

Sec. 5. **Inconsistent acts repealed.**—All acts or parts of acts now in effect inconsistent with the provisions of this act are hereby superseded, modified or amended to conform to and give full force and effect to the provisions of this act.

Sec. 6. This act shall take effect and be in force from and after its passage.

Approved March 8, 1937:

CHAPTER 64—H. F. No. 70

An act relating to Workmen's Compensation; abolishing as to all contracts of employment made after the effective date of this act, the right of an employe or employer to elect not to be bound by the Workmen's Compensation Act as it has heretofore existed under Section 4271, Mason's Minnesota Statutes, 1927; excluding certain employes and employers from the operation of this act but providing procedure by which certain of said excluded employers and employes may bring themselves within the provisions of this act; making all employers, except those specifically excluded, liable for compensation to employes and their dependents for accidental injury or death arising out of and in the course of their employment and requiring all such employers, except the state and the municipal subdivisions thereof, to either insure or self-insure such compensation liability; providing remedies for the employe when such employer does not comply with this act; fixing the liability of third parties, who, by their wrongful act or omission cause injury to or death of employes of others and granting the right of subrogation in such cases; fixing the liability of joint employers; granting to the Industrial Commission and courts the right to determine the reasonable value of legal services or disbursements in connection with proceedings hereunder on behalf of employes or their dependents; and repealing Sections 4261, 4262, 4263, 4264, 4265, 4266, 4267, 4268, 4269, 4270, 4271, 4272, 4277, and 4291, Mason's Minnesota Statutes of 1927, all relating to compensation and all acts or parts of acts inconsistent herewith.

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

Section 1. **Employers right to elect abolished.**—The right of an employer and employe, as it has heretofore existed under section 4271, Mason's Minnesota Statutes, 1927, to elect not to be bound by the Workmen's Compensation Act is hereby abolished as to all contracts made after the effective date of this Act. On and after the effective date of this Act all employers and employes, except those

excluded by Section 4 hereof, shall be subject to the provisions of the Workmen's Compensation Law, and every such employer shall be liable for compensation, medical and other benefits according to the schedules of the Workmen's Compensation Law, and all acts amendatory thereof and supplementary thereto, and shall pay compensation in every case of personal injury or death of his employe, caused by accident arising out of and in the course of the employe's employment, without regard to the question of negligence, except injury or death which is intentionally self-inflicted or when the intoxication of such employe is the natural or proximate cause of the injury, and the burden of proof of such fact shall be upon the employer. The liability herein imposed upon the employer shall extend to and bind those conducting the employer's business during bankruptcy, insolvency or assignment for the benefit of creditors. It is hereby made the duty of all employers to commence payment of compensation at the time and in the manner prescribed by the Workmen's Compensation Law without the necessity of any agreement or order of the Industrial Commission, payments to be made at the intervals when the wage was payable as nearly as may be. No agreement by any employe or dependent whether made before or after the injury or death to take as compensation an amount less than that prescribed by law shall be valid.

Sec. 2. All employers shall be insured—exceptions.—Every employer except the state and the municipal subdivisions thereof liable under this Act to pay compensation shall insure payment of such compensation with some insurance carrier authorized to insure such liability in this state or obtain an order from the Industrial Commission exempting him from insuring his liability for compensation and permitting him to self-insure such liability in the manner hereinafter set forth; provided that nothing herein contained shall prevent any employer with the approval of the Industrial Commission from excluding medical and hospital benefits as required in Section 4279, Mason's Minnesota Statutes of 1927; provided, also, that an employer conducting distinct operations or establishments at different locations may either insure or self-insure such other portion of his operations which may be determined by the Industrial Commission to be a distinct and separate risk. An employer desiring to be exempted from insuring his liability for compensation shall make application to the Industrial Commission, showing his financial ability to pay such compensation, whereupon the Commission by written order may make such exemption as it deems proper. The Commission may, from time to time, require further statement of financial ability of such employer to pay compensation, and may upon ten days' notice in writing revoke its order granting such exemption, in which event such employer shall immediately insure his liability. As a condition for the granting of an exemption the Industrial Commission

shall have authority to require the employer to furnish such security as it may consider sufficient to insure payment of all claims under compensation. Where the security is in the form of a bond or other personal guaranty, the Industrial Commission may, at any time, either before or after the entry of an award, upon at least ten days' notice and opportunity to be heard, require the surety to pay the amount of the award, *the same to be enforced in like manner as the award itself may be enforced.*

Sec. 3. Liability of employer exclusive.—The liability of an employer prescribed by the preceding sections shall be exclusive and in the place of any other liability whatsoever to such employe, his personal representative, surviving spouse, parents, child or children, dependents or next of kin, or any other person entitled to recover damages at common law or otherwise on account of such injury or death, except that if an employer other than state and the municipal subdivisions thereof, shall fail to insure or self-insure his liability for compensation, medical and other benefits, to his injured employes and their dependents, as provided in Section 2 of this Act, an injured employe, or his legal representatives or his dependents in case death results from the injury, may, at his or their option, elect to claim compensation under the Workmen's Compensation Law or to maintain an action in the courts for damages on account of such injury or death; and in such action it shall not be necessary to plead or prove freedom from contributory negligence, nor may the defendant plead as a defense that the injury was caused by the negligence of a fellow servant, nor that the employe assumed the risk of his employment, nor that the injury was due to contributory negligence of the employe, unless it shall appear also that such negligence was wilful on the part of the employe, but the burden of proof to establish such wilful negligence shall be upon the defendant.

The State of Minnesota and the several municipal subdivisions thereof, when not carrying insurance at the time of such injury or death shall be regarded and treated as self-insurers for the purposes of this Act.

Sec. 4. Application of act.—This Act shall not be construed or held to apply to any common carrier by steam railroad, domestic servants, farm laborers or persons whose employment at the time of the injury is casual, and not in the usual course of the trade, business, profession, or occupation of his employer; provided, however, that an employer of farm laborers or domestics may assume the liability for compensation and benefits imposed by Sections 1 and 2 hereof upon employers, and the purchase and acceptance by such employer of a valid compensation insurance policy, which shall include in its coverage a classification of farm laborers or domestics, shall constitute as to such employer an assumption by him of such liability with-

out any further act on his part, and such assumption of liability shall take effect and continue from the effective date of such policy and as long only as such policy shall remain in force. If during the life of any such insurance policy, an employe, who is a farm laborer or domestic, shall suffer personal injury or death by an accident arising out of and in the course of his employment, the exclusive remedy of such employe or his dependents shall be to accept compensation and benefits according to the Workmen's Compensation Act.

Sec. 5. Liability of others than employer.—(1) Where an injury or death for which compensation is payable under circumstances also creating a legal liability for damages on the part of any party other than the employer, such party being at the time of such injury or death insured or self-insured in accordance with Section 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, 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 by the Compensation 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 and medical expense payable by him to such employe or his dependents hereunder, together with the costs and disbursements of such action and reasonable attorney's fees expended by him therein.

The provisions of subdivision 1 of this section shall apply only where the employer liable for compensation and the other party or parties legally liable for damages were both either insured or self-insured and were engaged in the due course of business, (a) in furtherance of a common enterprise, or (b) the accomplishment of the same or related purposes in operation on the premises where the injury was received at the time thereof, and not otherwise.

(2) Where an injury or death for which compensation is payable is caused under circumstances also creating a legal liability for damages on the part of any party other than the employer, such party being at the time of such injury or death insured or self-insured in

accordance with Section 2 of this Act, but where the provisions of subdivision 1 of this section do not apply, or where said party or parties other than the employer are not insured or self-insured at time of such injury or death as provided by Section 2 of this Act, legal proceedings may be taken by the employe or dependents against such other party or parties 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 or parties is brought by the injured employe, or, in case of his death, by his dependents, and a 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 after deducting costs, reasonable attorney's fees and reasonable expenses incurred by such employe or dependents in making such collections or enforcing such liability; provided that in such case if such action be not diligently prosecuted by the employe, or if, for any reason, the court deem it necessary or advisable in order to protect the interests of the employer, the court may, upon application, grant the right to the employer to intervene in any such action for the prosecution thereof, as now provided by law; provided that if the injured employe, or, in case of his death, his dependent, 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 of 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; provided that, in such case, if such action be not diligently prosecuted by the employer, or if, for any reason, the court deem it necessary or advisable in order to protect the interest of the employe, the court may, upon application, grant the right to the employe or his dependents, as the case may be, to intervene in any such action for the prosecution thereof, as now provided by law, but such employer shall, nevertheless, pay over to the injured employe or dependents all sums collected from such other party or parties, by judgment or otherwise, in excess of the amount of such compensation payable by the employer under the Workmen's Compensation Act, and costs, reasonable attorney's fees and reasonable expenses incurred by such employer in making such collection and 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. 6. Joint employers shall contribute.—In case any employe for whose injury or death compensation is payable under this Act shall, at the time of the injury or death, be employed and paid jointly

by two or more employers liable for compensation under this Act, such employers shall contribute the payment of such compensation in the proportion of their several wage liabilities to such employe. If some of such employers shall be excluded from the Act and not liable for compensation, then the liability of such of them as are liable for compensation 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 Act shall prevent any arrangement between such employers for a different distribution as between themselves of the ultimate burden of such compensation.

Sec. 7. Application of act.—All accidental injuries or deaths of employees arising out of and in the course of their employment which have and will occur under contracts of employment entered into prior to the effective date of this Act shall be governed by the Workmen's Compensation Law in force at the time of such injury or death notwithstanding any provision in this Act to the contrary.

Sec. 8. Legal services an enforceable lien.—No claim for legal services or disbursements pertaining to any demand made or suit or proceeding brought under the provisions of this Act shall be an enforceable lien against the amount paid or payable as compensation or damages, or be valid or binding in any other respect, unless the same be approved in writing by the Industrial Commission if such claim arises out of a proceeding for compensation under this Act, or by the judge presiding at the trial in an action for damages, or by a judge of the district court in settlement of a claim for damages without trial. Provided that if notice in writing be given to the employer or his insurer or the defendant, as the case may be, of such claims for legal services or disbursements, the same shall be a lien against the amount paid or payable as compensation, subject to determination of the amount and approval hereinbefore provided.

Sec. 9. Act not severable.—This Act as a whole being incompatible with the Workmen's Compensation Act as it now exists, the provisions hereof are hereby declared to be inseparable and if any section, clause or part thereof shall be found invalid, then the whole Act shall be invalid.

Sec. 10. Acts repealed.—Sections 4261, 4262, 4263, 4264, 4265, 4266, 4267, 4268, 4269, 4270, 4271, 4272, 4277 and 4291, Mason's Minnesota Statutes, 1927, all relating to compensation, and all acts or parts of acts inconsistent herewith are hereby repealed.

Sec. 11. Effective July 1, 1937.—This Act shall take effect and be in force on and after July 1, 1937.

Approved March 12, 1937.