

board in a common district containing ten, or more, townships shall have and exercise all powers, and be subject to the same laws and regulations as school boards in independent districts.

Approved April 23, 1913.

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CHAPTER 466—S. F. No. 101.

*An Act to reimburse judges of the district court, for amounts paid out for railway, traveling and hotel expenses while absent from their places of residence in the discharge of their official judicial duties.*

Be it enacted by the Legislature of the State of Minnesota:

Section 1. **District court judges to be reimbursed for expenses.**—The judges of the district court shall be paid, in addition to the amounts now provided by law, all sums they shall hereafter pay out as necessary railway, traveling and hotel expenses while absent from their places of residence in the discharge of their official duties. Each judge shall file quarterly with the state auditor an itemized statement, verified by him, of all such expenses actually paid by him during the preceding quarter, which shall be audited by said state auditor and paid upon his warrant.

Sec. 2. This act shall take effect and be in force from and after its passage.

Approved April 24, 1913.

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CHAPTER 467—S. F. No. 290.

*An Act prescribing the liability of an employer to make compensation by way of damages for injuries due to accident received by an employe arising out of and in the course of employment, modifying common law and statutory remedies, in such cases; establishing an alternative elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder in certain cases. //*

Be it enacted by the Legislature of the State of Minnesota:

PART I.

Section 1. **Compensation by action at law—Modification of remedies.**—When personal injury or death is caused to an employe by accident arising out of and in the course of his employment, of which injury the actual or lawfully imputed negligence of the employer is the natural and proximate cause, he, or, in case of death, his personal representative, for the exclusive bene-

fit of the surviving spouse and next of kin, shall receive compensation by way of damages therefor from his employer, provided the employe was himself not wilfully negligent at the time of receiving such injury; and the question of whether the employe was wilfully negligent shall be one of fact to be submitted to the jury, subject to the usual powers of the court over verdicts rendered contrary to the evidence, or to law.

**Sec. 2. When it shall not be a defense.**—In all cases brought under Part 1 of this act it shall not be a defense (a) that the employe was negligent, unless and except it shall also appear that such negligence was wilful; (b) that the injury was caused by the negligence of a fellow employe; (c) that the employe had assumed the risks inherent in, or incidental to the work, or arising out of and in the course of his employment from the failure of the employer to provide and maintain safe premises and suitable appliances, which grounds of defense are hereby abolished except as provided in Section 4.

**Sec. 3. When employer loses rights.**—If the employer elects not to come under Part 2 of this act, he loses the right to interpose the three defenses named in Section 2 in any action brought against him for personal injury or death of an employe.

**Sec. 4. When employer may set up defense.**—If the employer becomes subject to Part 2 of this act and the employe does not, then the employer may set up such defenses as are available at the time of the passage of this act.

**Sec. 5. Provisions to apply to claim for death.**—The provisions of Sections one, two, three and four shall apply to any claim for the death of an employe arising under Section 4503 of Chapter 84, Revised Laws of Minnesota 1905, and the acts or parts of acts amendatory thereof, concerning death by wrongful act.

**Sec. 6. Burden of proof upon defendant.**—In all actions at law brought pursuant to Part 1 of this act, the burden of proof to establish wilful negligence of the injured employe shall be upon the defendant.

**Sec. 7. Claim for legal services not an enforceable lien.**—No claim for legal services or disbursements pertaining to any demand made or suit brought under the provisions of this act shall be an enforceable lien against the amount paid as compensation, or be valid or binding in any other respect, unless the same be approved in writing by the judge presiding at the trial, or in case of settlement without trial, by a judge of the district court. Provided, that if notice in writing be given the defendant, of such claim for legal services or disbursements, the same shall be a lien against the amount paid as compensation, subject to determination of the amount and approval here-

inbefore provided. All sums allowed as liens against such compensation or paid for legal, medical and hospital services and other disbursements, shall be reported by the employe to the labor commissioner with terms of settlement as provided in Section 24 of this act.

## PART 2.

### ELECTIVE COMPENSATION.

Sec. 8. **Not to apply to common carrier.**—This act shall not be construed or held to apply to any employer acting as a common carrier when engaged in interstate or foreign commerce by railroad, which employer by reason of being engaged in interstate or foreign commerce by railroad, is not subject exclusively to the legislative power of the State of Minnesota, or for which employer and the employes thereof, a rule of liability or method of compensation has been, or may be established by the congress of the United States; nor shall it apply to any employe of such common carrier injured or killed while so engaged. Nor shall the provisions of this act apply to actions or proceedings to recover damages or compensation for personal injuries sustained by domestic servants, farm laborers, or persons whose employment at the time of the injury is but casual and not in the usual course of the trade, business, profession or occupation of his employer.

Whenever an employe of a common carrier, engaged in interstate or foreign commerce by railroad shall sustain personal injury by accident, arising out of, and in the course of his employment, resulting in his disability or death, it shall be presumed prima facie that such employee was, at the time of the accident, engaged in such commerce.

Sec. 9. **When agreement is made between employer and employee.**—If both employer and employe, shall, by agreement express or implied, or otherwise, as herein provided, become subject to Part 2 of this act, compensation according to the schedules hereinafter contained shall be paid by every such employer, in every case of personal injury or death of his employe, caused by accident, arising out of and in the course of employment, without regard to the question of negligence, except accidents which are intentionally self inflicted or when the intoxication of such employee is the natural or proximate cause of the injury, and the burden of proof of such fact shall be upon the employer.

Sec. 10. **To be surrender of rights.**—Such agreement or the election hereinafter provided for shall be a surrender by the parties thereto of their rights to any other method, form or amount of compensation or determination thereof than as pro-

vided in Part 2 of this act, and an acceptance of all the provisions of Part 2 of this act, and shall bind the employe himself, and for compensation for his death shall bind his personal representative, the surviving spouse and next of kin, as well as the employer, and those conducting his business during bankruptcy or insolvency, for compensation for death or injury, as provided for by Part 2 of this act.

**Sec. 11. Contracts presumed to have been made in writing.**

—All contracts of employment made after the taking effect of this act shall be presumed to have been made with reference, and subject to the provisions of Part 2, unless otherwise expressly stated in the contract, in writing, or unless written or printed notice has been given by either party to the other, as hereinafter provided, that he does not accept the provisions of Part 2. Every employer and every employe is presumed to have accepted and come under Part 2 hereof, unless thirty (30) days prior to accident, he shall have signified his election not to accept or be bound by the provisions of Part 2. This election not to accept Part 2 shall be by notice as follows:

The employer shall post and keep posted in his shop or place of business a written or printed notice of his election not to be bound by Part 2 hereof and file a duplicate thereof with the labor commissioner.

The employe shall give written or printed notice to the employer of his election not to be bound by Part 2, and file a duplicate with proof of service attached thereto with the labor commissioner.

**Sec. 12. Either party may terminate agreement.**—Either party may terminate his acceptance, or his election not to accept of the provisions of Part 2 by thirty (30) days' written notice to the other. A duplicate of such notice with proof of service attached thereto shall be filed with the labor commissioner and the time shall not begin to run until the notice is so filed.

Provided, however, that during the thirty (30) days immediately succeeding the taking effect of this act, notice of election not to accept the provisions of Part 2 may be given by either party to the other as above provided, and shall be immediately effective as a notice of election, upon filing duplicate thereof with the labor commissioner.

#### SCHEDULE OF COMPENSATION.

**Sec. 13. Schedule of compensation allowed under act.**—Following is the schedule of compensation; (a) For injury producing temporary total disability, fifty per centum of the wages received at the time of injury, subject to a maximum compensation of ten dollars (\$10.00) per week and a minimum of six dollars (\$6.00) per week; provided, that if at the time of injury

the employe receives wages of less than six dollars (\$6.00) per week, then he shall receive the full amount of such wages per week. This compensation shall be paid during the period of such disability, not, however, beyond three hundred weeks. Payments to be made at the intervals when the wage was payable, as nearly as may be.

(b) In all cases of temporary partial disability the compensation shall be fifty per cent of the difference between the wage of the workman at the time of the injury, and the wage he is able to earn in his partially disabled condition. This compensation shall be paid during the period of such disability, not however beyond three hundred weeks, payment to be made at the intervals when the wage was payable as nearly as may be and subject to the same maximum and minimum as stated in (a).

(c) For permanent partial disability, the compensation shall be based upon the extent of such disability. In cases included by the following schedule the compensation shall be that named in the schedule, to-wit:

For the loss of a thumb, fifty per centum of daily wages during sixty (60) weeks.

For the loss of a first finger, commonly called index finger, fifty per centum of daily wages during thirty-five (35) weeks.

For the loss of a second finger, fifty per centum of daily wages during thirty (30) weeks.

For the loss of a third finger, fifty per centum of daily wages during twenty (20) weeks.

For the loss of a fourth finger, commonly called little finger, fifty per centum of daily wages during fifteen weeks.

The loss of the first phalange of the thumb, or of any finger, shall be considered equal to the loss of one-half of such thumb, or finger, and compensation shall be one-half the amounts specified above for such thumb or finger.

The loss of more than one phalange shall be considered as the loss of the entire finger or thumb; providing, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

For the loss of a great toe, fifty per centum of daily wages during thirty (30) weeks.

For the loss of one of the toes other than a great toe, fifty per centum of daily wages during ten (10) weeks.

The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of such toe, and compensation shall be one-half of the amount above specified.

The loss of more than one phalange shall be considered as the loss of the entire toe.

For the loss of a hand, fifty per centum of daily wages during one hundred and fifty (150) weeks.

For the loss of an arm, fifty per centum of daily wages during two hundred (200) weeks.

For the loss of a foot, fifty per centum of daily wages during one hundred and twenty-five (125) weeks.

For the loss of a leg, fifty per centum of daily wages during one hundred and seventy-five (175) weeks.

For the loss of an eye, fifty per centum of daily wages during one hundred (100) weeks.

In all other cases of permanent partial disability, not above enumerated, the compensation shall be fifty per centum of the difference between the wage of the workman at the time of the injury and the wage he is able to earn in his partially disabled condition. Compensation shall continue during disability, not however, beyond three hundred (300) weeks.

In all cases of permanent partial disability within the foregoing schedule, it shall be considered that the permanent loss of the use of a member shall be equivalent to and draw the same compensation as the loss of that member; but the compensation in and by said schedule provided, shall be in lieu of all other compensation in such cases.

Should the employer and employe be unable to agree upon the amount of compensation to be paid, the amount of compensation shall be determined according to the provisions of Section 30 hereof.

The compensations provided in clause (c) are all subject to the same limitations as to maximum and minimum as are stated in clause (a).

(d) For permanent total disability, fifty per centum of the wages received at the time of injury, subject to a maximum compensation of ten dollars (\$10.00) per week and a minimum of six dollars (\$6.00) per week; provided, that if at the time of injury the employe receives wages of less than six dollars (\$6.00) per week, then he shall receive the full amount of wages per week. This compensation shall be paid during the period of such disability, not, however, beyond four hundred (400) weeks; payment to be made at the intervals when the wage was payable, as nearly as may be.

(e) The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof, or a total loss of mental faculties, or complete paralysis of both legs or both arms, shall constitute permanent total disability.

(f) In case death occurs to a workman during the period of disability, caused by an injury due to accident, and arising out of and in the course of his employment, all payments previously made as compensation for such injury, shall be deducted from the compensation, if any, due on account of death.

#### DEPENDENTS.

Sec. 14. **Who are dependents and allowances to each.**—(1) Wife and children presumed wholly dependent. For the purposes of this act, the following described persons, viz.: Wife, minor children under the age of eighteen years; or those over that age who are physically or mentally incapacitated from earning, shall be presumed to be wholly dependent.

(2) Actual dependents.—Any dependents named in subdivision 1; also husband, mother, father, grandmother, grandfather, sisters and brothers who were wholly supported by the deceased workman at the time of his death and for a reasonable period of time immediately prior thereto shall be considered his actual dependents, and payment of compensation shall be made to them in the order named.

(3) Partial dependents.—Any dependents named in subdivision 2, who regularly derived part of their support from the wages of the deceased workman at the time of his death and for a reasonable period of time immediately prior thereto shall be considered his partial dependents, and payment of compensation shall be made to them in the order named.

#### DISTRIBUTION OF COMPENSATION TO DEPENDENTS.

(4) In death cases, compensation payable to dependents shall be distributed according to the laws of Minnesota, providing for distribution of the personal property of an intestate decedent, except as herein otherwise provided, and shall be computed and paid on the following basis:

(5) If the deceased employe leave a widow and no dependent child, there shall be paid to the widow, thirty-five per centum of the monthly wages of deceased.

(6) If the deceased employe leave a widow and one dependent child, there shall be paid to the widow for the benefit of herself and such child, forty per centum of the monthly wages of deceased.

(7) If the deceased employe leave a widow and either two or three dependent children, there shall be paid to the widow for the benefit of herself and such children, fifty per centum of the monthly wages of deceased.

(8) If the deceased employe leave a widow and four or more dependent children, there shall be paid to the widow for the benefit of herself and such children, sixty per centum of the monthly wages of the deceased.

(9) In case of re-marriage of a widow without children, she shall receive a lump sum settlement equal to one-half of the amount of the compensation remaining unpaid. In case of re-marriage of a widow who has dependent children, the unpaid balance of compensation which would otherwise become due to her, shall be paid to such children.

(10) If the deceased employe leave a dependent orphan, there shall be paid forty per centum of the monthly wages of deceased, with ten per centum additional for each orphan in excess of two, with a maximum of sixty per centum of such wages.

(11) If the deceased employe leave a dependent husband and no dependent child, there shall be paid to the husband twenty-five per centum of the monthly wages of deceased.

(12) If the deceased employe leave no widow or children or husband entitled to any payment hereunder, but should leave a parent or parents, either or both of whom are wholly dependent on the deceased, there shall be paid, if only one parent, twenty-five per centum of the monthly wages of the deceased, and if both parents, thirty-five per centum of the monthly wages of the deceased to such parent or parents.

(13) If the deceased leave no widow or dependent child or husband or parent entitled to any payment hereunder, but leaves a brother, sister or grandparent wholly dependent on him for support, there shall be paid to such dependent relative, if but one, twenty-five per centum of the monthly wages of the deceased, or if more than one thirty per centum of the monthly wages of the deceased, divided between or among them share and share alike.

(14) If compensation is being paid under Part 2 of this act to any dependent, such compensation shall cease upon the death or marriage of such dependent, unless otherwise provided herein.

(15) Partial dependents.—Partial dependents shall be entitled to receive only that proportion of the benefits provided for actual dependents which the average amount of the wages regularly contributed by the deceased to such partial dependent at, and for a reasonable time immediately prior to the injury, bore to the total wage of the deceased, during the same time.

(16) No dependents.—Expense of last sickness and burial not exceeding one hundred dollars (\$100.00), in addition to the medical and hospital services and expenses provided by Section 18.

(17) Death compensation.—The compensation in case of death shall be subject to a maximum compensation of ten dollars (\$10.00) per week and a minimum of six dollars (\$6.00) per

week; provided, that if at the time of injury the employe receives wages of less than six dollars (\$6.00) per week, then the compensation shall be the full amount of such wages per week. This compensation shall be paid during dependency not exceeding three hundred (300) weeks. Payments to be made at the intervals when the wage was payable, as nearly as may be.

(18) In computing and paying compensation to orphans or other children, in all cases, only those under eighteen years of age, or those over eighteen years of age who are physically or mentally incapacitated from earning, shall be included; the former to receive compensation only during the time they are under eighteen, the latter only for the time they are so incapacitated, within the period of three hundred (300) weeks.

Sec. 15. **Injury increasing disability.**—If an employe receive an injury, which, of itself, would only cause permanent partial disability, but which, combined with a previous disability, does in fact cause permanent total disability, the employer shall only be liable for the permanent partial disability caused by the subsequent injury.

Sec. 16. **Liability of joint employers.**—In case any employe for whose injury or death compensation is payable under Part 2 of this act shall, at the time of the injury, be employed and paid jointly by two or more employers subject to this act, such employers shall contribute the payment of such compensation in the proportion of their several wage liability to such employe. If one or more but not all of such employers should be subject to Part 2 of this act, and otherwise subject to liability for compensation hereunder, then the liability of such of them as are so subject, shall be to pay the proportion of the entire compensation which their proportionate wage liability bears to the entire wages of the employe: Provided, however, that nothing in this section shall prevent any arrangement between such employers for a different distribution, as between themselves, of the ultimate burden of such compensation.

Sec. 17. **Waiting period.**—No compensation shall be allowed for the first two weeks after injury received, except as provided by Section 18, nor in any case unless the employer has actual knowledge of the injury or is notified thereof within the period specified in Section 19.

Sec. 18. **Medical, surgical and hospital service.**—Such medical and surgical treatment, medicine, medical and surgical supplies, crutches and apparatus as may be reasonably required at the time of the injury and thereafter during the disability, but not exceeding ninety (90) days, to cure and relieve from the effects of the injury, the same to be provided by the employer and in case of his inability or refusal seasonably to do so, the

employer to be liable for the reasonable expense incurred by or on behalf of the employe in providing the same; provided, however, that the total liability under this section shall not exceed the sum of one hundred dollars (\$100.00) in value; except that the court may, during said period of ninety (90) days, upon necessity being shown therefor, require the employer to furnish such additional medical, surgical and hospital treatment and supplies as may be reasonable, which, together with any such sums or relief theretofore furnished shall not exceed in all two hundred dollars (\$200.00) in value.

**Sec. 19. Notice to employer of accident.**—Unless the employer shall have actual knowledge of the occurrence of the injury, or unless the injured workman, or a dependent, or some one in behalf of either, shall give notice thereof to the employer in writing, within fourteen (14) days after the occurrence of the injury, then no compensation shall be due until such notice is given or knowledge obtained. If the notice is given, or the knowledge obtained within thirty (30) days from the occurrence of the injury, no want, failure, or inaccuracy of a notice shall be a bar to obtaining compensation, unless the employer shall show that he was prejudiced by such want, defect or inaccuracy, and then only to the extent of such prejudice. If the notice is given, or the knowledge obtained within ninety (90) days, and if the employe, or other beneficiary, shall show that his failure to give prior notice was due to his mistake, inadvertence, ignorance of fact or law, or inability, or to the fraud, misrepresentation or deceit of the employer or his agent, then compensation may be allowed, unless the employer shall show that he was prejudiced by failure to receive such notice, in which case the amount of compensation shall be reduced by such sum as shall fairly represent the prejudice shown. Unless knowledge be obtained or notice given, within ninety (90) days after the occurrence of the injury, no compensation shall be allowed.

**Sec. 20. Notice to be given.**—The notice referred to in Section 19 may be served personally upon the employer, or upon any agent of the employer upon whom a summons may be served in a civil action, or by sending it by registered mail to the employer at the last known residence or business place thereof within the state, and shall be substantially in the following form:

## NOTICE.

"You are hereby notified that an injury was received by (Name).....who was in your employ at (Place).....while engaged as (kind of work).....on or about the.....day of .....19.., and who is now located at (give town, street and number).....that so far as now known, the nature of the injury was.....and that compensation may be claimed therefor.

(Signed).....

(Giving address).

Dated .....19....."

But no variation from this form shall be material if the notice is sufficient to advise the employer that a certain employe, by name, received a specified injury in the course of his employment on or about a specified time, at or near a certain place specified.

Sec. 21. **Examination and verification of injury.**—(1) The injured employe must submit himself to examination by employer's physician, if requested by the employer, and at reasonable times thereafter upon employer's request. The employe shall be entitled upon request to have his own physician present at any such examination. Each party shall defray the cost of his own physician.

(2) Medical examination by neutral physician.—In case of dispute as to the injury, the court may, of its own motion, or upon request of any interested party, appoint a neutral physician of good standing and ability to make an examination of the injured person, and report his findings to the court. The expense of such examination shall be borne by the said parties.

(3) If the injured employe refuses to comply with any reasonable request for examination, his right to compensation shall be suspended and no compensation shall be paid while he continues in such refusal.

(4) Autopsy.—In all death claims where the cause of death is obscure or disputed, any interested party may require an autopsy; the cost of such autopsy shall be borne by the party demanding the same.

Sec. 22. **Settlement and payment of compensation.**—(1) The interested parties shall have the right to settle all matters of compensation between themselves. But all settlements shall be substantially in accordance with the provisions of Sections 13 and 14 of this act, and shall be approved by a judge of the district court. When so approved such settlements shall be filed with the clerk of the district court and in case of default by the employer in the payment of any compensation determined or

agreed upon and the continuation of such default for the period of thirty (30) days after payment is due and payable, the employe may upon five (5) days' notice in writing to the employer of his intention to apply to the court for judgment, cause judgment to be entered on such settlement or determination for all compensation due and payable and unpaid; and such judgment shall have the same force and effect, and may be satisfied as *other judgments of the same court.*

(2) In case of a dispute over, or failure to agree upon a claim for compensation between employer and employe, or the dependents of the employe, either party may submit the claim, both as to questions of fact, the nature and effect of the injuries, and the amount of compensation therefor according to the schedule herein provided, to the judge of the district court of the county which would have jurisdiction in a civil case, or, where there is more than one judge of said court, then to either or any of said judges of such court; which judge is hereby authorized to hear and determine such disputes in a summary manner, and his decision as to all questions of fact shall be conclusive and binding, subject to the right of appeal as hereinafter provided.

Sec. 23. **In case of an alien.**—In case a deceased employe entitled to compensation is an alien, who leaves surviving him a wife or other dependent residing outside of the United States, the said judge shall by order, in case no other personal representative of the deceased shall have been appointed by the probate court, direct payment to be made to the duly accredited consular officer of the foreign country of which the deceased was a citizen, if such consular officer resides in the state of Minnesota, upon like terms as to bond for the proper application of the compensation coming to the deceased, as are required of administrators. But in either case such representatives shall, when so appointed and at reasonable times thereafter, upon request of the employer, furnish to the employer a sworn statement containing a list of the dependents with the names, age, residence and relationship of each dependent to the deceased.

Sec. 24. **Record of settlements.**—Copies of all settlements and releases shall be filed by the employer with the labor commissioner within ten (10) days after such settlements are made, and shall become part of the permanent records of that department.

Sec. 24A. **Commissioner to assist in adjusting differences.**—The labor commissioner upon demand of an employe in this state, shall advise such employe of his rights under this act and shall assist, so far as possible, in adjusting differences between employe and employer under Part 2 thereof.

He shall observe in detail the operation of the act throughout the state and shall make report thereof to each session of the legislature, together with such suggestions and recommendations as to changes as he may deem necessary or advisable for the improvement thereof.

**Sec. 25. Payment in lump sum.**—The amounts of compensation payable periodically hereunder, either by agreement of the parties, so approved by the court, or by decision of the court, may be commuted to one or more lump sum payments, except compensation due for death or permanent total disability, or for permanent partial disability resulting from the loss of an arm or a hand or a foot or a leg or an eye. These may be so commuted only with the consent of the district court.

**Sec. 26. Settlements to be final—Exceptions.**—All settlements of compensation by agreement of the parties, and all awards of compensation made by the court, where the amount paid or to be paid in settlement or by award, does not exceed the compensation for six months disability, shall be final and not subject to readjustment.

**Sec. 27. When compensation payable periodically may be modified.**—All amounts paid by employer and received by the employe or his dependents, by lump sum payment, shall be final; but the amount of any award payable periodically for more than six (6) months may be modified as follows:

(a) At any time by agreement of the parties and approved by the court.

(b) If the parties cannot agree, then at any time after six (6) months from the date of the award an application may be made to the court by either party on the ground of increase or decrease of incapacity due solely to the injury. In such case the same procedure shall be followed as in Section 30 in case of disputed claim for compensation.

**Sec. 28. Employer may pay award to trustee and be discharged.**—At any time after the amount of any award has been agreed upon by the parties, or found and ordered by the court, a sum equal to the present value of all future installments of compensation calculated on a six per cent basis, may (where death or the nature of the injury renders the amount of future payments certain) by leave of court, be paid by the employer to any savings bank or trust company of this state to be approved and designated by the court, and such sum, together with all interest thereon, shall, thereafter be held in trust for the employe or the dependents of the employe, who shall have no further recourse against the employer. The payment of such sum by the employer, evidenced by the receipts in duplicate of the trustee one of which shall be filed with the labor commissioner, and the other filed with the clerk of the district

court, shall operate as a satisfaction of said award as to the employer. Payments from said fund shall be made by the trustee in the same amounts and at the same time as are herein required of the employer until said fund and interest shall be exhausted. In the appointment of the trustee, preference shall be given, in the discretion of the court, to the choice of the injured employe or the dependents of the deceased employe, as the case may be.

**Sec. 29. Preference as to compensation.**—The right to compensation and all compensation awarded any injured employe or for death claims to his dependents, shall have the same preference against the assets of the employer as other unpaid wages for labor; but such compensation shall not become a lien on the property of third persons by reason of such preference.

Claims for compensation owned by an injured employe or his dependents, shall not be assignable and shall be exempt from seizure or sale for the payment of any debt or liability.

**Sec. 30. Procedure in case of dispute.**—Procedure in case of dispute shall be as follows: Either party may present a verified complaint to said judge setting forth the names and residences of the parties and the facts relating to employment at the time of injury, the injury in its extent and character, the amount of wages being received at the time of injury, the knowledge of the employer or notice of the occurrence of said injury, and such other facts as may be necessary and proper for the information of the said judge, and shall state the matter or matters in dispute and the contention of the petitioner with reference thereto.

Upon the presentation of such complaint, it shall be filed with the clerk of the district court of the proper county, and the judge shall fix by order a time and place for the hearing thereof, not less than three (3) weeks after the date of the filing of said complaint. A copy of said complaint and order shall be served as summons in a civil action upon the adverse party within four (4) days after filing the complaint. Within seven (7) days after the service of such complaint the adverse party shall file and answer to said complaint, which shall admit or deny the substantial averments of the complaint, and shall state the contention of the defendant with reference to the matter in dispute as disclosed by the complaint. The answer shall be verified in like manner as required for a complaint.

At the time fixed for hearing, or any adjournment thereof the said judge shall hear such witnesses as may be presented by each party, and in a summary manner decide the merits of the controversy. This determination shall be filed in writing with the clerk of the said court, and judgment shall be entered thereon in the same manner as in causes tried in the said district

court, and shall contain a statement of facts as determined by said judge. Subsequent proceedings thereon shall only be for the recovery of moneys thereby determined to be due, provided that nothing herein contained shall be construed as limiting the jurisdiction of the supreme court to review questions of law by certiorari. Costs may be awarded by said judge in his discretion, and when so awarded the same costs shall be allowed, taxed and collected as are allowed, taxed and collected for like services and proceedings in civil cases.

**Sec. 31. Rights of action preserved.**—Every right of action for death, by wrongful act or for injury by negligence, accruing to an injured employe prior to the taking effect of this act is continued and preserved under the existing law.

**Sec. 31A. Employer given right to insure risks—Conditions.**—Any employer who is responsible for compensation as provided in this act may insure the risk in any manner then authorized by law. But those writing such insurance shall in every case be subject to the conditions in this section hereinafter named.

If the risk of the employer is carried by any insurer doing business for profit, or by any insurance association or corporation formed of employers, or of employers and workmen, to insure the risks under this act, operating by the mutual assessment or other plan or otherwise, then insofar as policies are issued on such risks they shall provide for compensation for injuries or death according to the full benefits of Part 2 of this act.

Such policies shall contain a clause to the effect that as between the workman and the insurer, that notice to and knowledge by the employer of the occurrence of the injury shall be deemed notice and knowledge on the part of the insurer; that jurisdiction of the employer for arbitration or other purposes shall be jurisdiction of the insurer, and that the insurer will in all things be bound by and subject to the awards rendered against such employer upon the risks so insured.

Such policies must provide that the workman shall have an equitable lien upon any amount which shall become owing on account of such policy to the employer from the insurer and in case of the legal incapacity or inability of the employer to receive the said amount and pay it over to the workman or dependents, the said insurer will pay the same direct to said workman or dependents, thereby discharging all obligations under the policy to the employer and all of the obligations of the employer and insurer to the workman; but such policies shall contain no provisions relieving the insurance company from payment when the employer becomes insolvent or discharged in bankruptcy or otherwise, during the period the policy is in force, if the compensation remains owing.

The insurer must be one authorized by law to conduct such business in the State of Minnesota, and authority is hereby granted to all insurance companies writing such insurance to include in their policies in addition to the requirements now provided by law the additional requirements, terms and conditions in this section provided.

It shall be lawful for the employer and the workman to agree to carry the risks covered by Part 2 of this act in conjunction with other and greater risks and providing other and greater benefits such as additional compensation, accident, sickness or old age insurance or benefits, and the fact that such plan involved a contribution by the workman shall not prevent its validity if the employer pays not less than the cost of the insurance of the risks otherwise covered by Part 2 of this act, and workman gets the whole of the additional compensation or benefits.

If the employer shall insure to his employees the payment of the compensations provided by Part 2 of this act, in a corporation or association authorized to do business in the state of Minnesota and approved by the insurance commissioner of the state of Minnesota, and if the employer shall post a notice or notices in a conspicuous place or in conspicuous places about his place of employment, stating that he is so insured and stating by whom insured, and if the employer shall further file copy of such notice with the labor commissioner of the state of Minnesota, then, and in such case, any suits or actions brought by an injured employee or his dependents shall be brought directly against the insurer, and the employer or insured shall be released from any further liability.

Provided that in case of insolvency or bankruptcy of such insurance company the employer shall not be released from liability under the provisions of this act.

The return of any execution upon any judgment of an employee against any such insurance company unsatisfied in whole or in part, shall be conclusive evidence of the insolvency of such insurance company and in case of the adjudication of bankruptcy or insolvency of any such insurance company by any court of competent jurisdiction, proceedings may be brought by the employee against the employer in the first instance or against such employer and insurance company jointly or severally or in any pending proceeding against any insurance company, the employer may be joined at any time after such adjudication.

Sec. 32. (1) **Third persons' rights and liabilities.**—Any person who creates or carries into operation any fraudulent scheme, artifice or device to enable him to execute work without himself being responsible to the workman for the provisions of this act,

shall himself be included in the term "employer," and be subject to all the liabilities of employers under this act. But this section shall not be construed to cover or mean an owner who lets a contract to a contractor in good faith, nor a contractor who, in good faith, lets to a sub-contractor a portion of his contract. Provided, however, that no person shall be deemed a contractor, or sub-contractor, so as to make him liable to pay compensation within the meaning of this section, who performs his work upon the employer's premises and with the employer's tools or appliances and under the employer's direction; nor one who does what is commonly known as "piece work," or in any way where the system of employment used merely provides a method of fixing the workman's wages.

(2) Where compensation is claimed from, or proceedings taken against a person under subdivision one of this section, the compensation shall be calculated with reference to the wage the workman was receiving from the person by whom he was immediately employed at the time of the injury.

(3) The employer shall not be liable or required to pay compensation for injuries due to the acts or omissions of third persons not at the time in the service of the employer, nor engaged in the work in which the injury occurs, except as provided in Section 33, or under the conditions set forth in Section 34(i).

Sec. 33. (1) **Liability of party other than employer—Procedure—Third party under Part 2.**—That where an injury or death for which compensation is payable under Part 2 of this act is caused under circumstances also creating a legal liability for damages on the part of any party other than the employer, such party also being subject to the provisions of Part 2 of this act, the employe in case of injury or his dependents in case of death, may, at his or their option, proceed either at law against such party to recover damages, or against the employer for compensation under Part 2 of this act, but not against both.

If the employe in case of injury, or his dependents in case of death, shall bring an action for the recovery of damages against such party other than the employer, the amount thereof, manner in which and the persons to whom the same are payable, shall be as provided for in Part 2 of this act and not otherwise; provided that in no case shall such party be liable to any person other than the employe or his dependents for any damages growing out of or resulting from such injury or death.

If the employe or his dependents shall elect to receive compensation from the employer, then the latter shall be subrogated to the right of the employe or his dependents to recover against such other party, and may bring legal proceedings against such party and recover the aggregate amount of compensation pay-

able by him to such employe, or his dependents hereunder, to gether with the costs and disbursements of such action and reasonable attorney's fees expended by him therein.

(2) **Third party not under Part 2.**—That where the injury or death for which compensation is payable under Part 2 of this act was caused under circumstances also creating a legal liability for damages on the part of any party other than the employer, such party not being subject to the provisions of Part 2 of this act, legal proceedings may be taken by the employe or dependents against such other party to recover damages, notwithstanding the payment by the employer, or his liability to pay compensation hereunder. But in such case, if the action against such other party is brought by the injured employe or in case of his death by his dependents, and judgment is obtained and paid, or settlement is made with such other party, either with or without suit, the employer shall be entitled to deduct from the compensation payable by him, the amount actually received by such employe or dependents; provided that if the injured employe or in case of his death his dependents shall agree to receive compensation from the employer or shall institute proceedings to recover the same, or accept from the employer any payment on account of such compensation, such employer shall be subrogated to all the rights of such employe or dependents and may maintain, or in case an action has already been instituted, may continue the action either in the name of the employe or dependents, or in his own name against such other party for the recovery of damages, but such employer shall nevertheless pay over to the injured employe or dependents all sums collected from such other party by judgment or otherwise in excess of the amount of such compensation payable by the employer under Part 2 of this act, and costs, attorney's fees, and reasonable expenses incurred by such employer in making such collection or enforcing such liability; provided that in no case shall such party be liable to any person other than the employe or his dependents for any damages growing out of or resulting from such injury or death.

**Sec. 34. Words and phrases defined.**—Throughout this act the following words and phrases as used therein shall be considered to have the following meaning respectively, unless the context shall clearly indicate a different meaning in the connection used.

(a) The word "compensation" has been used both in Part 1 and Part 2 of this act to indicate the money benefit to be paid on account of injury or death. Strictly speaking, the benefit which an employe may receive by action at law under Part 1 of this act is damages, and this is indicated in Section 1. To avoid confusion, the word "compensation" has been used in both parts

of the act, but it should be understood that under Part 1 the compensation by way of damages is determined by an action at law.

(b) "Child" or "children" shall include posthumous children and all other children entitled by law to inherit as children of the deceased.

(c) A dependent child or orphan shall be considered to mean an unmarried child under the age of eighteen years or one over that age, who is physically or mentally incapacitated from earning.

(d) The term "employer" as used herein shall mean every person not excluded by Section 8, who employs another to perform a service for hire, and to whom the "employer" directly pays wages, and shall include any person or corporation, co-partnership, or association or group thereof, and shall include county, village, town, city, school district and other public employers, except the state.

(e) The term "physician" shall include "surgeon," and in either case shall mean one authorized by law to practice his profession within one of the United States and in good standing in his profession at the time.

(f) The term "workman" shall include the plural and all ages and both sexes.

(g) The terms "employe" and "workman" are used interchangeably and have the same meaning throughout this act, and shall be construed to mean:

(1) Every person in the service of a county, city, town, village or school district therein, under any appointment or contract of hire, express or implied, oral or written; but shall not include any official of any county, city, town, village or school district therein, who shall have been elected or appointed for a regular term of office, or to complete the unexpired portion of any regular term.

(2) Every person, not excluded by Section 8, in the service of another under any contract of hire, express or implied, oral or written, including aliens and also including minors who are legally permitted to work under the laws of the state, who for the purpose of making election of remedy under this act shall be construed the same, and have the same power of contracting and electing as adult employes.

(h) The word "accident" as used in the phrases "personal injuries due to accident" or "injuries or death caused by accident" in this act shall, unless a different meaning is clearly indicated by the context, be construed to mean an unexpected or unforeseen event, happening suddenly and violently, with or without human fault and producing at the time, injury to the physical structure of the body.

(i) Personal injuries, etc.—Without otherwise affecting either the meaning or interpretation of the abridged clause, “personal injuries arising out of and in the course of employment,” it is hereby declared:

Not to cover workmen except while engaged in, on, or about the premises where their services are being performed, or where *their service requires their presence as a part of such service at the time of the injury, and during the hours of service as such workmen, and shall not include an injury caused by the act of a third person or fellow employe intended to injure the employe because of reasons personal to him, and not directed against him as an employe, or because of his employment.*

(j) Wherever in this act the singular is used, the plural shall be included; where the masculine gender is used, the feminine and neuter shall be included.

(k) Amputations.—Amputations between the elbow and the wrist shall be considered as the equivalent of the loss of a hand, and amputation between the knee and the ankle shall be considered as the equivalent of the loss of a foot.

(l) The labor commissioner, referred to in this act, shall denote the Commissioner of Labor of the State of Minnesota.

(m) “The court” as used herein shall mean the district court which would have jurisdiction in an ordinary civil case involving a claim for the injuries or death in question, and “the judge” shall mean a judge of said court.

(n) As to constitutionality.—In case for any reason any paragraph or any provision of this act shall be questioned in any court of last resort and shall be held by such court to be unconstitutional or invalid, the same shall not be held to affect any other paragraph or provision of this act, except that Parts 1 and 2 are hereby declared to be inseparable, and if either part be declared void or inoperative in an essential part, so that the whole of such part must fall, the other part shall fall with it and not stand alone. Part 1 of this act shall not apply in cases where Part 2 becomes operative in accordance with the provisions thereof, but shall apply in all other cases, and in such cases shall be in extension or modification of the common law.

**Sec. 35. Repealing inconsistent acts.**—All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

**Sec. 36. Time act shall take effect.**—This act shall take effect from and after the 1st day of October, A. D. 1913.

Approved April 24, 1913.