

CHAPTER 176

WORKMEN'S COMPENSATION ACT

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176.01 DEFINITIONS. Subdivision 1. **Words, terms, and phrases.** Unless the language or context clearly indicates that a different meaning is intended, the following words, terms, and phrases, for the purposes of this chapter, shall be given the meanings subjoined to them.

Subd. 2. **Compensation.** The word "compensation" indicates the money benefits to be paid on account of injury or death.

Subd. 3. **Child, children.** "Child" or "children" includes posthumous children, all other children entitled by law to inherit as children of the deceased, and the child or children of a person who shall have been adjudged to be his or their father by a court of competent jurisdiction in any state of the United States; also step-children, grandchildren and foster children who were members of the family of the deceased at the time of his injury and dependent upon him for support.

Subd. 4. **Husband, widower.** The terms "husband" and "widower" are used interchangeably and have the same meaning.

Subd. 5. **Employer.** The term "employer" means every person who employs another to perform a service for hire and to whom the "employer" directly pays

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wages, and includes any person, corporation, copartnership, or association, or group thereof, and includes state, county, village, borough, town, city, school district, and other public employers.

Subd. 6. **Physician, surgeon.** The term "physician" includes "surgeon," and in either case means one authorized by law to practice his profession within one of the United States and in good standing in his profession at the time.

Subd. 7. **Workman.** The term "workman" includes the plural, and all ages, and both sexes.

Subd. 8. **Employee.** The terms "employee" and "workman" are used interchangeably and have the same meaning throughout this chapter and shall be construed to mean:

(1) Every person in the service of the state, or any county, city, town, village, borough, or school district therein, under any appointment or contract of hire, expressed or implied, oral or written, but shall not include any official of the state or of any county, city, town, village, borough, 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; sheriffs; deputy sheriffs, constables, marshals, policemen, and firemen shall be employees within the meaning of this section; where in any city operating under a home rule charter, a mode and manner of compensation is provided by the charter which is different from that provided by this chapter, and the amount of compensation provided by the charter would, if taken thereunder, exceed the amount the employee is entitled to under this chapter for the same period, he shall, in addition to his compensation under this chapter, receive under the charter an amount equal to the excess in compensation provided by the charter over what he is entitled to by this chapter; if the amount of compensation provided by the charter would, if taken thereunder, be equal to or less than the amount of compensation the employee is entitled to under this chapter for the same period, he shall take only under this chapter; any peace officer other than a sheriff, deputy sheriff, marshal, or policeman shall be considered an employee while engaged in the enforcement of peace or in and about the pursuit and capture of any person charged with or suspected of crime;

(2) Every person in service of another under any contract of hire, expressed or implied, oral or written, including aliens, and also including minors, who, for the purpose of making election of remedy under this chapter, shall be construed the same, and have the same power of contracting and electing as adult employees.

Subd. 9. **Accident.** The word "accident," as used in the phrases "personal injuries due to accident" or "injuries or death caused by accident," means 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, and occupational disease as defined in subdivision 15.

Subd. 10. **Member.** "Member," as an anatomy term in this chapter, includes eye and ear, as well as leg, foot, toe, hand, finger, thumb, and arm.

Subd. 11. **Personal injuries arising out of and in the course of employment.** 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 services require their presence as a part of such service, at the time of the injury, and during the hours of service as such workmen; provided, that where the employer regularly furnishes transportation to his employees to or from the place of employment, such employees shall be held to be subject to this chapter while being so transported, but shall not include an injury caused by the act of a third person or fellow employee intended to injure the employee because of reasons personal to him, and not directed against him as an employee, or because of his employment.

Subd. 12. **Industrial commission, commission, commissioner.** "Industrial commission" and "commission" mean the industrial commission of Minnesota; and "commissioner" means a member of that commission.

Subd. 13. **Farm laborers, commercial threshermen, and commercial balers.** The term "farm laborers" shall not include the employees of commercial threshermen or of commercial balers. Commercial threshermen and commercial balers are hereby defined to be persons going about from place to place threshing grain,

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shredding or shelling corn, or baling hay or straw, respectively, as a business; provided, that farmers owning threshing, shredding, shelling, or baling machines not engaged in such business generally and doing their own threshing, shredding, shelling, or baling or casually doing such work for other farmers in the same community, and farmers exchanging work among themselves shall not be classed as commercial threshermen or commercial balers.

Subd. 14. **Daily wage.** "Daily wage" means the daily wage of the employee in the employment in which he was engaged at the time of the injury, and if at the time of the injury the employee is working on part time for the day, his daily wage shall be arrived at by dividing the amount received or to be received by him for such part time service for the day by the number of hours of such part time service and multiplying the result by the number of hours of the normal working day for the employment involved. In the case of persons performing services for municipal corporations in the case of emergency, then the normal working day shall be considered and computed as eight hours, and in cases where such services are performed gratis or without fixed compensation the daily wage of the person injured shall, for the purpose of calculating compensation payable under this chapter, be taken to be the usual going wage paid for similar services in municipalities where such services are performed by paid employees.

The weekly wage shall be arrived at by multiplying the daily wage by the number of days and fractional days normally worked in the business of the employer for the employment involved; provided, that the weekly wage shall not be less than five times the daily wage. Occasional overtime shall not be considered in computing the weekly wage, but if such overtime is regular or frequent throughout the year for the employment involved, then it shall be taken into consideration.

Where board or other allowances of any character except gratuities are made to an employee in addition to wages as a part of the wage contract, they shall be deemed a part of his earnings and computed at the value thereof to the employee.

Subd. 15. **Occupational disease.** The words "occupational disease" mean a disease arising out of and in the course of employment peculiar to the occupation in which the employee is engaged and due to causes in excess of the hazards ordinary of employment. Ordinary diseases of life to which the general public is equally exposed outside of employment are not compensable, except where such diseases follow as an incident of an occupational disease, or where the exposure peculiar to the occupation makes such disease an occupational disease hazard. A disease arises out of the employment only if there be a direct causal connection between the conditions under which the work is performed and if the occupational disease follows as a natural incident of the work as a result of the exposure occasioned by the nature of the employment. An employer is not liable for compensation for any occupational disease which cannot be traced to the employment as a direct and proximate cause and is not recognized as a hazard characteristic of and peculiar to the trade, occupation, process, or employment or which results from a hazard to which the workman would have been equally exposed outside of the employment.

Subd. 16. **When no presumption exists.** Prior legislative enumerations of occupational disease shall not entitle any employee afflicted with such disease to a presumption that the same is in fact an occupational disease.

[1921 c. 82 ss. 65, 66; 1923 c. 300 ss. 13, 14; 1925 c. 175; 1927 c. 216; 1937 c. 18 s. 1; 1941 c. 512; 1943 c. 033 ss. 2, 3; 1945 c. 195; 1945 c. 233 s. 1] (4325, 4326)

176.02 EMPLOYERS RIGHT TO ELECT ABOLISHED. The right of an employer and employee, as it has heretofore existed under Mason's Minnesota Statutes of 1927, Section 4271, to elect not to be bound by the workmen's compensation act, is hereby abolished as to all contracts made hereafter, except professional baseball players under contract for hire which contract gives compensation equal to or greater than that provided by the workmen's compensation act, provided, the professional baseball club and the professional baseball player file with the industrial commission a written consent signed by both parties not to be bound by the workmen's compensation statutes and the same approved by the industrial commission. All employers and employees, except those excluded by section 176.05, and those professional baseball players who have elected not to be bound by the provisions hereof, as hereinbefore set forth, shall be subject to the provisions of the workmen's compensation act, and every such employer shall be liable for compensation, medical and other benefits according to the schedules of the work-

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men's compensation act, and all acts amendatory thereof and supplementary thereto, and pay compensation in every case of personal injury of his employee, caused by accident arising out of and in the course of the employee's employment without regard to the question of negligence, except injury or death which is 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. 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 act 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 employee 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.

[1937 c. 64 s. 1; 1939 c. 265] (4272-1)

176.03 EMPLOYERS SHALL BE INSURED; EXCEPTIONS. Every employer, except the state and the municipal subdivisions thereof, liable under this chapter 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. Nothing herein contained shall prevent any employer, with the approval of the industrial commission, from excluding medical and hospital benefits as required in section 176.15. An employer conducting distinct operations 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. If the required security is in the form of currency or negotiable bonds, the commission shall deposit same with the state treasurer. In the event of any default upon the part of any self-insurer to pay a just claim against it under the workmen's compensation act, or failure to abide by any final order or decision of the industrial commission directing and awarding payment of compensation and benefits to any of its employees or the dependents of deceased employees, then upon at least ten days' notice to such self-insurer, the industrial commission may by order to the state treasurer require said treasurer to proceed to sell the pledged and assigned securities or such part thereof as may be necessary to pay the full amount of any such claims or award, with interest thereon. The authority to sell herein conferred may be exercised from time to time to satisfy any order or award of the industrial commission or judgment obtained thereon. When such securities are sold, the money so obtained shall be deposited in the state treasury to the credit of the industrial commission and awards made against any such self-insurer by the commission shall be paid to the persons entitled thereto by the state treasurer upon warrants prepared by the commission, and approved by the state auditor, out of the proceeds of the sale of such securities. Where the security is in the form of a surety bond or other personal guaranty, the 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.

[1937 c. 64 s. 2; 1945 c. 31] (4272-2)

176.04 LIABILITY OF EMPLOYER EXCLUSIVE. The liability of an employer prescribed by sections 176.02 and 176.03 shall be exclusive and in the place of any other liability to such employee, his personal representative, surviving spouse,

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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 employees and their dependents, as provided in section 176.03, an injured employee, 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 act 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 employee assumed the risk of his employment, nor that the injury was due to contributory negligence of the employee, unless it shall appear also that such negligence was wilful on the part of the employee, but the burden of proof to establish such wilful negligence shall be upon the defendant.

The state 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 chapter.

[1937 c. 64 s. 3] (4272-3)

176.05 APPLICATION. This chapter 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 176.02 and 176.03 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 without 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 employee, 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 employee or his dependents shall be to accept compensation and benefits according to the workmen's compensation act.

[1937 c. 64 s. 4] (4272-4)

176.06 LIABILITY OF OTHERS THAN EMPLOYER. Subdivision 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 176.03, the employee 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 employee 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 workmen's compensation act, and not otherwise; provided, that in no case shall such party be liable to any person other than the employee or his dependents for any damages growing out of or resulting from such injury or death.

If the employee or his dependents shall elect to receive compensation from the employer, then the latter shall be subrogated to the right of the employee 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 employee 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

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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.

Subd. 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 176.03, 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 the time of such injury or death as provided by section 176.03, legal proceedings may be taken by the employee 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 employee, 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 employee or dependents after deducting costs, reasonable attorney's fees and reasonable expenses incurred by such employee or dependents in making such collections or enforcing such liability; provided, that in such case if such action be not diligently prosecuted by the employee, 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 employee, 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 of the rights of such employee or dependents, and may maintain, or, in case an action has already been instituted, may continue the action, either in the name of the employee 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 employee, the court may upon application grant the right to the employee 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 pay over to the injured employee 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 employee or his dependents for any damages growing out of or resulting from such injury or death.

Subd. 3. **Reimbursement to state from recoveries by employees or dependents.** In every case arising under the provisions of subdivision 2 when the state is the employer no settlement between such third party and the employee shall be valid unless within a reasonable time prior thereto notice thereof has been given to the state, and if the state as employer has paid compensation or medical benefits to said employee under the provisions of the workmen's compensation act and has become subrogated to the rights of said employee or dependents as therein provided, then any settlement between the employee or his dependents and said third party shall be void as against the subrogation rights of the state.

In the event any action at law is instituted by said employee or dependents against such third party for recovery of damages, said employee, dependents or his or their attorney shall also serve on the state a copy of the complaint and notice of trial or note of issue in such action. Any judgment rendered therein shall be subject to a lien of the state for the amount to which it is entitled to be subrogated under the provisions of subdivision 2.

In every case in which the state is the employer and liable to pay compensation or is subrogated to the rights of the employee or dependents all notices and services herein provided for shall be made on the attorney general and the state industrial commission.

[1937 c. 64 s. 5; 1943 c. 499 s. 1] (4272-5)

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176.07 JOINT EMPLOYERS SHALL CONTRIBUTE. In case of an employee for whose injury or death compensation is payable under this chapter, at the time of the injury or death, be employed and paid jointly by two or more employers liable for compensation under this chapter, such employers shall contribute the payment of such compensation in the proportion of their several wage liabilities to such employee. If some of such employers shall be excluded from the provisions of this chapter 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 employee. Nothing in this chapter shall prevent any arrangement between such employers for a different distribution as between themselves of the ultimate burden of such compensation.

[1937 c. 64 s. 6] (4272-6)

176.08 APPLICATION CONTINUED. All accidental injuries or deaths of employees arising out of and in the course of their employment, which have occurred and will occur under contracts of employment entered into prior to the effective date of this chapter, shall be governed by the workmen's compensation act in force at the time of such injury or death notwithstanding any provision in this chapter to the contrary.

[1937 c. 64 s. 7] (4272-7)

176.09 LEGAL SERVICES AN ENFORCEABLE LIEN; APPROVAL. No claim for legal services or disbursements pertaining to any demand made or suit or proceeding brought under the provisions of this chapter 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 chapter, 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. 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 provided in this chapter.

[1937 c. 64 s. 8] (4272-8)

176.10 MINORS HAVE POWER TO CONTRACT. Minors shall have the same power to contract, make election of remedy, make settlements, and receive compensation as adult employees; subject to the power of the industrial commission in its discretion at any time to require the appointment of a guardian to make such settlement and to receive moneys thereunder or under an award.

[1921 c. 82 s. 13; 1945 c. 233 s. 2] (4273)

176.11 SCHEDULE OF COMPENSATION. Following is the schedule of compensation:

Subdivision 1. **Temporary total disability.** For injury producing temporary total disability, 66% per cent of the daily wage at the time of injury, subject to a maximum compensation of \$24.00 per week and a minimum of \$10.00 per week; provided, that if at the time of injury the employee receives wages of \$10.00 or less per week, he shall receive the full amount of such wages per week; this compensation shall be paid during the period of such disability, not beyond 300 weeks, payment to be made at the intervals when the wage was payable, as nearly as may be.

Subd. 2. **Temporary partial disability.** In all cases of temporary partial disability the compensation shall be 66% per cent of the difference between the daily wage of the workman at the time of 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 beyond 300 weeks, payment to be made at the intervals when the wage was payable, as nearly as may be, and subject to the maximum stated in subdivision 1; and, if the employer does not furnish the workman with work which he can do in his temporary partially disabled condition and, after a reasonably diligent effort, he is unable to procure such work with another employer, the commission may fix a rate of compensation to be paid to the workman during the period of such disability and unemployment, not beyond 300 weeks, which shall be based upon the percentage of his general physical disability as may be determined from competent medical testimony adduced at a hearing before a referee, a commissioner, or the commission.

Subd. 3. **Permanent partial disability.** For the permanent partial disability from the loss of a member the compensation during the healing period, but not exceeding 15 weeks, shall be 66% per cent of the difference between the daily wage of the workman at the time of injury and the wages he is able to earn, if any, in his partially disabled condition, unless on application to the commission, made in the manner provided in section 19 for additional medical service, the period is extended by the commission for not to exceed an additional 35 weeks; and thereafter and in addition thereto, compensation shall be that named in the following schedule:

(1) For the loss of a thumb, 66% per cent of the daily wage at the time of injury during 60 weeks;

(2) For the loss of a first finger, commonly called index finger, 66% per cent of the daily wage at the time of injury during 35 weeks;

(3) For the loss of a second finger, 66% per cent of the daily wage at the time of injury during 30 weeks;

(4) For the loss of a third finger, 66% per cent of the daily wage at the time of injury during 20 weeks;

(5) For the loss of a fourth finger, commonly called the little finger, 66% per cent of the daily wage at the time of injury during 15 weeks;

(6) The loss of the first phalange of the thumb, or of any finger, is considered equal to the loss of one-half of such thumb or finger, and compensation shall be paid at the prescribed rate during one-half the time specified for such thumb or finger;

(7) The loss of one and one-half or more phalanges is considered as the loss of the entire finger or thumb; provided, 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;

(8) For the loss of a great toe, 66% per cent of the daily wage at the time of injury during 30 weeks;

(9) For the loss of one of the toes, other than a great toe, 66% per cent of the daily wage at the time of injury during ten weeks;

(10) The loss of the first phalange of any toe is considered equal to the loss of one-half of such toe, and compensation shall be paid at the prescribed rate during one-half the time specified for such toe;

(11) The loss of one and one-half or more phalanges is considered as the loss of the entire toe;

(12) For the loss of a hand, not including the wrist movement, 66% per cent of the daily wage at the time of injury during 150 weeks;

(13) For the loss of a hand, including the wrist movement; 66% per cent of the daily wage at the time of injury during 175 weeks;

(14) For the loss of an arm, 66% per cent of the daily wage at the time of injury during 200 weeks;

(15) Amputation of the arm below the elbow is considered the loss of a hand, including wrist movement, if enough of the forearm remains to permit the use of an effective artificial member, otherwise it is considered the loss of an arm;

(16) For the loss of a foot, not including the ankle movement, 66% per cent of the daily wage at the time of injury during 125 weeks;

(17) For the loss of a foot, including the ankle movement, 66% per cent of the daily wage at the time of injury during 150 weeks;

(18) For the loss of a leg, if enough of the leg remains to permit the use of an effective artificial member, 66% per cent of the daily wage at the time of injury during 175 weeks;

(19) For the loss of a leg so close to the hip that no effective artificial member can be used, 66% per cent of the daily wage at the time of injury during 200 weeks;

(20) Amputation of the leg below the knee is considered the loss of a foot, including ankle movement, if enough of the lower leg remains to permit the use of an effective artificial member, otherwise it is considered the loss of a leg;

(21) For the loss of an eye, 66% per cent of the daily wage at the time of injury during 100 weeks;

(22) For the complete permanent loss of hearing in one ear, 66% per cent of the daily wage at the time of injury during 52 weeks;

(23) For the complete permanent loss of hearing in both ears, 66% per cent of the daily wage at the time of injury during 156 weeks;

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(24) For the loss of an eye and a leg, 66% per cent of the daily wage at the time of injury during 350 weeks;

(25) For the loss of an eye and an arm, 66% per cent of the daily wage at the time of injury during 350 weeks;

(26) For the loss of an eye and a hand, 66% per cent of the daily wage at the time of injury during 325 weeks;

(27) For the loss of an eye and a foot, 66% per cent of the daily wage at the time of injury during 300 weeks;

(28) For the loss of two arms, other than at the shoulder, 66% per cent of the daily wage at the time of injury during 400 weeks;

(29) For the loss of two hands, 66% per cent of the daily wage at the time of injury during 400 weeks;

(30) For the loss of two legs, other than so close to the hips that no effective artificial member can be used, 66% per cent of the daily wage at the time of injury during 400 weeks;

(31) For the loss of two feet, 66% per cent of the daily wage at the time of injury during 400 weeks;

(32) For the loss of one arm and the other hand, 66% per cent of the daily wage at the time of injury during 400 weeks;

(33) For the loss of one hand and one foot, 66% per cent of the daily wage at the time of injury during 400 weeks;

(34) For the loss of one leg and the other foot, 66% per cent of the daily wage at the time of injury during 400 weeks;

(35) For the loss of one leg and one hand, 66% per cent of the daily wage at the time of injury during 400 weeks;

(36) For the loss of one arm and one foot, 66% per cent of the daily wage at the time of injury during 400 weeks;

(37) For the loss of one arm and one leg, 66% per cent of the daily wage at the time of injury during 400 weeks;

(38) For serious disfigurement not resulting from the loss of a member or other injury specifically compensated, materially affecting the employability of the injured person in the employment in which he was injured or other employment for which the employee is then qualified, 66% per cent of the daily wage at the time of injury during such period as the commission may determine, not beyond 75 weeks;

(39) Where an employee sustains concurrent injuries resulting in concurrent disabilities, he shall receive compensation only for the injury which entitles him to the largest amount of compensation, but this does not affect liability for serious disfigurement materially affecting the employability of the injured person or liability for the concurrent loss of more than one member, for which members compensations are provided in the specific schedule and in subdivision 5;

(40) In all cases of permanent partial disability it is considered that the permanent loss of the use of a member is equivalent to and draws the same compensation as the loss of that member, but the compensation in and by this schedule provided shall be in lieu of all other compensation in such cases, except as otherwise provided by this section;

In the event a workman has been awarded, or is entitled to receive, a compensation for loss of use of a member under any workmen's compensation law, and thereafter sustains a loss of such member under circumstances entitling him to compensation therefor under the workmen's compensation act, as amended, the amount of compensation awarded, or that he is entitled to receive, for such loss of use, is to be deducted from the compensation due under the schedules of this section for the loss of such member, provided, that the amount of compensation due for the loss of the member caused by the subsequent accident is in no case less than 25 per cent of the compensation payable under the schedule of this section for the loss of such member;

(41) In cases of permanent partial disability due to injury to a member, resulting in less than total loss of such member, not otherwise compensated in this schedule, compensation shall be paid at the prescribed rate during that part of the time specified in the schedule for the total loss of the respective member which the extent of injury to the member bears to its total loss;

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(42) All the compensations provided in this clause for loss of members or loss of the use of members are subject to the limitations as to maximum and minimum stated in subdivision 1;

(43) In addition to the compensation provided in this schedule for loss or loss of the use of a member, the compensation during the period of retraining for a new occupation, as certified by the division of re-education, operating under Laws 1919, Chapter 365, shall be 66% per cent of the daily wage at the time of the injury, not beyond 25 weeks, provided the injury is such as to entitle the workman to compensation for at least 75 weeks in the schedule of indemnities for permanent impairments, and provided the commission, on application thereto, finds that such retraining is necessary and makes an order for such compensation;

(44) In all cases of permanent partial disability not enumerated in this schedule, the compensation shall be 66% per cent of the difference between the daily wage of the workman at the time of the injury and the daily wage he is able to earn in his partially disabled condition, subject to a maximum of \$24.00 per week; and continue during disability, not beyond 300 weeks, and if the employer does not furnish the workman with work which he can do in his permanently partially disabled condition and, after a reasonably diligent effort, he is unable to procure such work with another employer, the commission may fix a rate of compensation to be paid to the workman during the period of his unemployment, not beyond 300 weeks, which is to be based upon the percentage of his general physical disability as determined from competent medical testimony adduced at a hearing before a referee, a commissioner, or the commission.

Subd. 4. Permanent total disability. For permanent total disability, as defined in subdivision 5, 66% per cent of the daily wage at the time of the injury, subject to a maximum compensation of \$24.00 per week and a minimum compensation of \$10.00 per week. If, at the time of the injury, the employee receives wages of \$10.00 or less per week, he shall receive the full amount of his wages per week. This compensation shall be paid during the permanent total disability of the injured person, but the total amount payable under this subdivision shall not exceed \$10,000 in any case, payments to be made at the intervals when the wage was payable as nearly as may be. In case an employee who is permanently and totally disabled becomes an inmate of a public institution, no compensation shall be payable during the period of his confinement in such institution, unless he has wholly dependent on him for support some person named in section 176.12, subdivisions 1, 2, or 3 (whose dependency shall be determined as if the employee were deceased), in which case the compensation provided for in section 176.12, during the period of such confinement, shall be paid for the benefit of persons so dependent during dependency.

Subd. 5. Permanent total disability. The total and permanent loss of the sight of both eyes, the loss of both arms at the shoulder, the loss of both legs so close to the hips that no effective artificial members can be used, complete and permanent paralysis, total and permanent loss of mental faculties, or any other injury which totally incapacitates the employee from working at an occupation which brings him an income constitutes total disability.

Subd. 6. Previous payments deducted from benefit. In case a workman sustains an injury due to an accident arising out of and in the course of his employment, and during the period of disability caused thereby death results approximately therefrom, all payments previously made as compensation for such injury shall be deducted from the compensation, if any, due on account of the death, and accrued compensation due to the deceased prior to his death, but not paid, is payable to such dependent persons or legal heirs as the commission may order without probate administration.

Subd. 7. Minors. If any employee entitled to the benefits of the workmen's compensation law is a minor or an apprentice of any age and sustains injuries due to an accident arising out of and in the course of his employment resulting in permanent total or permanent partial disability, the weekly earnings, for the purpose of computing the compensation to which he is entitled, shall be the weekly earnings which such minor or apprentice would probably earn after arriving at legal age or completing the apprenticeship, if uninjured, which probable earnings shall be approximately the average earnings of adult journeymen workmen of the same sex below the rank of superintendent or general foremen in the department of the plant

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or industry in which such minor or apprentice was employed at the time of his injury.

[1921 c. 82 s. 14; 1923 c. 300 s. 3; 1923 c. 408 s. 1; 1925 c. 219; 1925 c. 161 ss. 1, 2; 1929 c. 250; 1941 c. 522; 1943 c. 496 s. 1; 1945 c. 389 s. 1] (4274)

176.12 DEPENDENTS AND ALLOWANCES. Subdivision 1. **Conclusive presumption of dependency.** For the purpose of this chapter, the following described persons shall be conclusively presumed to be wholly dependent: (a) wife, unless it be shown that she was voluntarily living apart from her husband at the time of his injury or death; (b) minor children under the age of 16 years;

Subd. 2. **Certain children.** Children between 16 and 18 years of age, or those over 18 if physically or mentally incapacitated from earning, shall, prima facie, be considered dependent;

Subd. 3. **Persons wholly supported.** Wife, child, husband, mother, father, grandmother, grandfather, grandchild, sister, brother, mother-in-law, father-in-law, 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;

Subd. 4. **Partly supported.** Any member of a class named in subdivision 3, who regularly derived part of his 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 such dependents in the order named;

Subd. 5. **To whom paid.** In death cases, compensation payable to dependents shall be computed on the following basis, and shall be paid to the persons entitled thereto, or to a guardian or such other person as the industrial commission may direct, for the use and benefit of the person entitled thereto;

Subd. 6. **Widow only.** If the deceased employee leave a widow and no dependent child, there shall be paid to the widow 40 per cent of the daily wage at the time of the injury of the deceased;

Subd. 7. **Spouse and one child.** If the deceased employee leave a widow or widower and one dependent child, there shall be paid to the widow or widower for the benefit of herself or himself and such child, 50 per cent of the daily wage at the time of injury of the deceased;

Subd. 8. **Spouse and two children.** If the deceased employee leave a widow or widower and two dependent children, there shall be paid to the widow or widower for benefit of herself or himself and such children, 60 per cent of the daily wage at the time of injury of the deceased;

Subd. 9. **Spouse and three or more children.** If the deceased employee leave a widow or widower and three or more dependent children, there shall be paid to the widow or widower for the benefit of herself or himself and such children, 66% per cent of the daily wage at the time of injury of deceased;

Subd. 10. **Allocation of compensation.** In all cases where compensation is payable to the widow or widower for the benefit of herself or himself and dependent child or children, the industrial commission shall have power to determine, in its discretion, what portion of the compensation shall be applied for the benefit of any such child or children and may order the same paid to a guardian;

Subd. 11. **Remarriage of widow.** In the case of remarriage of a widow without dependent children she shall receive a lump sum settlement equal to one-half of the amount of the compensation remaining unpaid, without deduction for interest, but not to exceed two full years' compensation. In case of remarriage of a widow who has dependent children the unpaid balance of compensation which would otherwise become her due shall be payable to the mother, guardian, or such other person as the industrial commission may order, for the use and benefit of such children during dependency; provided, that if the dependency of the children ceases before the equivalent of two years of the mother's compensation has been paid to the children, the remainder of the two years' compensation shall be payable in a lump sum to the mother without deduction for interest. The payments as provided herein shall be paid within 60 days after written notice to the employer of such remarriage or that the dependency of children has ceased; provided, that no widow who remarried shall be held to be a widow without dependent children when the deceased

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employee leaves a dependent child or children as defined by Section 176.01, subdivision 3;

Subd. 12. **Orphans.** If the deceased employee leave a dependent orphan, there shall be paid 45 per cent of the daily wage at the time of injury of the deceased, with ten per cent additional for each additional orphan, with a maximum of 66% per cent of such wages;

Subd. 13. **Husband and no child.** If the deceased employee leave a dependent husband and no dependent child, there shall be paid to the husband 30 per cent of the daily wage at the time of injury of the deceased;

Subd. 14. **Parents.** If the deceased employee leave no widow or child or husband entitled to any payment hereunder, but leaves both parents wholly dependent on deceased, there shall be paid to such parents jointly 45 per cent of the weekly wage at the time of the injury of the deceased; provided, that in case of the death of either of the wholly dependent parents the survivor shall receive 35 per cent of the weekly wage thereafter; if the deceased employee leave one parent wholly dependent on the deceased, there shall be paid to such parent 35 per cent of the weekly wage at the time of injury of the deceased; provided, that the compensation payable under this paragraph shall not exceed the actual contributions made by the deceased to the support of such parent or parents, for a reasonable time immediately prior to the injury which caused the death of the decedent;

Subd. 15. **Remote dependents.** If the deceased should leave no widow or child or husband or parent entitled to any payment hereunder, but should leave a grandparent, grandchild, brother, sister, mother-in-law, or father-in-law wholly dependent on him for support, there shall be paid to such dependent, if but one, 30 per cent of the daily wage at the time of injury of the deceased, or if more than one, 35 per cent of the daily wage at the time of injury of the deceased, divided between or among them share and share alike;

Subd. 16. **Cessation of payments.** Compensation shall cease upon the death or marriage of such dependent, unless otherwise provided herein;

Subd. 17. **Partial dependents.** Partial dependents shall be entitled to receive only that portion of the benefits provided for actual dependents which the average amount of wages regularly contributed by the deceased to such partial dependents at the time of, and for a reasonable time immediately prior to, the injury, bore to the total income of the dependent during the same time;

Subd. 18. **Burial benefit.** In all cases where death results to an employee caused by accident arising out of and in the course of employment, the employer shall pay, in addition to the expenses provided for in section 176.15, the expense of burial, not exceeding in amount \$250; in case any dispute arises as to the reasonable value of the services rendered in connection with the burial, the same shall be determined and approved by the industrial commission before payment, after such reasonable notice to interested parties as the commission shall require; if the deceased leave no dependents, no compensation shall be payable except as provided by this subdivision or section 176.13;

Subd. 19. **Compensation; rate; limitation.** The compensation payable in case of death to persons wholly dependent shall be subject to a maximum compensation of \$24.00 per week and a minimum of \$10.00 per week; provided, that if at the time of injury the employee receives wages of \$10.00 or less per week, then the compensation shall be the full amount of such wages per week; the compensation payable to partial dependents shall be subject to a maximum of \$24.00 per week and a minimum of \$10.00 per week; provided, that if the income loss of the said partial dependents by such death is \$10.00 or less per week, then the dependents shall receive the full amount of their income loss; this compensation shall be paid during dependency, but shall not exceed \$7,500 in case of a dependent wife, child, children, or orphan, and shall not exceed 300 weeks in case of any other dependent, payments to be made at the intervals when the wage was payable, as nearly as may be;

Subd. 20. **Order of payment.** Actual dependents shall be entitled to take compensation in the order named in subdivision 3 above, during dependency, until 66% per cent of the daily wage of the deceased at the time of injury shall have been exhausted; provided, that such compensation shall not exceed \$7,500 in case of a dependent wife, child, children, or orphan, or continue beyond 300 weeks in case

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of any other dependent; but the total compensation to be paid to full actual dependents of a deceased employee shall not exceed in the aggregate \$24.00 per week.

[1921 c. 82 s. 15; 1923 c. 300 s. 4; 1923 c. 408 ss. 2, 3; 1925 c. 161 ss. 3, 4, 5, 6, 7; 1933 c. 61 s. 1; 1945 c. 389 s. 2] (4275)

176.13 DISABILITY OR DEATH RESULTING FROM ACCIDENT; INCREASE OF PREVIOUS DISABILITY; SPECIAL COMPENSATION FUND. If an employee receives an injury which of itself would cause only 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.

(a) In addition to compensation for such permanent partial disability and after the cessation of the payments for the prescribed period of weeks, the employee shall be paid by the state the remainder of the compensation that would be due for permanent total disability, as provided for by section 176.11, clause (d), out of a special fund known as the special compensation fund.

(b) All employees who are now receiving, or who may hereafter become entitled to receive, compensation for permanent total disability, whether from the employer or from the special fund, after receiving the full amount of \$10,000 for such disability, shall be paid from the fund an additional sum of not to exceed \$2,500, in the same manner and with the same limitations, except as to amounts, at the rate of one-half of the wages they were receiving at the time of the injury which rendered them permanently totally disabled, subject to a maximum of \$15.00 per week and a minimum of \$8.00 per week, but the full amount of their wages if at the time of such injury they were receiving less than \$8.00 per week. Payments to permanently totally disabled employees from such additional sum of \$2,500 shall be made only upon petition by the injured employee to the industrial commission for the same, stating that the full amount of \$10,000 has been received, or is due to be paid within 30 days, which petition shall be accompanied by an affidavit of a reputable physician stating that he has examined the employee and found him to be still permanently totally disabled.

(c) All widows with a dependent child or children who are now receiving, or who may hereafter become entitled to receive, compensation under section 176.12 for the death of their husbands shall, after the maximum collectible compensation has been paid and satisfactory proof thereof filed, receive from the special fund additional compensation, not exceeding \$2,500, in the same manner and with the same limitations as is prescribed by section 176.12, except that the maximum weekly compensation shall not exceed \$15.00, until the youngest child attains the age of 18 years or the additional sum of \$2,500 has been fully paid. Such payments to widows from the special fund shall be made only on petition by the widow to the industrial commission, which shall be accompanied by birth certificates or other satisfactory proof of the ages of her living children under the age of 18 years and affidavits of two responsible persons that she is still the widow of the employee for whose death she was drawing compensation.

This fund shall be created for such purposes in the following manner:

(1) In every case of death of an employee resulting from an accident arising out of and in the course of his employment where there are no persons entitled to compensation, the employer shall pay to the industrial commission the sum of \$300;

(2) When an employee shall suffer a compensable injury, which results in permanent partial disability by reason of the total loss of a member or members, or injury to a member or members resulting in less than a total loss of such member, and which injury entitles him to compensation pursuant to section 176.11, clause (c), the employer, or his insurer, shall, in addition to the compensation provided for in clause (c), pay to the industrial commission, for the benefit of the special compensation fund, a lump sum, without interest deductions, equal to two per cent of the total compensation to which the employee is entitled under clause (c) for the permanent partial disability, this sum to be paid to the industrial commission as soon as the total amount of the permanent partial disability payable for the particular injury is determined by the industrial commission, or arrived at by the agreement of the parties and such amount is approved by the industrial commission.

Such sums as are paid to the industrial commission pursuant to the provisions hereof shall be by it deposited with the state treasurer for the benefit of the special compensation fund and be used to pay the benefits provided by this chapter. All

money heretofore arising from the provisions of this section shall be transferred to this special compensation fund. All penalties collected for violation of any of the provisions of this chapter shall be credited to this special compensation fund.

The state treasurer shall be the custodian of this special fund and the industrial commission shall direct the distribution thereof, the same to be paid as other payments of compensation are paid. In case deposit is or has been made under the provisions of clause (1) of this section, and dependency later is shown, or if deposit is or has been made pursuant to either clause (1) or (2) hereof by mistake or inadvertence, or under such circumstances that justice requires a refund thereof, the state treasurer is hereby authorized to refund such deposit upon order of the industrial commission.

[1921 c. 82 s. 16; 1923 c. 300 s. 5; 1933 c. 75; Ex. 1933 c. 21 s. 1; 1935 c. 311 s. 1; Ex. 1936 c. 43 s. 1; 1941 c. 384; 1945 c. 106] (4276)

176.14 WHEN COMPENSATION BEGINS. In cases of temporary total or temporary partial disability, no compensation shall be allowed for the first week after the disability commenced, except as provided by section 176.15, nor in any case unless the employer has actual knowledge of the injury or is notified thereof within the period specified in section 176.16. If such disability continues for four weeks or longer, such compensation shall be computed from the commencement of such disability.

[1921 c. 82 s. 18] (4278)

176.15 MEDICAL AND SURGICAL TREATMENT. The employer shall furnish such medical, surgical, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches and apparatus, including artificial members, as may reasonably be required at the time of the injury, and during the disability, to cure and relieve from the effects of the injury. In case of his inability or refusal seasonably to do so the employer shall be liable for the reasonable expense incurred by or on behalf of the employee in providing the same. Upon request by the employee, the industrial commission may require the above treatment, articles, and supplies for such further time as it may determine, and a copy of such order shall be forthwith mailed to the parties in interest. Any party in interest, within ten days from the date of mailing, may demand a hearing and review of such order.

The commission may at any time, upon the request of an employee or employer, order a change of physicians and designate a physician suggested by the injured employee or by the commission itself, and in such case the expense thereof shall be borne by the employer upon the same terms and conditions as hereinbefore provided in this section for medical and surgical treatment and attendance.

The pecuniary liability of the employer for the treatment, articles, and supplies herein required shall be limited to such charges therefor as prevail in the same community for similar treatment, articles, and supplies furnished to injured persons of a like standard of living, when the same are paid for by the injured persons. The commission may on the basis above stated determine the reasonable value of all such service and supplies, and the liability of the employer shall be limited to the amount so determined.

[1921 c. 82 s. 19; 1923 c. 300 s. 6; 1929 c. 248 s. 1] (4279)

176.16 NOTICE OF INJURY. 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 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 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 90 days, and if the employee 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

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shown. Unless knowledge be obtained or notice given within 90 days after the occurrence of the injury, no compensation shall be allowed.

[1921 c. 82 s. 20] (4280)

176.17 SERVICE AND FORM OF NOTICE. The notice referred to in section 176.16, 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 employment 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).....

Dated....., 19....." (giving address)

No variation from this form shall be material if the notice is sufficient to advise the employer that a certain employee, 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.

[1921 c. 82 s. 21] (4281)

176.18 LIMIT OF ACTIONS. The time within which the following acts shall be performed shall be limited to the following periods, respectively:

(1) Actions or proceedings by an injured employee to determine or recover compensation, two years after the employer has made written report of the injury to the industrial commission but not to exceed six years from the date of the accident;

(2) Actions or proceedings by dependents to determine or recover compensation two years after the receipt by the commission of notice, in writing, of death, given by the employer, but not to exceed six years from the date of the accident; provided, that in any such case, if a dependent of the deceased or any one in his behalf shall give notice of such death to the commission, the commission shall forthwith notify, in writing, the employer of the time and place of such death; in case the deceased was a native of a foreign country, and leaves no known dependent or dependents within the United States, it shall be the duty of the commission to give written notice of the death to the consul or other representative of the foreign country forthwith;

(3) In case of physical or mental incapacity, other than minority, of the injured person or his dependents to perform or cause to be performed any act required within the time by this section specified, the period of limitation in any such case shall be extended for two years from the date when such incapacity ceases.

[1921 c. 82 s. 22; 1923 c. 300 s. 7] (4282)

176.19 EXAMINATION AND VERIFICATION OF INJURY. (1) The injured employee must submit himself to examination by the employer's physician, if requested by the employer, and at reasonable times thereafter upon the employer's request. The employee 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) In case of dispute as to the injury, the industrial commission, or in case of a hearing, the commissioner or referee conducting the hearing, may, upon its or his own motion, or upon request of any interested party, designate a neutral physician of good standing and ability to make an examination of the injured person and report his findings to the commission, a commissioner or referee, as the case may be. A copy of the signed certificate of such neutral physician shall be mailed to the parties in interest and either party, within five days from date of mailing, may demand that such physician be produced for purpose of cross-examination. Such signed certificate of a neutral physician shall be competent evidence of the facts stated therein. The expense of such examination shall be paid as ordered by the commission, commissioner or referee.

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

(4) In all death claims where the cause of death is obscure or disputed, any interested party may request an autopsy and, if denied, the commission shall, upon petition and proper showing, order the same. If any dependent claiming compensation or benefits does not consent to such autopsy within the time fixed by the commission in such order, all dependents shall forfeit all rights to compensation. The cost of such autopsy shall be borne by the party demanding the same.

(5) Any physician designated by the commission, commissioner or referee, or whose services are furnished or paid for by the employer, who treats, or who makes or is present at any examination of, an injured employee, may be required to testify as to any knowledge acquired by him in the course of such treatment or examination, relative to the injury or the disability resulting therefrom.

[1921 c. 82 s. 23; 1923 c. 300 s. 8; 1943 c. 633 s. 1] (4283)

176.20 COMPENSATION TO ALIEN DEPENDENTS. In case a deceased employee for whose injury or death compensation is payable leaves surviving him an alien dependent or dependents residing outside of the United States, the industrial commission shall direct the payment of all compensation due to such dependent or dependents to be made to the duly accredited consular officer of the country of which the beneficiaries are citizens, if such consular officer resides within the state, or to his designated representative residing within the state, or if the commission believes that the interests of such alien dependent will be better served, and such alien dependent shall at any time prior to final settlement file with the commission a power of attorney designating any other suitable person residing in this state to act as attorney in fact in such proceedings, then the commission may, in its discretion, appoint such person. If it appears necessary to institute or carry on any proceedings to enforce payment of compensation due to such dependent or dependents, the commission may permit the consular officer to commence and institute these proceedings and, if during the pendency of the same, following the death of the alien employee, such power of attorney is filed by the alien dependent, the commission shall then summarily exercise its discretion and determine whether such attorney in fact shall be substituted to represent the alien dependent or if the consular officer or his representative shall continue therein. Such person so appointed may institute and carry on proceedings to settle all claims for compensation and to receive for distribution to such alien dependent or dependents all compensation arising hereunder. The settlement and distribution of the funds shall be made only on order of the commission. Such person so appointed shall furnish a good and sufficient bond, satisfactory to the commission, conditioned upon the proper application of the moneys received by him. Before such bond is discharged, such person so appointed shall file with the commission a verified account of the items of his receipts and disbursements of such compensation.

Such person so appointed shall, before receiving the first payment of such compensation and thereafter when ordered so to do by the commission, furnish to the commission a sworn statement containing a list of the dependents, with the name, age, residence, extent of dependency, and relationship to the deceased of each dependent. In any proceedings heretofore taken to recover compensation for any alien dependent where the same have been instituted and carried on for a period of at least five years in the name of a person as petitioner, designated by power of attorney from the alien dependent, the right of such designated petitioner to conclude the proceedings or final settlement and to fully bind all parties thereby, is hereby legalized in all respects.

[1921 c. 82 s. 24; 1929 c. 251; 1939 c. 416] (4284)

176.21 PAYMENT IN LUMP SUM. The amounts of compensation payable periodically hereunder may be commuted to one or more lump sum payments only by order of the commission and on such terms and conditions as the commission may prescribe.

In making such commutations the lump sum payments shall, in the aggregate, amount to a sum equal to the present value of all future instalments of compensation calculated on a five per cent basis.

[1921 c. 82 s. 25; 1929 c. 400] (4285)

176.22 PAYMENT TO TRUSTEE. At any time after the amount of any award or commutation has been finally determined by the industrial commission, a sum equal to the present value of all future instalments of the 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 the commission, be paid by the employer to any savings bank or trust company of this state to be approved and designated by the commission, and such sum, together with all interest thereon, shall thereafter be held in trust for the employee or the dependents of the employee, who shall have no further recourse against the employer. The payment of such sum by the employer, evidenced by receipt of the trustee, filed with the commission, shall operate as a satisfaction of the compensation liability as to the employer. Payments from the fund shall be made by the trustee in the same amounts and at the same time as are herein required of the employer until the fund and interest shall be exhausted, excepting as the commission shall otherwise order. In the appointment of the trustee, preference shall be given in the discretion of the commission to the choice of the injured employee or the dependents of the deceased employee, as the case may be.

[1921 c. 82 s. 26] (4286)

176.23 COMPENSATION A PREFERRED CLAIM; ASSIGNMENT; EXEMPTION. The right to compensation and all compensation awarded any injured employee 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 employee or his dependents shall not be assignable and shall be exempt from seizure or sale for the payment of any debt or liability except as otherwise provided in this chapter.

[1921 c. 82 s. 27] (4287)

176.24 EMPLOYEE TO INSURE EMPLOYEES; EXCEPTIONS. Subdivision 1. Every employer, except the state and the municipal subdivisions thereof, liable under this chapter to pay compensation shall insure payment of such compensation with some insurance carrier authorized to insure such liability in this state unless such employer shall be exempted from such insurance by the industrial commission. Nothing herein contained shall prevent any employer, with the approval of the commission, from excluding medical and hospital benefits as required in section 176.15. An employer conducting distinct operations or establishments at different locations may either insure or self-insure each separate establishment or operation and such other portion of his operations, which may be determined by the 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 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 case such employer shall immediately insure his liability. As a condition for the granting of an exemption the 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 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.

Subd. 2. Any employer who shall fail to comply with the provisions of this section to secure payment of compensation shall be liable to the State of Minnesota for a penalty of \$50.00; and, in addition thereto, if the employer continues his non-compliance, he shall be liable for five times the lawful premium, as determined by the compensation insurance board, for compensation insurance for such employer for the period he fails to comply with such provisions, commencing ten days after notice has been served upon such employer by the commission in the manner provided for the service of the summons in civil actions. Such penalties may be recovered jointly or separately in a civil action brought in the name of the state by the attorney general in any court having jurisdiction thereof, and it shall be the duty

of the commission, whenever any such failure occurs, to immediately certify the fact thereof to the attorney general, and upon receipt of such certification the attorney general shall forthwith commence and prosecute such action. All penalties recovered by the state hereunder shall be paid into the state treasury, to be credited to the special compensation fund.

Subd. 3. Any employer who wilfully and intentionally fails to comply with the provisions of subdivision 1 hereof, in addition to being subject to the penalty prescribed in subdivision 2, shall be guilty of a gross misdemeanor.

[1921 c. 82 s. 28; 1923 c. 282 s. 1; 1945 c. 76] (4288)

176.25 WHO MAY INSURE; POLICIES. Any employer who is responsible for compensation may insure the risk in any manner then authorized by law. Those writing such insurance shall in every case be subject to the conditions of this section hereinafter named.

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

Such policies shall contain a clause to the effect that, as between the workman and the insurer, 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, jurisdiction of the employer for any purpose shall be jurisdiction of the insurer, and 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 amount and pay it over to the workman or dependents, the insurer will pay the same direct to the 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 provision 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, 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. No agreement by an employee to pay to an employer any portion of the cost of insuring his risk under this chapter shall be valid. It shall be lawful for the employer and the workman to agree to carry the risk covered by this chapter in conjunction with other and greater risks and providing other and greater benefits as additional compensation, accident, sickness, or old age insurance or benefits, and the fact that such plan involves a contribution by the workman shall not prevent its validity if such plan has been approved in writing by the industrial commission. Any employer who shall make any charge or deduction prohibited by this section shall be guilty of a misdemeanor.

If the employer shall insure to his employees the payment of the compensation provided by this chapter in a corporation or association authorized to do business in the state and approved by the insurance commissioner and if the employer shall post notices 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 commission, then and in such case, any proceedings 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.

In case of insolvency or bankruptcy of such insurance company the employer shall not be released from liability under the provisions of this chapter.

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 proceedings against any insurance company, the employer may be joined at any time after such adjudication.

The provisions of this section to the extent that the same are applicable shall apply also when an employer exempted from insuring his liability for compensation as provided in section 176.24 shall insure any part of his liability for the compensation.

[1921 c. 82 s. 29; 1923 c. 282 s. 2; 1931 c. 352 s. 1] (4289)

176.255 DISPUTE AS TO PAYMENT OF COMPENSATION BENEFITS.

Where benefits are payable under the provisions of this chapter, and a dispute arises between two or more employers or insurers as to which of the employers or insurers is liable for payment thereof, the commission may direct the payment of the benefits by one or more of the employers or insurers pending the determination of liability. Upon determination of liability the commission shall order the party liable for the benefits to reimburse any other party for payments made with interest at the rate of five per cent per annum. The commission may also award reasonable attorney fees in favor of the claimant and against the party held liable for the benefits.

Any order of the commission under the provisions of this section directing the payments of the benefits by one or more of the employers or insurers pending the determination of liability shall not be used as evidence before any referee, commission, or court in which the dispute is pending.

[1941 c. 64]

176.26 PROHIBITION OF DISCRIMINATING AGAINST PHYSICALLY HANDICAPPED PERSONS.

No person, partnership, association, or corporation, or their agents or employees, writing workmen's compensation insurance in this state shall make or charge any rate which discriminates against the employment by the insured of any person who is physically handicapped by reason of loss or loss of use of any member due to accident or other cause.

[1919 c. 367 s. 1] (4289-1)

176.27 PENALTY. Any person, partnership, association, or corporation, or their agents or employees, offering a rate of compensation insurance forbidden by section 176.26 shall be guilty of a misdemeanor.

[1919 c. 367 s. 2] (4289-2)

176.28 CANCELANON OF LICENSE. When any company, or its agents or employees, shall have been convicted of a violation of sections 176.26 and 176.27, such fact shall be sufficient cause for the cancelation of its license by the commissioner of insurance.

[1919 c. 367 s. 3] (4289-3)

176.29 LICENSES TO WRITE WORKMEN'S COMPENSATION INSURANCE; REVOCATION.

The license now or hereafter granted to any insurer to write workmen's compensation insurance in the state shall be revoked by the commissioner of insurance in case it or its agents have been guilty of fraud, misrepresentation, or culpable, persistent, and unreasonable delay in making settlements under the provisions of the workmen's compensation act and acts amendatory thereof. Such action may be taken by the commissioner upon his own motion, the recommendation of the industrial commission, or the complaint of any interested person. A complaint against any such insurer shall be in writing and shall clearly specify the grounds upon which the revocation of the license of such insurer is sought, and such insurer shall have the right to answer the complaint in writing and be heard before the commissioner of insurance in its own behalf, and the method of procedure for the hearing shall be prescribed by the commissioner of insurance, who shall set a time and place therefor and shall give all parties interested at least ten days' notice thereof by mail. He shall make and file his findings and order and shall send a copy thereof to the industrial commission, to the complainant, and to the insurer against whom the charges are made. Within ten days after the service of the findings and order of the commissioner of insurance revoking the license of any insurer, which service may be made by mail, the insurer may appeal from such order to the district court of the district in which the office of the commissioner of insurance is located by serving written notice of appeal upon him. The commis-

sioner of insurance shall thereupon file with the clerk of such court a certified copy of his findings and order, which shall be prima facie evidence of the facts therein stated. Thereupon the court shall summarily hear and determine the questions involved in the appeal.

[1919 c. 508] (4289-4)

176.30 WHO LIABLE AS EMPLOYERS; CONTRACTORS; SUBCONTRACTORS. Subdivision 1. 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 chapter, shall himself be included in the term "employer" and be subject to all the liabilities of the employers under this chapter. This section shall not be construed to cover or mean an owner who lets a contract to a contractor in good faith. No person shall be deemed a contractor or subcontractor, so as to make him liable to pay compensation within the meaning of this section, who performs his work upon the employers' premises and with the employers' tools or appliances and under the employers' 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.

Subdivision 2. Where compensation is claimed from or proceedings taken against a person under subdivision 1 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.

Subdivision 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 176.06, or under the conditions set forth in section 176.01, subdivision 11.

Subdivision 4. When any subcontractor fails to comply with provisions of section 176.24, the general contractor, intermediate contractor, or subcontractor shall be liable for all compensation benefits to employees, of all subsequent subcontractors engaged upon the subject matter of the contract, and injured on, in, or about the premises. Any person paying such compensation benefits under the provisions of this subdivision shall be subrogated to the rights of the injured employee against his immediate employer, or any person whose liability for compensation benefits to the employee is prior to the liability of the person paying such compensation benefit. The liabilities arising under this subdivision may be determined by the industrial commission.

[1921 c. 82 s. 30; 1929 c. 252 s. 1] (4290)

176.31 PENALTIES FOR UNREASONABLE DELAY. Subdivision 1. **Injuries subject to workmen's compensation act.** In all cases of injuries subject to the workmen's compensation act, as amended, payment of compensation commences within 30 days after the employer is notified of the injury or has knowledge thereof, unless within such period the employer or his insurer files with the commission a denial of liability therefor or applies to the commission for an extension of time within which to determine liability. For cause shown, the commission may grant such extension for not more than 30 days. Any employer or insurer who fails, within such 30-day period, to commence payment of compensation or to file with the commission a denial of liability for such injury or to apply to the commission for an extension of time within which to determine liability, shall pay into the special compensation fund a sum equal to the compensation to which the employee or his dependents are entitled for each day of delay after the expiration of such 30-day period in addition to the compensation payable to the employee or his dependents for his injury. If any employer or insurer is granted an extension of time within which to determine liability and fails, within such extension period, to commence payment of compensation or to file a notice of denial of liability therefor, such employer or insurer shall pay into the special compensation fund a sum equal to the compensation to which the employee or his dependents are entitled for each day of delay after the expiration of such extension period in addition to the compensation payable to the employee or his dependents for his injury. If any employer or insurer subject to either of these requirements fails to pay into the special compensation fund the sum so required to be paid within 60 days after the expiration of the 30-day period or the extension period, as the case may be, the commission

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may require such employer or insurer to pay into the special compensation fund a sum equal to double the compensation to which the employee or his dependents are entitled to for each day of such delay in addition to the compensation payable to the employee or his dependents for his injury. The additional payments herein provided shall be assessed by the commission against the employer or insurer on the basis of where such delay is chargeable. The insurer shall not be liable for a payment assessed against the employer. The additional payments herein provided shall be paid by the party against whom they are assessed.

Subd. 2. Frivolous proceedings or defenses. In any case where any proceeding has been instituted or carried on or any defense interposed by any employer or insurer liable to pay compensation hereunder which does not present a real controversy but is merely frivolous or for delay, or where there has been any unreasonable or vexatious delay of payment, or neglect or refusal to pay, or intentional underpayment of any compensation due to any employee or dependent, the commission or the supreme court on appeal may, after reasonable notice and hearing or opportunity to be heard, award, in addition to the compensation payable or to become payable, an amount equal to not more than 25 per cent of the compensation payable or to become payable. To secure information as to any act or omission specified in this subdivision the industrial commission may examine the books and records of any employer or insurance carrier relative to the payment of compensation hereunder, or require any such employer or insurance carrier to furnish any other information relating to the payment of compensation hereunder. In case of an insurer persisting in any act or omission specified in this subdivision, or refusing or failing to allow the commission to examine its books and records or to furnish such information, the commission shall make complaint in writing to the insurance commissioner, setting forth the facts and recommending the revocation of the license of such insurer to do business in this state, whereupon the commissioner of insurance shall hear and determine the matter as provided in section 176.29; and, if any such charge is found true, the commissioner of insurance shall revoke the license of such insurer and thereafter it shall be unlawful for such insurer to write or effect insurance in this state.

[1921 c. 82 s. 32; 1943 c. 586 s. 1] (4292)

176.32 EMPLOYERS MUST REPORT ACCIDENTS; REPORTS; DUTY OF PHYSICIANS. It is hereby made the duty of every employer subject to the provisions of this chapter to make or cause to be made a report to the industrial commission of any accident to any employee which occurs in the course of his employment and which causes death or serious injury within 48 hours of the occurrence of such accident, and of all other accidents which occur to any employee in the course of his employment, and of which the employer or his foreman has knowledge, within seven days after the occurrence of such accident; provided, that such injuries are sufficient wholly or partially to incapacitate the person injured from labor or service for more than the remainder of the day, shift, or turn on which the injury was sustained, which reports shall be made upon a form to be prescribed by the commission.

The industrial commission shall include in the form of report prepared by it a statement that the employer will pay the compensation as required by law, to be signed by the employer or his representative where a liability to pay compensation is admitted.

Accidents required by this section to be reported within 48 hours may be reported by telephone, telegraph, or personal notice and a written report of such accident shall then be made within seven days, or at such time as the commission shall designate, and the commission may require such supplementary reports of any accident as it may deem necessary for the securing of the information required by law; provided, that when an accident has been reported which subsequently terminates fatally a supplemental report shall be filed with the commission within 48 hours after receipt of knowledge of such death, stating that the injury has proved fatal and any other facts in connection with such death or as to the dependents of such deceased employee which the commission may require.

Every physician or surgeon who shall examine, treat, or have special knowledge of, any injury to any employee compensable under this chapter, shall, within ten days after receipt of any request therefor in writing made by the industrial commission, report to the commission all facts within his knowledge relative to the

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nature and extent of any such injury and the extent of any disability resulting therefrom, upon a form to be prescribed by the commission.

It is hereby made the duty of the commission, from time to time and as often as may be necessary, to keep itself fully informed as to the nature and extent of any injury to any employee compensable under this chapter, and the extent of any disability resulting therefrom, and the rights of such employee to compensation; to request in writing and procure from any physician or surgeon examining, treating, or having special knowledge of any such injury, a report of the facts within his knowledge relative thereto.

Any employer or physician or surgeon who shall fail to make any report required by this section, in the manner and within the time herein specified, shall be liable to the State of Minnesota for a penalty of \$50.00 for each such failure, and such penalty shall be recovered in a civil action brought in the name of the state by the attorney general in any court having jurisdiction thereof, and it shall be the duty of the commission when any such failure to report occurs to immediately certify the fact thereof to the attorney general, and upon receipt of any such certification the attorney general shall forthwith commence and prosecute such action. All penalties recovered by the state hereunder shall be paid into the state treasury.

No such report or part thereof, nor any copy of the same or part thereof, shall be open to the public, nor shall any of the contents thereof be disclosed in any manner by any official or clerk or other employee or person having access thereto, but the same may be used upon the hearings under this chapter or for state investigations and for statistics only, and any such disclosure is hereby declared to be a misdemeanor and punishable as such.

For the purpose of determining the merits of a compensation claim the commission may permit examination of its file in a compensation case by an attorney at law upon the furnishing to the commission written authorization therefor, signed by the employee, his dependent or dependents, the employer or insurer, as the case may be.

Any employer or insurer or injured employee shall, upon request of the commission, file with the commission all medical reports in the possession of such employer or insurer having any bearing upon the case or showing the nature and extent of disability; provided, that duly verified copies of such reports may be filed with the commission in lieu of the originals.

[1921 c. 82 s. 33; 1925 c. 161 s. 8; 1939 c. 241] (4293)

176.33 DUTIES OF COMMISSION WHEN EMPLOYEE IS INJURED. On receipt of notice or information that an employee has sustained an injury which may be compensable, the industrial commission shall forthwith mail to such employee, if his post-office address be known or ascertainable, a written or printed notice in the form of a letter giving a brief statement in simple language of such employee's general rights and duties under this chapter. In addition to such other matters as in the discretion of the commission may be incorporated in this notice, it shall summarize the employer's duty to furnish medical and hospital treatment and to pay compensation, and shall invite such employee to ask the advice of the commission in case any doubt or dispute arises concerning his rights under this chapter on account of such injury. The notice shall be accompanied by an envelope addressed to the commission, for use by the employee in making any reply.

[1921 c. 82 s. 34] (4294)

176.34 EMPLOYER TO NOTIFY COMMISSION OF DISCONTINUANCE OF PAYMENTS. Before discontinuing the payment of compensation in any case, the employer shall, if it is claimed by or on behalf of the injured person or his dependents that his right to compensation still continues, or if such employee or his dependents shall refuse to sign or object to signing a final receipt, notify the industrial commission in writing of such proposed discontinuance of payment, with the date of discontinuance and the reason therefor, and that the employee or dependent, as the case may be, objects thereto, and such employer shall file with such notice of discontinuance any medical reports in his possession bearing upon the physical condition of the injured employee at or about the time of the discontinuance of the compensation, or duly verified copies of such reports in lieu of the originals; and, until such notice is given and such reports filed, the liability for the making of such payments shall continue unless otherwise ordered by the commission; provided, that the receipt of any such notice of discontinuance, together with such reports by the commission as herein provided shall operate as a suspension of payment of

compensation until the right thereto can be investigated, heard, and determined as herein provided. It is hereby made the duty of the commission forthwith, upon receipt of any such notices of discontinuance, to notify the employee of the receipt thereof and mail him a copy of the same, together with copies of the reports filed with such notice at his last known place of residence, and to make such investigations and inquiries as may be necessary to ascertain and determine whether the right to compensation in any such case has terminated in accordance with law, and if upon investigation it shall appear that the right to compensation in any such case has not terminated or will not terminate upon the date specified in any such notice of discontinuance, the commission shall set down for hearing before the commission, or some commissioner or referee, the question of the right of the employee, or dependent, as the case may be, to further compensation, such hearing to be held within 25 days of the receipt by the commission of any such notice of discontinuance, and eight days' notice of such hearing shall be given by the commission to the interested parties.

After the hearing by the commission, commissioner, or referee and due consideration of all the evidence submitted, the commission, commissioner, or referee shall promptly enter an order or award for such further amount of compensation to be paid by the employer, if any, as may be due and payable. If upon investigation it shall appear that the right to compensation in any such case has terminated, the commission shall forthwith notify the employer in writing of such fact and the receipt of such notice by the employer shall operate to relieve him and the insurance carrier, as of the date when payment of compensation became suspended, as provided by this chapter, from any further liability for payment of compensation in such case, subject to the right of review provided by this chapter, and subject to the right of the commission, at any time prior to this review, to set aside its decision, or that of the referee, and grant a new hearing pursuant to section 176.60.

In addition to the filing of the reports required by law, all employers shall promptly file or cause to be filed with the commission all current interim and final receipts for the payments of compensation made, and it is hereby made the duty of the commission periodically to check the records of such commission in each case, and require such employers to file or cause to be filed all such receipts for compensation payments as and when due, it being the intention of this section that the commission shall definitely supervise and require prompt and full compliance with all provisions for the payment of compensation as required by law. Any insurance carrier insuring any employer in this state against liability imposed by this chapter shall be and hereby is authorized and empowered, for and on behalf of said employer, to perform any and all acts required of the employer under the provisions of this chapter; provided, that the employer shall be responsible for all authorized acts of an insurer in his behalf and for any omission or delay or any failure, refusal or neglect of any such insurer to perform any such act, and nothing herein contained shall be construed to relieve the employer from any penalty or forfeiture provided by this chapter.

[1921 c. 82 s. 35; 1925 c. 161 s. 9; 1933 c. 74 s. 1] (4295)

176.35 COMMISSION MAY ADVISE; REPORT TO LEGISLATURE. The industrial commission may, upon demand of an employer, or an employee or his dependent, designate one or more of its employees who shall advise such party or parties of his or their rights under this chapter, and shall assist so far as possible in adjusting the differences between the employee or his dependents and the employer, and the employee or employees of the commission so designated are hereby empowered to appear in person before the commission, commissioner, or referee in any proceeding as the representative or adviser of any such party; and, in any such case, such party shall not be required to be also represented by an attorney at law.

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

[1921 c. 82 s. 36] (4296)

176.36 PROCEEDING BEGUN BY PETITION. All proceedings before the industrial commission shall be by petition addressed to the commission. All petitions shall be in writing and in such form as may be prescribed by the commission, except as otherwise provided by this chapter.

[1921 c. 82 s. 37] (4297)

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176.37 PAPERS FILED IN MAIN OFFICE. All papers to be filed or acted upon by the industrial commission shall be delivered to it at its principal office, except as the commission may otherwise order.

[1921 c. 82 s. 38] (4298)

176.38 PAPERS SHALL BE FILED IMMEDIATELY. All papers delivered to the industrial commission for filing under the provisions of this chapter or the rules and regulations of the commission shall be immediately filed.

[1921 c. 82 s. 39] (4299)

176.39 ORDERS AND DECISIONS FILED. Every order, decision, or award made by any commissioner or referee shall be forthwith filed with the industrial commission, and the commission shall immediately serve or cause to be served upon every party in interest a copy of every order, decision, or award made by it or him, together with a notification of the time when the same was filed.

[1921 c. 82 s. 40] (4300)

176.40 SERVICE BY MAIL. All papers and notices to which any party may be entitled shall be served by mail, or in such other manner as the industrial commission may direct. Any such paper or notice shall be deemed served on the date when mailed, properly stamped and addressed, and shall be presumed to have reached the party to be served; but any party may show by competent evidence that any paper or notice was not received, or that there was an unusual or unreasonable delay in its transmission through the mails. In such case proper allowance shall be made for the party's failure within the prescribed time to assert any right given him by this chapter. The commission, its secretary, and any commissioner or referee, serving or causing to be served any such paper or notice shall keep a careful record of such service.

[1921 c. 82 s. 41] (4301)

176.41 PROCEDURE IN CASE OF DISPUTE. In cases of dispute as to any question of law or fact in connection with any claim for compensation, either party, or in case of default for a period of at least ten days, in payment of compensation due and payable; the person or persons entitled thereto may present a verified petition to the industrial commission setting forth, in addition to such other facts as the rules of the commission may require, the names and residences of the parties and the facts relating to employment at the time of injury, its extent and character, the amount of wages being received, the knowledge of the employer or notice of the occurrence of the injury, and such other facts as may be necessary and proper for the information of the commission, and state the matter or matters in dispute and the contention of the petitioner with reference thereto.

[1921 c. 82 s. 42] (4302)

176.42 ACTION WHERE EMPLOYER A NON-RESIDENT; VENUE; COMPLAINT; ATTACHMENT; GARNISHMENT; APPEARANCE BY EMPLOYER. At any time after the filing of a petition for compensation, the petitioner, his agent or attorney, may file an affidavit stating that the employer named in the petition is a non-resident or is a foreign corporation, and that the service of the petition and other notices as provided by this chapter cannot be made on the employer. Thereupon the petitioner may commence an action in the district court of the county where the employee in respect to whom compensation is claimed resided at the time of injury or death, as the case may be. Such action shall be commenced and proceed in the same manner as is provided by law for actions in the district court. The complaint in such action shall contain a statement that a petition for compensation in the matter has been filed with the industrial commission of Minnesota, together with the affidavit, as hereinbefore provided, and a statement of the facts upon which the right to compensation or other relief is based, as provided in this chapter. In any such action the property of defendant may be attached by writ of attachment or proceedings in garnishment, and the summons may be served by publication as provided in other actions in the district court. In the event the employer makes a general appearance in the proceedings upon the petition so filed with the commission and shall file therein such bond or security as may be fixed and approved by the commission, or in the event any insurance company authorized to do business in this state shall appear in such proceedings for the employee and assume liability for any award that may be entered in such proceedings against such employer, the proceedings in the district court shall be dismissed.

[1927 c. 417 s. 1] (4302A)

176.43 DETERMINATION OF ISSUES; REFERENCE; APPEALS TO SUPREME COURT. When issue is joined in any such case in the district court, the court may try and fully determine the same without a jury, or the court may refer the matter to the industrial commission, and thereupon the commission shall proceed to determine the matter as in cases originally commenced before the commission, and the commission shall report its findings and decision therein to the district court, which findings and decision may be approved or disapproved by the court in the same manner as is provided by law and the rules of such court for the approval or disapproval of the report of a referee, and shall order judgment, which shall be entered accordingly as in other cases. An appeal shall lie from such decision and judgment of the district court to the supreme court as in other cases.

[1927 c. 417 s. 1] (4302B)

176.44 COMMISSION TO GIVE HEARING ON CLAIM-PETITION. When a claim-petition or other petition is presented to the industrial commission, the commission shall, by general rules or special order, either direct it to be heard by the commission or assign it to a commissioner or a referee for hearing. Petitions to commute further compensation payments shall be heard by the commission.

The secretary of the commission shall within ten days after the same is presented serve upon each adverse party a copy of the petition, together with a notice that the petition will be heard by the commission or the commissioner or referee to whom it has been assigned, giving his name and address, as the case may be, and if the petition shall be assigned to a commissioner or a referee, shall deliver the original petition to him with copies of the notices served on the adverse parties.

[1921 c. 82 s. 43] (4303)

176.45 REHEARING. Any time before an award or disallowance of compensation or order has been made by a commissioner or referee to whom a petition has been assigned, the commission may order such petition heard before it or may reassign it to another commissioner or referee. Unless the commission shall otherwise order, the testimony taken before the original commissioner or referee shall be considered as though taken before the commission or substituted commissioner or referee.

[1921 c. 82 s. 44] (4304)

176.46 ANSWER TO PETITION. Within ten days after a copy of any petition has been served on the adverse party, he may file with the industrial commission and serve upon the petitioner or his attorney a verified answer to the petition, which shall admit or deny the substantial averments of the petition and shall state the contention of such adverse party with reference to the matter in dispute as disclosed by the petition. Within five days after the service of the answer, the petitioner may file with the commission and serve on the adverse party or his attorney a verified reply, admitting or denying the matter set forth in the answer.

Every fact alleged in a petition not specifically denied by an answer so filed by an adverse party shall be deemed to be admitted by him. The failure of any adverse party, or of all of them, to deny a fact so alleged shall not preclude the commission, the commissioner, or referee before whom the petition is heard from requiring, of its or his own motion, proof of such fact.

[1921 c. 82 s. 45] (4305)

176.47 COMMISSION TO FIX TIME AND PLACE OF HEARING. When the reply has been filed or the time in which to file a reply has expired, the commission shall fix a time and place for hearing the petition not less than ten days after the filing of the reply or the expiration of the time within which a reply can be filed. Notice of such hearing shall be given by mailing a copy to the interested parties not less than five days before the date fixed for such hearing. Such hearing may be had before the commission or before a commissioner or referee designated by the secretary by written order, copy of which written order shall be mailed to the commissioner or referee so designated. All hearings shall be held in the county where the injury occurred unless otherwise ordered by the commission or the commissioner or referee conducting the hearing. The secretary, if the petition has been directed to be heard by the commission, or the commissioner or referee to whom the petition has been assigned, shall serve upon all parties in interest a notice of the time and place of hearing at least five days prior to such hearing.

[1921 c. 82 s. 46; 1923 c. 300 s. 9] (4306)

176.48 AWARD BY DEFAULT. Upon failure of an adverse party in any case to serve and file an answer as provided by this chapter, the commission, upon proof

of service of the petition and failure to answer being made and filed with it, shall forthwith make an award based upon the petition, if the facts stated therein are sufficient to support the same, of such compensation as the claimant is shown thereby to be entitled to; provided, that the commission may require proof of any fact alleged in the petition, and in such case the commission shall promptly and summarily hear and determine the matter and promptly make its award. If the petition does not state facts sufficient to support an award, the commission shall promptly notify the petitioner or his attorney of such fact in writing and another petition may be filed as in the case of an original petition.

[1921 c. 82 s. 47] (4307)

176.49 COMMISSION, TESTIMONIAL POWERS. The industrial commission by a member, or the commissioner or referee to whom a cause may be assigned by the commission for hearing, shall administer oaths to all witnesses, and, upon its or his own motion or the written request of any interested party, may issue subpoenas for the attendance of witnesses and the production of such books, papers, records, and documents material in the cause as shall be designated in such request or required by the commission, commissioner, or referee. The applicants for subpoenas shall advance necessary service and witness fees, which shall be the same as the service and witness fees provided by law for civil causes in the district court; the commission shall pay for the attendance of all witnesses subpoenaed by it on its own motion. If any person refuses to comply with any order or subpoena issued by the commission, or by any commissioner or referee in a cause assigned to him by the commission, or if any person refuses to permit an inspection of any place or premises or to produce any books, papers, records, or documents material in the cause or if any witness refuses to appear or testify regarding that which he may be lawfully interrogated, any judge of the district court in the county in which the cause is pending, on application of the commission, or the commissioner or referee hearing the cause, shall compel obedience by attachment proceedings as for contempt as in the case of disobedience of a similar order or subpoena issued by such court.

[1921 c. 82 s. 48] (4308)

176.50 AWARD; INTERVENTION. The industrial commission, if a petition is directed to be heard by it, or the commissioner or referee to whom a petition is assigned for hearing, shall hear all competent evidence produced and make in writing and as soon as may be after the conclusion of the hearing such findings of fact, conclusions of law, and award or disallowance of compensation or other order as the pleadings and the evidence produced before it or him and the provisions of this chapter shall in its or his judgment require. Any person having such an interest in any matter before the commission, a commissioner, or referee, that he may either gain or lose by any order or decision relating thereto shall, upon written application to the commission, commissioner, or referee setting forth the facts which show such interest, be permitted to intervene under such rules and regulations as the commission may prescribe.

[1921 c. 82 s. 49] (4309)

176.51 REFEREE. The industrial commission may refer any question of fact arising under any petition, including a petition for commutation of compensation heard by it, to a commissioner or referee to hear evidence and report to the commission the testimony taken before him or such testimony and findings of fact thereon as the commission may order. The commission may refer any question of fact arising under any petition assigned to a commissioner or referee, to another commissioner or referee to hear evidence and report the testimony so taken thereon to the original commissioner or referee.

[1921 c. 82 s. 50] (4310)

176.52 INVESTIGATION. The industrial commission, commissioner, or referee, if it or he deem it necessary, may, of its or his own motion, either before, during, or after any hearing, make an investigation of the facts set forth in the petition or answer. The commission, or a commissioner or referee, with the consent of the commission, may appoint one or more impartial physicians or surgeons to examine the injuries of the claimant and report thereon, and may employ the services of such other experts as shall appear necessary to ascertain the facts. The report of any physician, surgeon, or expert appointed by the commission or by a commissioner or referee shall be filed with the commission and be a part of the record and open to inspection as such.

The commission shall fix the compensation of such physicians, surgeons, and experts which, when so fixed, shall be paid out of the funds appropriated to the department of labor and industry for the maintenance of the department, and taxed as a part of the costs of the proceedings to be repaid to such department by either party, or both, or otherwise, as the commission may direct. If any sum so taxed shall not be paid by the party directed to repay, the same may be collected as costs are now collectible.

[1921 c. 82 s. 51] (4311)

176.53 HEARINGS SHALL BE PUBLIC. All hearings before the commission, a commissioner, or a referee shall be public.

[1921 c. 82 s. 52] (4312)

176.54 COMMISSION NOT BOUND BY RULES OF EVIDENCE. The commission, or a commissioner or a referee, in making an investigation or conducting a hearing under this chapter, shall not be bound by common law or statutory rules of evidence or by technical or formal rules of pleading or procedure, except as provided by this chapter; and shall make such investigation or inquiry or conduct such hearing in such manner as to ascertain the substantial rights of the parties. All findings of fact shall be based only upon competent evidence.

[1921 c. 82 s. 53] (4313)

176.55 DEPOSITIONS; EVIDENCE. Depositions may be taken as now provided by law for civil cases, except as otherwise ordered by the commission, commissioner, or referee. The records kept by a hospital of the medical or surgical treatment given to an employee in such hospital shall be admissible as evidence of the medical and surgical matters stated therein, but shall not be conclusive proof of such matters.

[1921 c. 82 s. 54] (4314)

176.56 APPEAL. Any party in interest may, within 30 days after notice of a commissioner's or referee's award or disallowance of compensation, or other order involving the merits of the case, shall have been served on him, take an appeal to the industrial commission on the ground:

(1) That the award or disallowance of compensation, or other order appealed from, is not in conformity with the terms of this chapter, or that the commissioner or referee committed any other error of law;

(2) That the findings of fact and award or disallowance of compensation, or other order appealed from, was unwarranted by the evidence, or was procured by fraud, coercion, or other improper conduct of any party in interest. The commission may upon cause shown within the 30 days extend the time for taking such appeal or for filing of an answer or other pleading for not to exceed 30 additional days.

Any party desiring to appeal to the commission shall prepare and sign a written notice, specifying the award or order appealed from and that the appellant appeals therefrom to the commission, and specifying the particular finding of fact which appellant claims is unwarranted by the evidence or which appellant claims was procured by fraud, coercion, or other improper conduct of any party in interest, or specifying any other ground upon which the appeal is based. The appealing parties shall, within the time limited for appeal, serve a copy of such written notice of appeal upon all adverse parties and file the original thereof with the commission, with proof of service thereon by admission or affidavit. The appealing parties shall, within the time limited for appeal, pay to the commission the sum of \$10.00, to be applied on the cost of the transcript of the proceedings appealed from, or so much thereof as may be necessary to present the question raised on such appeal. The appellant shall be liable for any excess of the \$10.00 in the cost of the transcript, and any part of that sum exceeding the actual cost of the transcript shall be refunded to the appellant; provided, that the commission may, on cause shown, direct that a transcript be made without expense to the appellant.

Upon the filing of the notice and the paying of the appeal fee, the commission shall immediately cause the transcript of testimony and proceedings to be typewritten, which transcript shall be certified as true and correct by the official reporter transcribing the same.

On any such appeal the commission may disregard the findings of fact of the commissioner or referee and examine the testimony taken before such commissioner or referee, and, if it deem proper, may hear other evidence and substitute for the findings of the commissioner or referee such findings of fact as the evidence taken

before the commissioner or referee, and the commission, as hereinbefore provided, may, in the judgment of the commission, require and make such disallowance or award of compensation or other order as the facts so found by it may require. The commission at its expense shall cause a complete record of its proceedings to be made, and provide a stenographer to take the testimony and record of proceedings at the hearings before a referee, commissioner, or the commission, and the stenographer shall furnish a transcript of such testimony or proceedings to any person requesting it upon payment to him of a reasonable charge therefor, to be fixed by the commission.

[1921 c. 82 s. 55; 1923 c. 300 s. 10; 1939 c. 150] (4315)

176.57 APPEAL BASED ON ERROR. When an appeal to the commission shall be based upon an alleged error of law it shall be its duty to grant a hearing thereon. The commission shall fix a time and place for such hearing and give at least five days' notice thereof in writing to all parties in interest. As soon as may be after any such hearing the commission shall either sustain or reverse the commissioner's or referee's award or disallowance of compensation, or other order appealed from, or make such modification thereof as it shall deem proper.

[1921 c. 82 s. 56] (4316)

176.58 APPEAL BASED ON FRAUD OR INSUFFICIENCY OF EVIDENCE. When an appeal shall be taken to the commission on the ground that the commissioner's or referee's award or disallowance of compensation was unwarranted by the evidence, or because of fraud, coercion, or other improper conduct by any party in interest, the commission may in its discretion grant a hearing de novo before the commission or assign the petition for rehearing to any commissioner or referee designated by it, or sustain the commissioner's or referee's award or disallowance of compensation. If the commission shall grant a hearing de novo, it shall fix a time and place for same and give at least five days' notice in writing to all parties in interest. As soon as may be after any hearing de novo by the commission, it shall in writing state its findings of fact and award or disallow compensation in accordance with the provisions of this chapter.

[1921 c. 82 s. 57] (4317)

176.59 PROCEEDINGS IN CASE OF DEFAULT; ENTRY OF JUDGMENT UPON AWARDS. On at least 30 days' default in the payment of compensation due under any award, the employee or dependents entitled to such compensation may file a certified copy of such award with the clerk of the district court of any county in the state, and on ten days' notice, in writing, to the adverse parties, served as provided by law for service of a summons, may apply to the judge of any district court for judgment thereon. On such hearing the judge of such court shall have the right to determine only the facts of the award and the regularity of the proceedings upon which the award is based, and order judgment accordingly, and such judgment shall have the same force and effect, and may be vacated, set aside, or satisfied as other judgments of the same court. No judgment shall be entered on an award while an appeal is pending. There shall be but one fee of 25 cents charged by the clerk for services in each case under this section, and this fee shall cover all services performed by him. An employee or dependent shall be entitled to entry of judgment for only such sums as are by the award payable to him. If any such award provides for the payment of money to a person other than such employee or dependent, such other person may by the same procedure obtain an entry of judgment for such sum as is payable to him by such award.

[1921 c. 82 s. 58; 1923 c. 300 s. 11; 1935 c. 314 s. 1] (4318)

176.60 NEW HEARING MAY BE GRANTED. At any time after an award has been made and before the same has been reduced to judgment or writ of certiorari issued by the supreme court, the commission may, for cause, upon application of either party and not less than five days' notice in writing to all interested parties, set the award aside and grant a new hearing and thereon determine the matter on its merits and make such findings of fact, conclusions of law, and award or disallowance of compensation or other order, as the pleadings and the evidence produced before it and the provisions of this chapter shall in its judgment require.

[1921 c. 82 s. 59; 1921 c. 423 s. 1] (4319)

176.61 APPEAL TO SUPREME COURT. Any party in interest may, within 30 days after the service of notice on him of any award or disallowance of compensation or order involving the merits of the case or any part thereof made by the com-

mission, have the same reviewed on certiorari by the supreme court on any of the following grounds:

(1) That the award or disallowance of compensation or other order sought to be reviewed is not in conformity with the terms of this chapter, or that the commission committed any other error of law;

(2) That the findings of fact and award or disallowance of compensation or other order sought to be reviewed was unwarranted by the evidence.

The supreme court may, upon cause shown within the 30 days, extend the time provided in this section for review on certiorari or for filing any paper required to be filed in such court. To render certiorari effective, the petitioner or relator shall, within 30 days after notice of such final award or disallowance or other order, serve upon the commission a writ of certiorari showing that a review is to be had in the supreme court of the proceedings of the commission on which such final award or disallowance of compensation is based, together with a bond, with such sureties and in such amount as the commission or commissioner shall direct and approve, conditioned to pay the cost of such review. The petitioner or relator shall pay to the secretary of the commission \$10.00, to be paid, in turn, by such secretary to the clerk of the supreme court as the filing fee provided by section 357.08. On serving of such writ of certiorari and filing bond and the payment of the amount aforesaid, the secretary of the commission shall immediately transmit to such clerk the filing fee, together with the return to such writ of certiorari and bond. The receipt by the clerk of such fee and the filing of such return shall vest the supreme court with jurisdiction of the matter. Within 30 days from receipt of the amount aforesaid and filing with the commission of the return to writ of certiorari and bond, the secretary shall transmit to the clerk of the supreme court a true and complete return of the proceedings of the commission in the cause sought to be reviewed, or such parts thereof as may be necessary to enable the supreme court properly to review the questions presented to it. Such return shall be certified to by the secretary under the seal of the commission and the petitioner or relator shall pay to the secretary the reasonable expense of preparing the return. On the filing of the return in the supreme court, the matter shall be heard and disposed of in accordance with the laws and rules of the court governing civil appeals. The supreme court may adopt such rules not inconsistent with the provisions of this chapter as may be deemed necessary or convenient for the impartial and speedy disposition of such matters.

[1921 c. 82 s. 60; 1921 c. 423 s. 2; 1923 c. 300 s. 12] (4320)

176.62 SUPREME COURT TO HAVE ORIGINAL JURISDICTION. The supreme court, on review taken under section 176.61, shall have and take original jurisdiction and may reverse, affirm, or modify the award or order of disallowance reviewed and enter such judgment as may be just and proper; and where necessary may remand the cause to the industrial commission for a new hearing or for further proceedings, with such directions as the court may deem proper.

[1921 c. 82 s. 61; 1921 c. 423 s. 3] (4321)

176.63 WRIT TO STAY PROCEEDINGS. A writ perfected under the provisions of this chapter shall stay all proceedings for the enforcement of collection of the award sought to be reviewed, or any part thereof, until the final disposition of the cause in the supreme court or before the industrial commission when the cause is remanded for a new hearing or further proceedings.

[1921 c. 82 s. 62; 1921 c. 423 s. 4] (4322)

176.64 ATTORNEY GENERAL TO APPEAR FOR COMMISSION. On all such reviews the attorney general shall, unless otherwise directed by the commission, appear as attorney for the industrial commission and prepare and present to the supreme court such papers, briefs, and arguments as he deems proper and necessary to a fair presentation of the questions involved in support of the award or order of disallowance sought to be reviewed.

[1921 c. 82 s. 63; 1921 c. 423 s. 5] (4323)

176.65 COSTS; REIMBURSEMENTS; ATTORNEY'S FEES; CERTIORARI. No costs shall be awarded against either party in hearings before the commission, commissioner, or referee, except as especially provided by this chapter, but in the discretion of the commission, commissioner, or referee conducting a hearing, or in the discretion of the commission in an appeal to it, the prevailing party may be awarded reimbursement for actual necessary disbursements to be taxed and allowed

by the commission, commissioner, or referee on five days' notice in writing to the adverse party. The commission, in affirming, or modifying and affirming, or reversing a disallowance and allowing an award, may include in its award reasonable attorney's fees incident to the review on appeal or may fix and allow a reasonable attorney's fee in such cases in a proceeding to tax disbursements thereon. On writs of certiorari the supreme court costs and disbursements shall be taxed the same as on civil appeals. If upon such review by the supreme court any award in favor of the injured employee or his dependents is affirmed, or modified and affirmed, or if the disallowance is reversed, the court may allow reasonable attorney's fees incident to such review, which shall be included as a part of the judgment order of the supreme court.

[1921 c. 82 s. 64; 1921 c. 423 s. 6; 1925 c. 161 s. 10] (4324)

176.66 OCCUPATIONAL DISEASES; HOW REGARDED. Subdivision 1. **Disability, disablement.** The disablement of an employee resulting from an occupational disease, except where specifically otherwise provided, is to be treated as the happening of an accident within the meaning of the workmen's compensation law and the procedure and practice provided applies to all proceedings under this section, except where specifically otherwise provided herein. When used in this section, "disability" means the state of being disabled from earning full wages at the work at which the employee was last employed and "disablement" means the act of becoming so disabled.

Subd. 2. **Disability or death caused by disease.** If an employee is disabled or dies and his disability or death is caused by a compensable occupational disease, he or his dependents are entitled to compensation for his death or for the duration of his disability according to the provisions of this chapter, except as otherwise provided in this chapter. If it be determined that such employee is able to earn wages at another occupation which is not unhealthful or injurious and such wages do not equal his full wages prior to the date of his disablement, the compensation payable is to be 66% per cent of the difference between the daily wage of the workman at the time of disablement and the daily wage he is able to earn in his partially disabled condition, continuing for a period of not longer than 25 weeks.

Subd. 3. **Disease must have been contracted within 12 months; exceptions.** Neither the employee nor his dependents are entitled to compensation for disability or death resulting from occupational disease, unless such disease is due to the nature of his employment as defined in section 176.01, subdivision 15, and was contracted therein within 12 months previous to the date of disablement; except in the case of silicosis or asbestosis, in which cases the disease must have been contracted within three years previous to the date of disablement.

Subd. 4. **False representation as to disease.** If an employee, at the time of his employment, wilfully and falsely represents in writing that he has not previously suffered from the disease which is the cause of disability or death, no compensation is payable.

Subd. 5. **Apportionment of compensation recoverable.** The total compensation due for occupational disease is recoverable from the employer who last employed the employee in the employment to the nature of which the disease was due and in which it was contracted. If such disease was contracted while such employee was in the employment of a prior employer, the employer who is made liable for the total compensation, as provided by this subdivision may appeal to the commission for an apportionment of such compensation among the several employers who, since the contraction of such disease, employed such employee in the employment to the nature of which such disease was due. Such apportionment is to be proportioned to the time such employee was employed in the service of such employers provided, that if a prior employer has met the requirement as to minimum standards herein provided for and has been certified by the industrial commission to that effect, that then the commission shall take into consideration in the apportionment of such liability not only the period of service of said employee with such employer, but shall likewise consider the element of exposure to which the employee was subjected while in the service of such employer maintaining minimum standards, and the apportionment determined only after a hearing, notice of the time and place of which is to be given to each employer alleged to be liable for any portion of such compensation. If the commission find that any portion of such compensation is payable by an employer prior to the employer who is made liable to the total

compensation, as provided by this subdivision, it shall make an award accordingly in favor of the last employer, which may be enforced in the same manner as an award for compensation.

Subd. 6. Notice of death or disability; to whom given. The employer to whom notice of death or disability is to be given or against who claim is to be made by the employee is the employer who last employed the employee during the 12 months in the employment to the nature of which the disease was due and in which it was contracted except in cases of silicosis or asbestosis, in which case the period shall be three years, and such notice is effective as against prior employers.

Subd. 7. Information required to be furnished. The employee or his dependents, if so requested, shall furnish the last employer, or the commission, with such information as to the names and addresses of his other employers during the periods as provided in subdivision 6, as he or they may possess. If such information is not furnished or is wilfully withheld and such last employer is for that reason unable to take proceedings against a prior employer under subdivision 5, unless it be established that the disease was contracted while the employee was in his employment, such last employer is not liable to pay compensation; or, if such information is not furnished or is not sufficient to enable such last employer to take proceedings against other employers under subdivision 5 such last employer is liable only for such part of the total compensation as, under the particular circumstances, the commission deems just; but a false statement in the information so furnished does not impair the employee's rights unless the last employer is prejudiced thereby.

Subd. 8. Rights of employee to recover compensation for other diseases not affected. Nothing in this section affects the rights of an employee to recover compensation in respect to a disease to which this section does not apply if the disease is an accidental personal injury within the meaning of the other provisions of this chapter.

Subd. 9. Provisions not retroactive. The provisions of this chapter do not apply to disability or death resulting from a disease contracted prior to the date on which Laws 1921, Chapter 82, became effective, unless such disease is determined to be an occupational disease under the terms of Laws 1943, Chapter 633, and was compensable at the time it was contracted or in cases of silicosis or asbestosis as herein provided.

[1921 c. 82 s. 67; 1939 c. 306; 1943 c. 633 s. 4] (4327)

176.661 OCCUPATIONAL DISEASE AGGRAVATED. Where an occupational disease is aggravated by any other disease or infirmity, not itself compensable, or where disease or death from any other cause, not itself compensable, is aggravated, prolonged, accelerated, or contributed to by an occupational disease, the compensation payable is to be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease were the sole cause of disease or death, as such occupational disease, as a causative factor, bears to all the causes of such disease or death. No compensation shall be payable for occupational disease where the employee refuses or wilfully fails to use standard safety appliances, ordered and provided for his protection and use, and approved by the commission, or who wilfully refuses to obey reasonable rules prescribed, printed and posted by the commission for the conduct of the work or to perform a statutory duty. Failure of an employer to maintain minimum standards of safety and healthful working conditions as provided by the orders of the commission, or to post and order compliance with all reasonable rules prescribed and ordered by the commission for the conduct of the particular work shall constitute a violation of section 182.19. The commission shall each year certify any place of employment which has complied with the minimum standards for healthful working conditions as prescribed by the commission.

[1943 c. 633 s. 7]

176.662 EVIDENCE; PRESUMPTIONS. In the absence of conclusive evidence in favor of an employee's or a dependent's claim of disability or death from silicosis or asbestosis it shall be presumed not to be due to the nature of any occupation or employment within Laws 1943, Chapter 633, unless during the ten years immediately preceding the date of disablement the employee shall have been exposed to the inhalation of silica dust or asbestos dust over a period of not less than five years, the last three years of which exposure shall have been in this state.

In cases of silicosis or asbestosis complicated with tuberculosis of the lungs causing total disability or death compensation is payable as and for uncomplicated silicosis or asbestosis when the silicosis or asbestosis is an essential factor in causing such complications of tuberculosis of the lungs. In cases of complications with other diseases than tuberculosis of the lungs compensation shall be proportioned as provided in section 176.661.

Where an employee is afflicted with an occupational disease to such a degree that it is unduly hazardous for such employee to continue in any employment involving the hazard of exposure to such occupational disease, or where for other causes it is medically inadvisable and unduly hazardous for such employee to continue in an employment involving such hazard of occupational disease, the commission shall order the removal of such employee from such hazardous employment.

An employee so removed is eligible for retraining for a new occupation and compensation during such retraining, as provided by the workmen's compensation law. In the event retraining benefits are not accepted by such employee he is to be compensated during his period of unemployment following such removal as though he were wholly or partially disabled by reason of compensable injury, but such compensation shall not exceed a period of 25 weeks following the date of the order so removing such employee. In the event an employee is disabled, by reason of compensable injury, at the time an order for his removal is issued, the benefits provided by this section attach and begin at the termination of such period of compensable disability and constitute additional benefits. In the event retraining of the employee is undertaken during the period of such partial disability compensation is not to continue beyond 25 weeks from the date when such retraining is begun.

If an employee, after being so removed from hazardous employment, returns to such hazardous employment exposing him to any occupational disease, without the consent of the commission, neither he nor his dependents are entitled to compensation for the disablement or death of such employee caused by occupational disease.

An employee so removed from employment is entitled to compensation for disability, or his dependents to compensation for his death, from occupational disease, if such disablement of the employee occurs within three years, in case of silicosis or asbestosis, or within one year, in case of other occupational diseases, from the date of such employee's last exposure to the hazards of such occupational disease prior to such removal.

[1943 c. 633 s. 8]

176.663 EMPLOYEE MAY WAIVE FULL COMPENSATION. Subject to the approval of the commission, an employee affected by occupational disease, as an alternative to a forced change of occupation, may waive, in writing, full compensation for any aggravation of his condition resulting from his continuing in hazardous employment. A waiver so permitted shall remain effective for the trade, occupation, process or employment for which executed, notwithstanding a change or changes of employer. In such cases compensation and medical benefits for later resulting disability or death from such disease is not to continue beyond 100 weeks.

[1943 c. 633 s. 9]

176.664 MUST SERVE NOTICE WITHIN 90 DAYS. Any claim for occupational disease is barred unless within 90 days after disablement of an employee as defined in section 176.66, subdivision 1, notice thereof in accordance with section 176.16 shall have been given to the employer, and unless the claim is filed with the commission within one year after the date of the employee's last exposure or within one year after the date of the last payment of compensation by the employer, or default in payment of compensation for occupational disease, except that in case of silicosis or asbestosis the claim may be filed with the commission within three years after the date of employee's last exposure or within three years of the date of the last payment of compensation by the employer, or his default in payment. If disablement occurs within the last 90 days allowed by this section for filing claim with the commission, then the employee or his dependents shall be allowed a period of 90 days from the happening of such disablement to comply with the provisions of this section.

Compensation is not payable for partial disability from silicosis or asbestosis, except where such partial disability follows a compensable period of total disability. After the effective date of Laws 1943, Chapter 633, in the event of total disability or death from silicosis or asbestosis, compensation is to be paid during a transition

period according to the following formula: if such total disability or death results during the first calendar month after the effective date of Laws 1943, Chapter 633, the total compensation payable for such disability or death, or both shall not exceed \$500; thereafter, the limit on the total compensation payable for total disability or death increases at the rate of \$50.00 per month, in each case such total is limited, pursuant to such formula, according to the month in which incapacity or death occurs. The liability of the employer to furnish medical benefits to the employee does not continue beyond the date when the last compensation is payable pursuant to such formula. Such progressive increase in the limits to the aggregate compensation and benefits for disability or death continues until the limits upon such benefits, as provided in the workmen's compensation act, is reached.

[1943 c. 633 s. 10]

176.665 HEARINGS. Upon the filing with the commission of a claim petition by an employee or his dependents, claiming and demanding compensation and benefits as for occupational disease, if such claim petition and the answer thereto, filed with the commission, presents or raises a controverted medical question and in addition other questions of liability, the commissioner shall first cause the petition and answer to be heard by the commission, a commissioner or referee, according to established practice, and permit all interested parties an opportunity to produce evidence relating to any issue involved except the controverted medical question; as to such question each party to the proceedings shall be permitted to take the testimony of one physician. Upon the completion of the taking of such evidence, the commission, commissioner or referee shall make findings of fact and conclusions of law on all issues involved.

[1943 c. 633 s. 11]

176.666 INVESTIGATIONS. When it appears to the state board of health that conditions exist which require investigation in order to determine the advisability of allowing or permitting an employee to continue in his hazardous employment, it shall file with the commission a petition demanding that the commission proceed to make such investigation and hold such hearings as may be necessary to such determination. Such investigation may also be initiated by the commission, or by petition of any employee or employer. The commission shall proceed promptly, after the filing of such petition or upon its own motion, with such investigation.

[1943 c. 633 s. 12]

176.667 EMPLOYEES TO SUBMIT TO MEDICAL EXAMINATION. Each employee, hereafter entering the service of an employer whose business is one in which the hazard of silicosis or asbestosis is involved, who will be exposed to such hazard because of such employment, shall, at the request of the employer, submit to a medical examination for the purpose of determining whether such employee can safely be employed in such hazardous employment. The cost of such medical examination shall be borne by the employer.

Within one year after the effective date of Laws 1943, Chapter 633, and annually thereafter, each employee engaged in employment which exposes him to the hazards of silicosis or asbestosis shall submit to a medical examination for the purpose of determining whether he is affected in any degree by silicosis or asbestosis, or peculiarly or especially susceptible to either of such diseases. The cost of such examination shall be equally divided between the employer and the employee. The findings and reports of the doctor making each such examination, together with X-ray films and other original exhibits, shall be filed in the office of the commission, and available to the department of health, provided that the commission shall be empowered to order, in such cases as it shall deem advisable, that the X-ray films be filed in any other suitable depository which the commission may designate, such films to be available to the department of health. Any such report is a public record, but may be used only for the purposes of Laws 1943, Chapter 633, as amended.

Upon the termination of an employee's service the employer may request employee to submit to a final medical examination by giving the employee leaving his service ten days' notice in writing of the time and place that the medical examination is to be made, which notice may be delivered to such employee personally or mailed to his last known address. Any employee who wilfully fails or refuses to submit to such medical examination upon leaving the service of an employer, shall thereby waive any right to compensation from such employer for such occupational

disease which later develops. The employer shall forthwith notify the commission in writing, of the employee's failure to submit to such medical examination, and such notice shall be filed in the office of the commission as in the case of medical reports, and shall serve as notice of termination of liability of such employer arising out of any claim by such individual, or by a subsequent employer because of the claim of such individual. The cost of such examination shall be borne by the employer.

[1943 c. 633 s. 13; 1945 c. 541 s. 1]

176.668 REGULAR INSPECTION. The commission shall keep a record of employments and regularly inspect places of employment in any industry in which the hazard of an occupational disease may exist. It shall establish reasonable minimum standards of safety and healthful working conditions in such places of employment and shall furnish such employers with written rules and regulations governing the maintenance of such minimum standards of working conditions. The commission in preparing such rules, regulations or standards, relating to health, or in evaluating industrial health hazards, shall consult with the state department of health through its division of industrial health.

[1943 c. 633 s. 14]

176.669 EXPENSES; RULES. Subdivision 1. **Payment of expenses.** Any expense incurred by the commission in carrying out the purposes of Laws 1943, Chapter 633, shall be paid out of the general fund for the department of labor and industry.

Subd. 2. **Making of rules.** The commission shall make such rules, regulations, and orders with reference to procedure as it deems necessary not inconsistent with Laws 1943, Chapter 633.

[1943 c. 633 ss. 15, 16]

176.67 NOT RETROACTIVE. All rights and liabilities arising on account of accidents or injuries occurring prior to the taking effect of this chapter shall be governed by the then existing law.

[1921 c. 82 s. 68] (4328)

176.68 INVALIDITY. In case for any reason any paragraph or any provision of this chapter 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 thereof.

[1921 c. 82 s. 69] (4329)

176.69 SETTLEMENT OF CLAIMS. An employee or dependent may by a stipulation or agreement settle a claim for compensation with the employer or his insurer, but no such settlement shall be of any force or validity whatsoever until such settlement has been reduced to writing, signed by the parties, approved by the industrial commission, and an award has been made thereon by the commission. All awards pursuant to such settlement shall be subject to reopening in accordance with section 176.60, notwithstanding any statement or agreement to the contrary, which may be contained in any such settlement shall be approved by the industrial commission only where the terms thereof, except as to the amount, conform to the compensation act.

The matter of the approving or disapproving proposed settlements shall rest in the discretion of the commission and the burden of showing that any proposed settlement is fair, reasonable, and in conformity with this chapter, except as to the amount, shall be on the parties.

[1935 c. 313 s. 1] (4330-1)

176.70 COMPENSATION PREFERRED CLAIM IN CERTAIN CASES. When compensation shall be awarded against any county, city, town, village, or school district by any court or commission having jurisdiction to any injured employee, or to the dependents of any deceased employee, under the provisions of the workmen's compensation act of this state, such compensation shall be a preferred claim against such county, city, town, village, or school district and it shall be the duty of the proper officers of any such county, city, town, village, or school district to pay any such claim for workmen's compensation at such times and in such amounts as shall be ordered by the court or commission, out of the general fund of such county, city, town, village, or school district, and from the current tax apportionment received by any such employer for the credit of the fund.

[1921 c. 26 s. 1] (4335)

176.71 WARRANTS ARE PREFERRED CLAIMS. In any case where the orders or warrants of such county, city, town, village, or school district have heretofore been issued, or shall hereafter be issued, in payment of any such compensation and remain unpaid, all such orders or warrants shall be preferred claims and paid out of the fund, from current tax apportionments received for the credit of the fund, in preference to any other claims for compensation arising under the law subsequent to the issuing of any such orders or warrants by the employer.

[1921 c. 26 s. 2] (4336)

176.72 LIBERALLY CONSTRUED. Sections 176.70 and 176.71 shall be liberally construed in order to effect the prompt payment of claims for workmen's compensation against any county, city, town, village, or school district by any injured employee, or the dependents of any deceased employee, of such county, city, town, village, or school district.

[1921 c. 26 s. 3] (4337)

176.73 APPLICATION OF WORKMEN'S COMPENSATION ACT TO STATE EMPLOYEES. The workmen's compensation act shall apply to all employees of the state employed in any department thereof. It shall be the primary duty of the industrial commission to defend the state and its several departments against workmen's compensation claims when after investigation it shall deem such defense necessary or advisable. The attorney general may, at any time and at any stage of a compensation proceeding, take over and assume such defense, and upon request of the commission or any department of the state, shall take over and assume such defense. For the purpose of such defense, the commission shall have authority to provide for medical examinations of injured employees, procure the attendance at hearings of expert and other witnesses and do any other act necessary to a proper defense. All expenses incurred in such defense shall be charged to the department involved and paid out of the state compensation revolving fund.

The commission shall have power to employ not to exceed two attorneys and one stenographer, and their salaries shall be apportioned among the several departments of the state in the proportion that the amount of compensation paid during the fiscal year by any such department bears to the total amount of compensation paid by all departments during such year, and the salaries shall be paid out of the state compensation revolving fund.

[1927 c. 436 s. 1; 1935 c. 315 s. 1] (4337-1)

176.74 HEADS OF STATE DEPARTMENTS TO REPORT TO INDUSTRIAL COMMISSION. The head of every state department shall report to the industrial commission any accident which may occur to any person in the employment of such department in the same manner and upon the same conditions as prescribed in section 176.32, relating to reports of employers, except that such report need not contain any statement in relation to liability to pay compensation.

[1927 c. 436 s. 2] (4337-2)

176.75 STATE EMPLOYEES; CLAIMS; POWERS OF INDUSTRIAL COMMISSION. The industrial commission is hereby vested with the same powers and duties with reference to claims for compensation or other benefits to employees of the state as in the case of employees of other employers, and the same procedure shall govern in determining the liability of the state for compensation to its employees as in other cases of liability under the workmen's compensation act, except as otherwise provided in sections 176.73 to 176.77.

[1927 c. 436 s. 3] (4337-3)

176.76 PROCEDURE. Upon the filing of any such report or upon information received by the industrial commission of any injuries for which liability for compensation from the state may arise, it shall be the duty of the commission to make a preliminary investigation to determine whether there is a probable liability for compensation by the state to such injured employee. The commission may require the assistance of the head of any state department or any other employees of the state in making such investigation and shall be furnished with all facts which may appear in the records of any state department bearing upon the question of accident or injury to any such employees. The commission shall thereupon make findings of fact as determined by such preliminary investigation and the award or other determination which the commission may determine should be made with reference to the liability of the state for compensation, and a copy of such findings of fact and proposed award or determination shall be furnished to such injured person,

the head of the department in which he is an employee, and the attorney general, by mailing a copy thereof to each such official. Within ten days after the mailing of such findings of fact, proposed award, or other determination, or such further time as the commission may fix, the injured person, head of the department, and attorney general may file with the commission an objection to such proposed award or determination. After such objection is filed, the commission shall reconsider such proposed award or determination and may set aside or correct any such findings, award, or other determination, without formal hearing. In the event that an award or other determination cannot be made in conformity with the provisions of the workmen's compensation act and the approval of the injured person or other persons filing such objections without formal hearing, the matter shall be set down for a formal hearing and determination by the commission as in other contested cases. If no such objections are filed such proposed findings, award, or other determination that the commission shall have made upon such preliminary investigation or reconsideration shall be final, subject to the right of the commission to reform or modify the same as provided in the compensation laws with reference to other awards or determination of compensation claims.

[1927 c. 436 s. 4] (4337-4)

176.77 PAYMENT OF COMPENSATION AWARDED. A certified copy of the findings and final award of the commission shall be filed with the attorney general and with the state auditor, and payment of compensation or other benefits, as the same may be determined by the industrial commission in such final award, shall be paid to the persons entitled thereto by the state treasurer upon warrants prepared by the commission and approved by the state auditor, pursuant to the final award, out of any money appropriated for the purpose of paying such compensation claims. The employees or dependents to whom such payments are made shall file with the commission receipts for all current interim and final payments of compensation the same as is required of employers by section 176.34 of the workmen's compensation act.

[1927 c. 436 s. 5; 1945 c. 30] (4337-5)

176.78 STATE COMPENSATION REVOLVING FUND. In order to facilitate the discharge by the state of its obligations under the workmen's compensation act, there is hereby established a revolving fund to be known and designated as the state compensation revolving fund.

Any unexpended balance in such fund remaining on July 1, 1935, together with the sums to be paid into the fund by the several state departments and divisions thereof, as hereinafter provided, shall constitute this fund. The state treasurer shall be the custodian of the fund and no moneys for awards of compensation benefits shall be paid out of the fund except in the manner now provided for payment of awards by the industrial commission pursuant to sections 176.73 to 176.77. Moneys required to be paid out in accordance with section 176.79, clauses (1) and (2), may be paid out upon the warrants of the commission.

[1933 c. 161 s. 1] (4337-6)

176.79 PAYMENTS TO BE MADE FROM FUND. Out of this fund shall hereafter be made all of the following payments in the following order:

(1) The actual cost to the industrial commission of the administration of the workmen's compensation act in its application to the employees of the several state departments and divisions thereof;

(2) All necessary expenses incurred by the commission or the attorney general's office in defending against or investigating any claim against the state for compensation;

(3) All awards made by the commission for compensation and medical, hospital, and other expenses to injured state employees or their dependents.

[1933 c. 161 s. 2] (4337-7)

176.80 [Obsolete]

176.81 MAINTENANCE OF FUNDS. Subdivision 1. This fund shall be maintained as follows.

Subd. 2. Every state department wherein the salaries of its employees are fixed by a managing or governing board, which board controls the expenditures of appropriations made to such departments, and which departments are by section 176.80 declared to be self-sustaining departments for the purpose of this chapter, and every state department or division thereof which is substantially financially self-

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sustaining by reason of income and revenue from its activities, shall at the end of every fiscal year pay into such fund such sum as the industrial commission shall certify has been paid out of the revolving fund during the year to employees of the department or divisions thereof or to dependents of these employees on account of compensation, medical, hospital, or other expenses as enumerated in section 176.79; provided, that on and after July 1, 1935, the state highway department shall reimburse the fund for moneys paid to its employees or their dependents at such times and in such amounts as the commission may by order require;

Subd. 3. Departments or divisions of the state which are not self-sustaining to any substantial degree shall, at the end of every biennium beginning June 30, 1935, pay into the fund such sum as the commission shall certify has been paid out of the revolving fund during the biennium to employees of the departments or divisions or the dependents of these employees on account of compensation, medical, hospital, or other expenses as enumerated in section 176.79;

It is hereby made the duty of the heads of such departments of the state to anticipate and make provision for these payments by including them in their budget requests to the legislature;

Subd. 4. Departments or divisions thereof which are partially self-sustaining shall at the end of every fiscal year pay into the fund such proportion of the sum which the industrial commission shall certify has been paid out of the revolving fund during the year to employees of the departments or divisions thereof or the dependents of these employees on account of compensation, medical, hospital, or other expenses as enumerated in section 176.79, as the total of their income and revenue bears to their annual cost of operating, and at the end of every biennium, beginning June 30, 1935, shall pay the balance of the sums so certified and during the biennium shall anticipate and make provisions for such payments by including the same in their budget requests to the legislature.

Subd. 5. There is hereby appropriated from the general revenue fund in the state treasury to the state compensation revolving fund the sum of \$50,000 to be used in connection with the payment of workmen's compensation claims of employees of the state, which, with the sum of \$74,013.12 heretofore appropriated from the trunk highway fund of the department of highways in the state treasury to the state compensation revolving fund to be used in connection with the payment of workmen's compensation claims of employees of the department of highways and, with \$75,986.88 already appropriated, totals \$200,000, the latter sum to constitute the state compensation revolving fund and to be used and maintained as herein provided.

[1933 c. 161 s. 4; 1935 c. 312 s. 1; 1939 c. 3 s. 1; 1945 c. 243] (4337-9)