall have applied for insurance, who together with existing policy holders shall amount to not

less than twenty, having not less than 2500 employes in a company licensed as Class A or 1000 in a company licensed as Class B, and until the Commissioner shall in writing have licensed such company to resume the issuance of such policies.

Section 5. No by-law of such company shall be inconsistent with this or any other law, and no by-law shall be valid until approved by the Commissioner of Insurance.

Section 6. Annual meetings of the members of such company shall be held for the election of directors and the transaction of other business, at such times, upon such notice and in such manner as the by-laws may provide. At all meetings a majority of votes cast thereon shall be necessary to the validity of any action and all voting shall be by ballot. Each member shall have one vote and one additional vote for every five hundred of employes or major fraction thereof, covered by the policy held by such member in the company; provided, that no member shall have more than twenty votes. The votes of a member shall be determined by the average number of employes at work and covered by said member's policy in the company during the last six months from a date not less than ten days immediately prior to the date of any such meeting. Before any member shall be permitted to cast more than one vote at any meeting of members he shall file with the secretary an affidavit showing the average number of employes at work during the preceding six months covered by the employer's policy of insurance. In all elections for directors each member shall have the right to cast as many votes in the aggregate as shall equal the number of votes to which he is entitled multiplied by the number of directors to be elected at such election; and each member may cast the whole number of such votes, either in person or by proxy, for one candidate or distribute such votes among the two or more candidates; and the directors shall not be elected in any other manner.

Section 7. Directors shall be elected annually at such time and place as shall be directed by the by-laws, but after the company shall have been organized and authorized to issue policies not more than two of such directors shall be persons who are not members of such company. They shall hold meetings at such times as may be fixed in the by-laws, and shall keep a record of their proceedings. A majority of the directors shall constitute a quorum for the transaction of business, and the affairs of such company shall be conducted by the directors, who shall receive such compensation as may be provided in the by-laws. The directors shall elect one of their number president, who shall hold office during the pleasure of the directors, and be president of the company. The directors shall elect such other officers as may be provided in the by-laws, and do such things as may be necessary properly to conduct the business of the company. Except as otherwise provided in this act or by law the powers and duties of the directors and all officers shall be as provided in the by-laws.

Section 8. The directors shall classify all risks and fix the premium rates for each class and may also, if they desire, adopt and enforce a proper merit-rating schedule. Liability for accidents or injuries to employes or the general public may be insured against in the same or separate policies; provided, the liability under any workmen's compensation law of this state shall be insured by separate policies. The rates charged shall be just, reasonable and adequate, with due allowances for merit-rating if adopted, and all risks of the same kind or degree of hazard shall be written at the same rate.

For greater convenience in determining equitable rates and for assessment, refund or dividend purposes, one or more employments may be separately grouped and separate expenses and income accounts and separate reserves may be maintained in respect thereto. Where the employments are grouped the premiums, assessments and refunds or dividends and reserves shall be fixed by and for groups in accordance with experience in each group.

Section 9. The directors may make and enforce reasonable rules and regulations, not in conflict with the laws of this state, for the prevention of accidents or injuries, and for this purpose the inspectors of the company shall have free access to the premises of all members. The policy of any member may be canceled on thirty days' notice for any failure to provide suitable safety appliances as provided by law or as required by the directors for all other similar risks.

Section 10. Such company shall provide and maintain reserves sufficient to cover its unearned premiums and also to carry to and discharge at maturity any and all liability for incurred losses and expenses. Such company if it desires may maintain a reserve for catastrophes also. All such reserves and the surplus or other funds, if any, shall be invested in such manner and securities as is now provided by law in this state for domestic insurance companies.

Section 11. The Company itself may, in its by-laws and policies, fix the contingent mutual liability of the policy holder for the payment of losses and expenses not provided for by its cash funds, and for the maintenance of reserves; but such contingent liability shall not be less than an amount sufficient to cover all assessments for annual deaths in excess of ninety, as provided in Section 14 and in Class A Companies an amount equal to one times, and in Class B companies an amount equal to five times the premium written in the policy which contingent liability shall be in addition to such premium.

Section 12. Such company may reinsure against all or part of its liability with any insurance company authorized to do a business within this state.

Section 13. Any employer of labor in this state or elsewhere, including any employer within the meaning of the word "employer" as defined in any workmen's compensation law of this state and

any public or private corporation, board or association, and any estate in the hands of any receiver, administrator, assignee, executor, guardian, conservator or other trustee whose risk shall be accepted by the company may take out a policy of insurance therein and by so doing shall become a member of such company and exercise and be entitled to all the rights and subject to all liabilities of members. The members of the corporation shall be policy holders therein, and when any member ceases to be a policy holder he shall cease, at the same time, to be a member of the Company. A corporation, partnership, association or joint stock Company may be a member of such Insurance Company and may authorize another person to represent it in such Insurance Company, and such representative shall have all the rights of any individual member including that of holding offices in such company.

Section 14. The directors of any such company which is not possessed of assets in excess of the required reserves and of all other liabilities shall make an assessment upon each of the persons to whom it shall have issued policies, proportionate to their several liability, and each of said persons shall be liable to the company immediately for his proportionate amount of such an assessment to make good any deficiency occurring during the life of such policy if the person be notified of such assessment within one year from the date of the expiration of his policy. If the deficiency for which assessment is made is caused by fatal accidents in excess of ninety in any one year in a company or group comprising the industry of coal mines, the assessment in respect to such excess may be payable at the option of the company either in one payment or in equal annual installments covering as many years as do the compensation installments payable to the dependents, the first of which shall be due and payable as soon as assessed. A default for sixty days in the payment of any installment shall in itself cause all other unpaid installments to become immediately due and payable. Any assessment authorized by this Act and made by the company against a person, including such unpaid installments, shall constitute a legal liability against him and in the event of his insolvency shall be entitled to a preference subject to claims already preferred by law over the unsecured debts of the member. All funds of the company and the contingent liability of the policy holders thereof, shall be available for the payment of any claim against the company.

Section 15. Any director, officer or member of any such company or of any other company may advance to the company any sum or sums of money necessary for the purpose of its business or to enable it to comply with any requirements of the law, and when so agreed such sums and the interest thereon shall not be a liability of the company or a claim against its assets, and shall be repaid only out of the surplus earnings of the company. No commission or promotion expenses shall be paid in connection with the organization of any such company or the advance of

any such money to the company, and the amount of such advances shall be reported in each annual statement to the Commissioner of Insurance. Where the employments are grouped as provided in this Act, such advances may be to a group.

Section 16. After the payment of all expenses, losses and other liabilities and providing for the maintaining the required reserves or if the employments are grouped then after the payment of all expenses, losses and other liabilities of a group, the directors may make refunds to the members or to the members of a group as the case may be, under the following conditions:

1. All sums advanced to the company under any agreement that the same should not be a liability of the company or a claim against its assets, with interest thereon, shall be first repaid to the parties advancing the same.

2. The directors shall next set aside any amounts which may be provided by the by-laws as a surplus or other fund, and

3. The balance, if any, shall be distributed as refunds to the members in proportion to the amount of earned premiums paid by them on the policy in force at the time the refund is declared.

Any director knowingly voting to pay or paying any dividend or refund in violation of the provisions of this act shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by imprisonment in the county jail for not less than one week nor more than one year.

Section 17. Any such company may be dissolved by two-thirds of the votes of its members at a meeting called for the purpose, a copy of the minutes of which meeting, verified by the affidavit of the president, shall be filed with the Commissioner of Insurance and the Secretary of State. Upon the filing thereof the title to all of the assets of the company shall immediately vest in the Commissioner, who shall proceed to take possession of the same and all the books and records of the company, and out of the proceeds thereof pay all of the costs of such administration, pay or provide for all its liabilities, pro rata if there be not sufficient assets to pay in full and distribute the balance in the following manner:

1st. Out of said balance he shall first pay all sums advanced to the company under any agreement that the same shall not be a liability of the company or a claim against its assets, with interest thereon.

2nd. The balance, if any, shall be paid to the members in proportion to the amount of earned premiums paid by them on the policy in force at the time the dissolution is voted.

3rd. If the employments are grouped, the distribution shall be according to the groups and to the members insured therein.

Section 18. No mutual insurance company organized under the laws of this state shall insure liability under any workmen's compensation law of this state unless such company be organized

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