

No. 61

AN ACT

SB 1048

Amending the act of June 2, 1915 (P.L.736) entitled, as amended, "An act defining the liability of an employer to pay damages for injuries received by an employe in the course of employment; establishing an elective schedule of compensation; providing procedure for the determination of liability and compensation thereunder; and prescribing penalties," further providing for interpretation and definitions, damages by action at law, elective compensation, procedure and general provisions and making repeals.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Sections 101 and 104, act of June 2, 1915 (P.L.736), known as "The Pennsylvania Workmen's Compensation Act," reenacted and amended June 21, 1939 (P.L.520), and amended February 28, 1956 (P.L.1120), are amended to read:

Section 101. That this act shall be called and cited as The Pennsylvania Workmen's Compensation Act, and shall apply to all **[accidents] injuries** occurring within this Commonwealth, irrespective of the place where the contract of hiring was made, renewed, or extended, and shall not apply to any **[accident] injury** occurring outside of the Commonwealth, except to **[accidents] injuries** occurring to Commonwealth employes outside the Commonwealth while such employes are engaged in duly authorized business of the Commonwealth, and except **[accidents] injuries** occurring to employes whose duties require them to go temporarily beyond the territorial limits of the Commonwealth, not over six months when such employes are performing services for employers whose place of business is within the Commonwealth.

Section 104. The term "employe," as used in this act is declared to be synonymous with servant, and includes—

All natural persons who perform services for another for a valuable consideration, exclusive of persons whose employment is casual in character and not in the regular course of the business of the employer, and exclusive of persons to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished or repaired, or adapted for sale in the worker's own home, or on other premises, not under the control or management of the employer. Every executive officer of a corporation elected or appointed in accordance with the charter and by-laws of the corporation, except elected officers of the Commonwealth or any of its political subdivisions, shall be an employe of the corporation *except as hereinafter provided in sections 302 (c), 305 and 321.*

Section 2. Section 105 of the act is amended to read:

Section 105. The term "contractor," as used in article two, section two hundred and three, and article three, section three hundred and two (b), shall not include a contractor engaged in an independent business, other than that of supplying laborers or assistants, in which he serves persons other than the employer in whose service the **[accident] injury** occurs, but shall include a sub-contractor to whom a principal contractor has sublet any part of the work which such principal contractor has undertaken.

Section 3. The act is amended by adding a section to read:

Section 105.1. The term "the Statewide average weekly wage," as used in this act, means that amount which shall be determined annually by the department for each calendar year on the basis of employment covered by the Pennsylvania Unemployment Compensation Law for the twelve-month period ending June 30 preceding the calendar year.

Section 4. The act is amended by adding a section to read:

Section 105.2. The terms "the maximum weekly compensation payable" and "the maximum compensation payable per week," as used in this act, mean sixty-six and two-thirds per centum of "the Statewide average weekly wage" as defined in section 105.1.

Section 5. Section 204 of the act, amended May 14, 1949 (P.L.1379), is amended to read:

Section 204. No agreement, composition, or release of damages made before the date of any **[accident] injury**, except the agreement defined in article three of this act, shall be valid or shall bar a claim for damages **[for the injury]** resulting therefrom; and any such agreement, other than that defined in article three herein, is declared to be against the public policy of this Commonwealth. The receipt of benefits from any association, society, or fund shall not bar the recovery of damages by action at law, nor the recovery of compensation under article three hereof; and any release executed in consideration of such benefits shall be void: Provided, however, That if the employe receives unemployment compensation benefits, such amount or amounts so received shall be credited as against the amount of the award made under the provisions of the occupational disease act.

Section 6. Subsection (a) of section 301 of the act, amended February 28, 1956 (P.L.1120), is amended to read:

Section 301. (a) When employer and employe shall by agreement, either express or implied, as hereinafter provided, accept the provisions of article three of this act, compensation for personal injury to, or for the death of such employe, by an **[accident] injury** in the course of his employment, shall be paid in all cases by the employer, without regard to negligence, according to the schedule contained in sections three hundred and six and three hundred and seven of this article: Provided, That no compensation shall be paid when the injury or death is intentionally self inflicted, or is caused by the employe's violation of law, but the burden of proof of such fact shall be upon the employer, and no compensation shall be paid if, during hostile attacks on the United States, injury or death of employes results solely

from military activities of the armed forces of the United States or from military activities or enemy sabotage of a foreign power.

* * *

Section 7. Subsection (c) of section 301 of the act is amended to read:
Section 301. * * *

(c) The terms "injury" and "personal injury," as used in this act, shall be construed to mean **[only violence to the physical structure of the body,] an injury to an employe, regardless of his previous physical condition, arising in the course of his employment and related thereto,** and such disease or infection as naturally results **[therefrom] from the injury or is aggravated, reactivated or accelerated by the injury;** and wherever death is mentioned as a cause for compensation under this act, it shall mean only death resulting from such **[violence] injury** and its resultant effects, and occurring within three hundred weeks after the **[accident] injury**. The term "injury **[by an accident] arising** in the course of his employment," as used in this article, shall not include an injury caused by an act of a third person intended to injure the employe because of reasons personal to him, and not directed against him as an employe or because of his employment; but shall include all other injuries sustained while the employe is actually engaged in the furtherance of the business or affairs of the employer, whether upon the employer's premises or elsewhere, and shall include all injuries caused by the condition of the premises or by the operation of the employer's business or affairs thereon, sustained by the employe, who, though not so engaged, is injured upon the premises occupied by or under the control of the employer, or upon which the employer's business or affairs are being carried on, the employe's presence thereon being required by the nature of his employment.

Section 8. Section 302 of the act is amended by adding a subsection to read:

Section 302. * * *

(c) *Any employer employing persons in agricultural labor at any time during the calendar year shall be required to provide workmen's compensation coverage for such employes according to the provisions of this act, except casual labor which means employments where the work contemplated is to be completed in not exceeding twenty days without regard to number of employes and the total labor cost of such work is less than one hundred fifty dollars (\$150).*

Section 9. Section 304 of the act is amended to read:

Section 304. Any agreement between employer and employe for the operation or non-operation of the provisions of article three of this act may be terminated prior to any **[accident] injury** by either party, upon thirty days' notice to the other in writing, if a copy of such notice, with proof of service, be filed in the department, as provided in section three hundred and two of this article.

Section 10. Section 304.1 of the act is repealed.

Section 11. Section 305 of the act, amended February 28, 1956 (P.L.1120) and January 25, 1966 (P.L.1552), is amended to read:

Section 305. Every employer liable under this act to pay compensation shall insure the payment of compensation in the State Workmen's Insurance Fund, or in any insurance company, or mutual association or company, authorized to insure such liability in this Commonwealth, unless such employer shall be exempted by the department from such insurance. Such insurer shall assume the employer's liability hereunder and shall be entitled to all of the employer's immunities and protection hereunder except, that whenever any employer shall have purchased insurance to provide benefits under this act to persons engaged in domestic service **[or agriculture]**, neither the employer nor the insurer may invoke the provisions of section **[1, act of June 21, 1939 (P.L.565), entitled "A Supplement to the act, approved the second day of June, one thousand nine hundred and fifteen (Pamphlet Laws, seven hundred thirty-six), entitled, as amended 'An act defining the liability of an employer to pay damages for injuries received by an employe in the course of employment; establishing an elective schedule of compensation; providing procedure for the determination of liability and compensation thereunder; and prescribing penalties,' as reenacted and amended, to exempt domestic servants and agricultural workers from the provisions thereof, except in certain cases,"]** 321 as a defense. An employer desiring to be exempt from insuring the whole or any part of his liability for compensation shall make application to the department, showing his financial ability to pay such compensation, whereupon the department, if satisfied of the applicant's financial ability, shall, upon the payment of a fee of **[fifty dollars (\$50.00)]** *one hundred dollars (\$100.00)*, issue to the applicant a permit authorizing such exemption. From a refusal of the department to issue such permit, an appeal shall lie to the **[court of common pleas of Dauphin County] Commonwealth Court**. In any such appeal the only question shall be whether the department abused its discretion in refusing such permit. The department shall establish a period of twelve (12) calendar months, to begin and end at such times as the department shall prescribe, which shall be known as the annual exemption period. Unless previously revoked, all permits issued under this section shall expire and terminate on the last day of the annual exemption period for which they were issued. Permits issued under this act shall be renewed upon the filing of an application, and the payment of a renewal fee of **[fifty dollars (\$50.00)]** *one hundred dollars (\$100.00)*. The department may, from time to time, require further statements of the financial ability of such employer, and, if at any time such employer appear no longer able to pay compensation, shall revoke its permit granting exemption, in which case the employer shall immediately subscribe to the State Workmen's Insurance Fund, or insure his liability in any insurance company or mutual association or company, as aforesaid.

Any employer who fails to comply with the provisions of this section for every such failure, shall, upon summary conviction before any official of competent jurisdiction, be sentenced to pay a fine of not less than **[one hundred dollars (\$100)]** *five hundred dollars (\$500)* nor more than **[five hundred dollars (\$500)]** *two thousand dollars (\$2,000)*, and costs of prosecution, or imprisonment for a period of not more than **[six months]** *one (1) year*, or both. Every day's violation shall constitute a separate offense. It shall be the duty of the department to enforce the provisions of this section; and it shall investigate all violations that are brought to its notice and shall institute prosecutions for violations thereof. All fines recovered under the provisions of this section shall be paid to the department, and by it paid into the State Treasury.

In any proceeding against an employer under this section, a certificate of non-insurance issued by the official Workmen's Compensation Rating and Inspection Bureau and a certificate of the department showing that the defendant has not been exempted from obtaining insurance under this section, shall be prima facie evidence of the facts therein stated.

Section 12. Section 306 of the act, amended February 28, 1956 (P.L.1120), December 28, 1959 (P.L.2034), December 31, 1965 (P.L.1284) and January 17, 1968 (Act No. 4), is amended to read:

Section 306. The following schedule of compensation is hereby established:

(a) For total disability, sixty-six and two-thirds per centum of the wages of the injured employe as defined in section three hundred and nine beginning after the seventh day of total disability, and payable for the duration of total disability, but the compensation shall not be more than **[sixty dollars per week]** *sixty-six and two-thirds per centum of the Statewide average weekly wage* nor less than **[thirty-five dollars per week.]** *fifty per centum of the maximum weekly compensation payable.* If at the time of injury, the employe receives wages **[of thirty-five dollars per week or less,]** *equal to or less than fifty per centum of the maximum weekly compensation payable,* then he shall receive ninety per centum of **[the wages per week]** *his average weekly wage* as compensation, but in no event less than **[twenty-two dollars per week,]** *thirty-three and one-third per centum of the maximum weekly compensation payable.* Nothing in this clause shall require payment of compensation after disability shall cease.

(b) For disability partial in character (except the particular cases mentioned in clause (c)), sixty-six and two-thirds per centum of the difference between the wages of the injured employe, as defined in section three hundred and nine, and the earning power of the employe thereafter; but such compensation shall not be more than **[forty-five dollars per week]** *sixty-six and two-thirds per centum of the Statewide average weekly wage.* This compensation shall be paid during the period of such partial disability except as provided in clause (e) of this section, but for not

more than **[three hundred and fifty] five hundred** weeks. Should total disability be followed by partial disability, the period of **[three hundred and fifty] five hundred** weeks shall not be reduced by the number of weeks during which compensation was paid for total disability. The term "earning power," as used in this section, shall in no case be less than the weekly amount which the employe receives after the **[accident] injury**, and in those cases in which the employe works fewer than five days per week for reasons not connected with or arising out of the disability resulting from the injury shall not be less than five times his actual daily wage as fixed by the day, hour, or by the output of the employe; and in no instance shall an employe receiving compensation under this section receive more in compensation and wages combined than a fellow employe in employment similar to that in which the injured employe was engaged at the time of the **[accident] injury**.

(c) For all disability resulting from permanent injuries of the following classes, the compensation shall be exclusively as follows:

(1) For the loss of a hand, sixty-six and two-thirds per centum of wages during **[one hundred and seventy-five] three hundred thirty-five** weeks.

(2) For the loss of a forearm, sixty-six and two-thirds per centum of wages during **[one hundred and ninety-five] three hundred seventy** weeks.

(3) For the loss of an arm, sixty-six and two-thirds per centum of wages during **[two hundred and fifteen] four hundred ten** weeks.

(4) For the loss of a foot, sixty-six and two-thirds per centum of wages during **[one hundred and fifty] two hundred fifty** weeks.

(5) For the loss of a lower leg, sixty-six and two-thirds per centum of wages during **[one hundred and eighty] three hundred fifty** weeks.

(6) For the loss of a leg, sixty-six and two-thirds per centum of wages during **[two hundred and fifteen] four hundred ten** weeks.

(7) For the loss of an eye, sixty-six and two-thirds per centum of wages during **[one hundred and fifty] two hundred seventy-five** weeks.

(8) For the complete loss of hearing, in both ears, sixty-six and two-thirds per centum of wages during **[one hundred and eighty] two hundred sixty** weeks; *for complete loss of hearing in one ear, sixty-six and two-thirds per centum of wages during sixty weeks.*

(9) For the loss of a thumb, sixty-six and two-thirds per centum of wages during **[sixty] one hundred** weeks.

(10) For the loss of a first finger, commonly called index finger, sixty-six and two-thirds per centum of wages during **[thirty-five] fifty** weeks.

(11) For the loss of a second finger, sixty-six and two-thirds per centum of wages during **[thirty] forty** weeks.

(12) For the loss of a third finger, sixty-six and two-thirds per centum of wages during **[twenty] thirty** weeks.

(13) For the loss of a fourth finger, commonly called little finger, sixty-six and two-thirds per centum of wages during **[fifteen] twenty-eight** weeks.

(14) The loss of the first phalange of the thumb shall be considered the loss of the thumb. The loss of a substantial part of the first phalange of the thumb shall be considered the loss of one-half of the thumb.

(15) The loss of any substantial part of the first phalange of a finger, or an amputation immediately below the first phalange for the purpose of providing an optimum surgical result, shall be considered loss of one-half of the finger. Any greater loss shall be considered the loss of the entire finger.

(16) The loss of one-half of the thumb, or a finger, shall be compensated at the same rate as for the loss of a thumb or finger but for one-half of the period provided for the loss of a thumb or finger.

For the loss of, or permanent loss of the use of, any two or more such members, not constituting total disability, sixty-six and two-thirds per centum of wages during the aggregate of the periods specified for each.

(17) For the loss of a great toe, sixty-six and two-thirds per centum of wages during forty weeks.

(18) For the loss of any other toe, sixty-six and two-thirds per centum of wages during sixteen weeks.

(19) The loss of the first phalange of the great toe, or of any toe, shall be considered equivalent to the loss of one-half of such great toe, or other toe, and shall be compensated at the same rate as for the loss of a great toe, or other toe, but for one-half of the period provided for the loss of a great toe or other toe.

(20) The loss of more than one phalange of a great toe, or any toe, shall be considered equivalent to the loss of the entire great toe or other toe.

(21) For the loss of, or permanent loss of the use of any two or more such members, not constituting total disability, sixty-six and two-thirds per centum of wages during the aggregate of the periods specified for each.

(22) For serious and permanent disfigurement of the head, neck or face, of such a character as to produce an unsightly appearance, and such as is not usually incident to the employment, sixty-six and two-thirds per centum of wages not to exceed **[one hundred and fifty] two hundred seventy-five** weeks.

(23) Unless the board shall otherwise determine, the loss of both hands or both arms or both feet or both legs or both eyes shall constitute total disability, to be compensated according to the provisions of clause (a).

(24) Amputation at the wrist shall be considered as the equivalent of the loss of a hand, and amputation at the ankle shall be considered as the equivalent of the loss of a foot. Amputation between the wrist and the elbow shall be considered as the loss of a forearm, and amputation between the ankle and the knee shall be considered as the loss of a lower leg. Amputation at or above the elbow shall be considered as the loss of an arm and amputation at or above the knee shall be considered as the loss of a leg. Permanent loss of the use of a hand, arm, foot, leg, eye, finger,

or thumb, great toe or other toe, shall be considered as the equivalent of the loss of such hand, arm, foot, leg, eye, finger, or thumb, great toe or other toe.

(25) In addition to the payments hereinbefore provided for permanent injuries of the classes specified, any period of disability necessary and required as a healing period shall be compensated in accordance with the provisions of this subsection. The healing period shall end (I) when the claimant returns to employment without impairment in earnings, or (II) on the last day of the period specified in the following table, whichever is the earlier:

For the loss of a hand, twenty weeks.

For the loss of a forearm, twenty weeks.

For the loss of an arm, twenty weeks.

For the loss of a foot, twenty-five weeks.

For the loss of the lower leg, twenty-five weeks.

For the loss of a leg, twenty-five weeks.

For the loss of an eye, ten weeks.

For the loss of hearing, ten weeks.

For the loss of a thumb or any part thereof, ten weeks.

For the loss of any other finger or any part thereof, six weeks.

For the loss of a great toe or any part thereof, twelve weeks.

For the loss of any other toe or any part thereof, six weeks.

This compensation shall not be more than [sixty dollars per week] *sixty-six and two-thirds per centum of the Statewide average weekly wage* nor less than [thirty-five dollars per week: Provided, That if at the time of injury the employe receives wages of thirty-five dollars per week or less then he shall receive ninety per centum of such wages per week as compensation, but in no event less than twenty-two dollars per week.] *sixty-six and two-thirds per centum of the maximum compensation payable per week for total disability as provided in subsection (a) of this section, but in no event more than the employe's average weekly wage.* When an employe works during the healing period, his wages and earning power shall be as defined in this act and he shall not receive more in wages and compensation combined than his wages at the time of the [accident] *injury* as defined in section three hundred and nine. Where any such permanent injury or injuries shall require an amputation at any time after the end of the healing period hereinbefore provided, the employe shall be entitled to receive compensation for the second healing period, and in the case of a second injury or amputation to the same limb prior to the expiration of the first healing period a new healing period shall commence for the period hereinbefore provided, and no further compensation shall be payable for the first healing period.

(d) Where, at the time of the [accident] *injury* the employe receives other injuries, separate from these which result in permanent injuries enumerated in clause (c) of this section, the number of weeks for which

compensation is specified for the permanent injuries shall begin at the end of the period of temporary total disability which results from the other separate injuries, but in that event the employe shall not receive compensation provided in clause (c) of this section for the specific healing period. In the event the employe suffers two or more permanent injuries of the above enumerated classes compensable under clause (c) of this section, he shall be compensated for the largest single healing period rather than the aggregate of the healing periods.

(e) No compensation shall be allowed for the first seven days after disability begins, except as provided in this clause (e) and clause (f) of this section. If the period of disability lasts more than six weeks after the date of the **[accident] injury**, the employe shall also receive compensation for the first seven days of disability.

(f) **[During the first twelve months after disability begins, the] The** employer shall **[furnish] provide payment for** reasonable surgical and medical services, services rendered by duly licensed practitioners of the healing arts, medicines, and supplies, as and when needed **[, unless the employe refuses to allow them to be furnished by the employer. If the employer shall, upon application made to him, refuse to furnish such services, medicines, and supplies, the employe may procure same and shall receive from the employer the reasonable cost thereof within the above limitation]; Provided, That the employe may select a duly licensed practitioner of the healing arts of his own choice, unless at least five physicians shall have been designated by the employer or by the employer and the employe's representative by agreement, in which instances the employe shall select a physician from among those designated.** In addition to the above service, **the employer shall provide payment for** medicines and supplies, hospital treatment, services and supplies and orthopedic appliances, and prostheses. **[shall be furnished by the employer for the said period of twelve months. The board may order further medical, surgical and hospital services, if it is established that further care will result in restoring the injured employe's earning power to a substantial degree. In each order the board shall specify the maximum period and the maximum cost of the cost of the treatment designed for the employe's rehabilitation.]** The cost for such hospital treatment, service and supplies shall not in any case exceed the prevailing charge in the hospital for like services to other individuals. If the employe shall refuse reasonable services **[rendered by] of** duly licensed practitioners of the healing arts, surgical, medical and hospital services, treatment, medicines and supplies, **[tendered to him by his employer,]** he shall forfeit all rights to compensation for any injury or any increase in his incapacity shown to have resulted from such refusal. Whenever an employe shall have suffered the loss of a limb, part of a limb, or an eye, the employer shall **[furnish to the employe, in addition to the aforementioned surgical and medical services, services rendered by duly licensed practitioners of the healing arts, medicines and supplies,] also provide payment for** an artificial limb or eye or other prostheses of a type and kind recommended by the

doctor attending such employe in connection with such injury and any replacements for an artificial limb or eye which the employe may require at any time thereafter, together with such continued medical care as may be prescribed by the doctor attending such employe in connection with such injury [~~without regard to the limitations in amount hereinbefore set forth~~] as well as such training as may be required in the proper use of such prostheses. The provisions of this section shall apply in injuries [where no] *whether or not loss of earning power occurs. If ward treatment is required, but no ward facilities are available, regardless of the patient's condition, the employer, not the patient, shall be liable for the additional costs for the facilities in a private or semi-private room.*

The payment by an insurer for any medical, surgical or hospital services or supplies after any statute of limitations provided for in this act shall have expired shall not act to reopen or revive the compensation rights for purposes of such limitations.

(g) Should the employe die from some other cause than the injury, [the liability for compensation shall cease.] *payments of compensation to which the deceased would have been entitled to under section 306 (c) (1) to (25) shall be paid to the following persons who at the time of the death of the deceased were dependents within the definition of clause 7 of section 307 and in the following order and amounts:*

(1) *To the surviving widow or widower if there are no children under the age of eighteen.*

(2) *To a surviving widow or widower and a surviving child or children in which event the widow or widower shall receive one-half and the surviving child or children shall receive the other half.*

(3) *To a surviving child or children if there is no surviving widow or widower.*

(4) *If there is no surviving widow or widower and no surviving child or children of the deceased then to that dependent or those dependents named in clause 5 of section 307.*

(5) *If there are no persons eligible as named above or in those classes then to those persons who are named in clause 6 of section 307.*

(6) *When such compensation is paid to dependents above named, compensation shall not cease even though the person receiving the payments ceases to be a dependent as defined in section 307.*

(7) *If there be no dependents eligible to receive payments under this section then the payments shall be made to the estate of the deceased but in an amount not exceeding reasonable funeral expenses as provided in this act or if there be no estate, to the person or persons paying the funeral expenses of such deceased in an amount not exceeding reasonable funeral expenses as provided in this act.*

Section 13. Section 306.1, amended December 28, 1959 (P.L.2034), is amended to read:

Section 306.1. If an employe, who has incurred (through [accident])

injury or otherwise) permanent partial disability, through the loss, or loss of use of, one hand, one arm, one foot, one leg or one eye, incurs total disability through a subsequent injury, causing loss, or loss of use of, another hand, arm, foot, leg or eye, he shall be entitled to additional compensation as follows:

After the cessation of payments by the employer for the period of weeks prescribed in Clause (c) of section 306, for the subsequent injury, additional compensation shall be paid during the continuance of total disability, at the weekly compensation rate applicable for total disability. This additional compensation shall be paid by the **[Commonwealth only upon an award by a compensation referee or the board]** *department out of the Subsequent Injury Fund created pursuant to section 306.2.* All claims for such additional compensation shall be forever barred unless the employe shall have filed a petition therefor with the **[board within one year after the last payment made under Clause (c) hereof out of the general fund in the State Treasury.]** *department in the same manner and within the same time as provided in section 315 with respect to other injuries.*

[The sum of seventy-five thousand dollars (\$75,000) is hereby appropriated to the Department of Labor and Industry for compensation payable, by the Commonwealth, under this section, for the biennium one thousand nine hundred and fifty-nine—one thousand nine hundred sixty-one.]

The Department of Labor and Industry shall be charged with the conservation of the assets of said appropriation. In furtherance of this purpose, the Attorney General shall appoint a member of his staff to represent the **[Commonwealth]** *Subsequent Injury Fund* in all proceedings brought to enforce claims against **[the Commonwealth]** *such fund.* In its award **[the Workmen's Compensation Board of]** the Department of Labor and Industry shall specifically find the amount the injured employe shall be paid weekly, the number of weeks compensation which shall be paid by the employer, the date upon which payments **[out of the State appropriation]** shall begin, and if possible the length of time such payments shall continue. **[all payments to cease upon the death of claimant.]**

Any benefits received by any employe, or to which he may be entitled, by reason of such increased disability, from any State or Federal fund or agency to which said employe has not directly contributed, shall be regarded as a credit to any award made against the Commonwealth as aforesaid, excepting those benefits received by an employe by reason of service connected physical injuries, incurred during any war between the United States of America and any foreign country.

Section 14. The act is amended by adding a section to read:

Section 306.2. *The sum of one hundred thousand dollars (\$100,000) is hereby appropriated to the Department of Labor and Industry for the Subsequent Injury Fund by the Commonwealth for the 1971-1972 fiscal year and this fund shall be maintained at one hundred thousand dollars (\$100,000) by assessing each insurer a proportion of the amount expended from the fund during the preceding year, that the total*

compensation paid by such insurers during such year bore to the total compensation paid by all insurers that year: Provided, however, That in the first year in which assessments are made under this provision, the total amount assessed and collected shall be two hundred per centum of the amount paid in such cases during the preceding year.

Section 15. Section 307 of the act, amended January 17, 1968 (Act No. 4), is amended to read:

Section 307. In case of death, compensation shall be computed on the following basis, and distributed to the following persons:

1. If there be no widow nor widower entitled to compensation, compensation shall be paid to the guardian of the child or children, or, if there be no guardian, to such other persons as may be designated by the board as hereinafter provided as follows:

(a) If there be one child, thirty-two per centum of wages of deceased, but not in excess of **[twenty-five dollars per week]** *sixty-six and two-thirds per centum of the Statewide average weekly wage.*

(b) If there be two children, forty-two per centum of wages of deceased, but not in excess of **[thirty-three dollars per week]** *sixty-six and two-thirds per centum of the Statewide average weekly wage.*

(c) If there be three children, fifty-two per centum of wages of deceased, but not in excess of **[forty-one dollars per week]** *sixty-six and two-thirds per centum of the Statewide average weekly wage.*

(d) If there be four children, sixty-two per centum of wages of deceased, but not in excess of **[forty-eight dollars per week]** *sixty-six and two-thirds per centum of the Statewide average weekly wage.*

(e) If there be five children, sixty-four per centum of wages of deceased, but not in excess of **[fifty-four dollars per week]** *sixty-six and two-thirds per centum of the Statewide average weekly wage.*

(f) If there be six or more children, sixty-six and two-thirds per centum of wages of deceased, but not in excess of **[sixty dollars per week]** *sixty-six and two-thirds per centum of the Statewide average weekly wage.*

2. To the widow or widower, if there be no children, fifty-one per centum of wages, but not in excess of **[thirty-nine dollars per week]** *sixty-six and two-thirds per centum of the Statewide average weekly wage.*

3. To the widow or widower, if there be one child, sixty per centum of wages, but not in excess of **[forty-six dollars per week]** *sixty-six and two-thirds per centum of the Statewide average weekly wage.*

4. To the widow or widower, if there be two children, sixty-six and two-thirds per centum of wages but not in excess of **[fifty-four dollars per week]** *sixty-six and two-thirds per centum of the Statewide average weekly wage.*

4 1/2. To the widow or widower, if there be three or more children, sixty-six and two thirds per centum of wages, but not in excess of **[sixty dollars per week]** *sixty-six and two-thirds per centum of the Statewide average weekly wage.*

5. If there be neither widow, widower, nor children entitled to compensation, then to the father or mother, if dependent to any extent upon the employe at the time of the [accident] *injury*, thirty-two per centum of wages but not in excess of [twenty-five dollars per week] *sixty-six and two-thirds per centum of the Statewide average weekly wage*: Provided, however, That in the case of a minor child who has been contributing to his parents, the dependency of said parents shall be presumed: And provided further, That if the father or mother was totally dependent upon the deceased employe at the time of the [accident] *injury*, the compensation payable to such father or mother shall be fifty-two per centum of wages, but not in excess of [thirty-eight dollars per week] *sixty-six and two-thirds per centum of the Statewide average weekly wage*.

6. If there be neither widow, widower, children, nor dependent parent, entitled to compensation, then to the brothers and sisters, if actually dependent upon the decedent for support at the time of his death, twenty-two per centum of wages for one brother or sister, and five per centum additional for each additional brother or sister, with a maximum of thirty-two per centum, such compensation to be paid to their guardian, or if there be no guardian, to such other person as may be designated by the board, as hereinafter provided.

7. Whether or not there be dependents as aforesaid, the reasonable expense of burial, not exceeding seven hundred fifty dollars, which shall be paid by the employer or insurer directly to the undertaker (without deduction of any amounts theretofore paid for compensation or for medical expenses).

Compensation shall be payable under this section to or on account of any child, brother, or sister, only if and while such child, brother, or sister, is under the age of eighteen *unless such child, brother or sister is dependent because of disability when compensation shall continue or be paid during such disability of a child, brother or sister over eighteen years of age*. No compensation shall be payable under this section to a widow, unless she was living with her deceased husband at the time of his death, or was then actually dependent upon him and receiving from him a substantial portion of her support. No compensation shall be payable under this section to a widower, unless he be incapable of self-support at the time of his wife's death and be at such time dependent upon her for support. If members of decedent's household at the time of his death, the terms "child" and "children" shall include step-children, adopted children and children to whom he stood in loco parentis, and shall include posthumous children. Should any dependent of a deceased employe die or remarry, or should the widower become capable of self-support, the right of such dependent or widower to compensation under this section shall cease: Provided, however, That if, upon investigation and hearing, it shall be ascertained that the widow or widower is living with a man or

woman, as the case may be, in meretricious relationship and not married, or the widow living a life of prostitution, the board may order the termination of compensation payable to such widow or widower. If the compensation payable under this section to any person shall, for any cause, cease, the compensation to the remaining persons entitled thereunder shall thereafter be the same as would have been payable to them had they been the only persons entitled to compensation at the time of the death of the deceased.

The wages upon which death compensation shall be based, shall not in any case be taken to exceed **[ninety dollars per week, nor be less than fifty dollars per week.]** *the Statewide average weekly wage nor be less than forty per centum of the Statewide average weekly wage.*

The board may, if the best interest of a child or children shall so require, at any time order and direct the compensation payable to a child or children, or to a widow or widower on account of any child or children, to be paid to the guardian of such child or children, or, if there be no guardian, to such other person as the board as hereinafter provided may direct. If there be no guardian or committee of any minor, dependent, or insane employe, or dependent, on whose account compensation is payable, the amount payable on account of such minor, dependent, or insane employe, or dependent may be paid to any surviving parent, or such other person as the board may order and direct, and the board may require any person, other than a guardian or committee, to whom it has directed compensation for a minor, dependent, or insane employe, or dependent to be paid, to render, as and when it shall so order, accounts of the receipts and disbursements of such person, and to file with it a satisfactory bond in a sum sufficient to secure the proper application of the moneys received by such person.

Section 16. Section 308 of the act is amended to read:

Section 308. Except as hereinafter provided, all compensation payable under this article shall be payable in periodical installments, as the wages of the employe were payable before the **[accident] injury**.

Section 17. Section 309 of the act, amended February 8, 1972 (Act No. 12), is amended to read:

Section 309. Wherever in this article the term "wages" is used, it shall be construed to mean the average weekly wages of the employe, ascertained in accordance with rules and regulations of the department as follows:

(a) If at the time of the **[accident] injury** the wages are fixed by the week, the amount so fixed shall be the average weekly wage;

(b) If at the time of the **[accident] injury** the wages are fixed by the month, the average weekly wage shall be the monthly wage so fixed multiplied by twelve and divided by fifty-two;

(c) If at the time of the **[accident] injury** the wages are fixed by the year, the average weekly wage shall be the yearly wage so fixed divided by fifty-two;

(d) If at the time of the **[accident] injury** the wages are fixed by the day, hour, or by the output of the employe, the average weekly wage shall be the wage most favorable to the employe, computed by dividing by thirteen the total wages of said employe earned in the employ of the employer in the first, second, third, or fourth period of thirteen consecutive calendar weeks in the fifty-two weeks immediately preceding the **[accident] injury**, or in case the employe receives wages, monthly or semi-monthly, by dividing by thirteen the total wages of said employe earned in the employ of the employer in the first, second, third, or fourth period of three consecutive calendar months in the year immediately preceding the **[accident] injury**;

If the employe has been in the employ of employer less than thirteen calendar weeks (or three calendar months, if the employe receives wages monthly or semi-monthly) immediately preceding the **[accident] injury**, his average weekly wage shall be computed under the foregoing paragraph, taking "total wages" for such purpose to be the amount he would have earned had he been so employed by employer the full thirteen calendar weeks (or three calendar months) immediately preceding the **[accident] injury** and had worked, when work was available to other employes in a similar occupation, unless it be conclusively shown that by reason of exceptional causes such methods of computation does not ascertain fairly the "total wages" of employe so employed less than thirteen calendar weeks (or three calendar months);

(e) In occupations which are exclusively seasonal and therefore cannot be carried on throughout the year, the average weekly wage shall be taken to be one-fiftieth of the total wages which the employe has earned from all occupations during the twelve calendar months immediately preceding the **[accident] injury**, unless it be shown that during such year, by reason of exceptional causes, such method of computation does not ascertain fairly the earnings of the employe, in which case the period for calculation shall be extended so far as to give a basis for the fair ascertainment of his average weekly earnings.

The terms "average weekly wage" and "total wages," as used in this section, shall include board and lodging received from the employer, and in employments in which employes customarily receive not less than one-third of their remuneration in tips or gratuities not paid by the employer, gratuities shall be added to the wages received but such terms shall not include amounts deducted by the employer under the contract of hiring for labor furnished or paid for by the employer and necessary for the performance of such contract by the employe, nor shall such terms include deductions from wages due the employer for rent and supplies necessary for the employe's use in the performance of his labor.

Where the employe is working under concurrent contracts with two or more employers, his wages from all such employers shall be considered as if earned from the employer liable for compensation.

If under clauses (a), (b), (c), (d) and (e) of this section, the amount determined is less than if computed as follows, his computation shall apply, viz.: Divide the total wages earned by the employe during the last two completed calendar quarters with the same employer by the number of days he worked for such employer during such period multiplied by five.

(f) In no case shall an employe's average weekly wage be less than one-thirteenth of his highest calendar quarter wage amount in the first four of the last five completed calendar quarters immediately preceding the date of his injury, and compensation payments may be commenced on this basis unless other information obtained from the employe or employer establishes a higher weekly wage under this section.

Section 18. Sections 311 and 313 of the act, amended February 28, 1956 (P.L.1120), are amended to read:

Section 311. Unless *the employer shall have knowledge of the occurrence of the injury, or unless* the employe or someone in his behalf, or some of the dependents or someone in their behalf, shall give notice thereof to the employer within twenty-one days after the **[accident] injury**, no compensation shall be due until such notice be given, and, unless such notice be given within one hundred and twenty days after the occurrence of the **[accident] injury**, no compensation shall be allowed.

Section 313. The notice referred to in sections three hundred and eleven and three hundred and twelve may be given to the immediate or other superior of the employe, to the employer, or any agent of the employer regularly employed at the place of employment of the injured employe. *Knowledge of the occurrence of the injury on the part of any such agents shall be the knowledge of the employer.*

Section 19. Section 315 of the act, amended February 8, 1972 (Act No. 12), is amended to read:

Section 315. In cases of personal injury all claims for compensation shall be forever barred, unless, within two years after the **[accident] injury**, the parties shall have agreed upon the compensation payable under this article; or unless within two years after the **[accident] injury**, one of the parties shall have filed a petition as provided in article four hereof. In cases of death all claims for compensation shall be forever barred, unless within two years after the death, the parties shall have agreed upon the compensation under this article; or unless, within two years after the death, one of the parties shall have filed a petition as provided in article four hereof. Where, however, payments of compensation have been made in any case, said limitations shall not take effect until the expiration of two years from the time of the making of the most recent payment prior to date of filing such petition: Provided, That any payment made under an established plan or policy of insurance for the payment of benefits on account of non-occupational illness or injury and which payment is identified as not being workmen's compensation shall not be considered

to be payment in lieu of workmen's compensation, and such payment shall not toll the running of the Statute of Limitations. However in cases of injury resulting from ionizing radiation in which the nature of the injury or its relationship to the employment is not known to the employe, the time for filing a claim shall not begin to run until the employe knows, or by the exercise of reasonable diligence should know, of the existence of the injury and its possible relationship to his employment.

Section 20. Section 319 of the act, amended December 28, 1959 (P.L.2034) and September 30, 1961 (P.L.1762), is amended to read:

Section 319. Where the compensable injury is caused in whole or in part by the act or omission of a third party, the employer shall be subrogated to the right of the employe, his personal representative, his estate or his dependents, against such third party to the extent of the compensation payable under this article by the employer; reasonable attorney's fees and other proper disbursements incurred in obtaining a recovery or in effecting a compromise settlement shall be prorated between the employer and employe, his personal representative, his estate or his dependents. The employer shall pay that proportion of the attorney's fees and other proper disbursements that the amount of compensation paid or payable at the time of recovery or settlement bears to the total recovery or settlement. Any recovery against such third person in excess of the compensation theretofore paid by the employer shall be paid forthwith to the employe, his personal representative, his estate or his dependents, and shall be treated as an advance payment by the employer on account of any future instalments of compensation.

Where an employe has received payments for the disability or medical expense resulting from an injury [by accident] in the course of his employment paid by the employer or an insurance company on the basis that the injury and disability were not compensable under this act in the event of an agreement or award for that injury the employer or insurance company who made the payments shall be subrogated out of the agreement or award to the amount so paid, if the right to subrogation is agreed to by the parties or is established at the time of hearing before the referee or the board.

Section 21. Subsection (a) of section 320 of the act, amended February 28, 1956 (P.L.1120), is amended to read:

Section 320. (a) If the employe at the time of the [accident] injury is a minor, under the age of eighteen years, employed or permitted to work in violation of any provision of the laws of this Commonwealth relating to minors of such age, compensation, either in the case of injury or death of such employe, shall be one hundred and fifty per centum of the amount that would be payable to such minor if legally employed. The amount by which such compensation shall exceed that provided for in case of legal employment may be referred to as "additional compensation."

* * *

Section 22. The act is amended by adding a section to read:

Section 321. Nothing contained in this act shall apply to or in any way affect any person who at the time of injury is engaged in domestic service: Provided, however, That in cases where the employer of any such person shall have, prior to such injury, by application to the Workmen's Compensation Board, approved by the board, elected to come within the provisions of the act, such exemption shall not apply.

Section 23. Sections 407, 410, 411, 413, the first paragraph of section 422, and sections 423, 428, 434 and 442 of the act, amended or added February 8, 1972 (Act No. 12), are amended to read:

Section 407. On or after the seventh day after any **[accident] injury** shall have occurred, the employer or insurer and employe or his dependents may agree upon the compensation payable to the employe or his dependents under this act; but any agreement made prior to the seventh day after the **[accident] injury** shall have occurred, or permitting a commutation of payments contrary to the provisions of this act, or varying the amount to be paid or the period during which compensation shall be payable as provided in this act, shall be wholly null and void. It shall be unlawful for any employer to accept a receipt showing the payment of compensation when in fact no such payment has been made.

Where payment of compensation is commenced without an agreement, the employer or insurer shall simultaneously give notice of compensation payable to the employe or his dependent, on a form prescribed by the department, identifying such payments as compensation under this act and shall forthwith furnish a copy or copies to the department as required by rules and regulations. It shall be the duty of the department to examine the notice to determine whether it conforms to the provisions of this act and rules and regulations hereunder.

All agreements made in accordance with the provisions of this section shall be on a form prescribed by the department, signed by all parties in interest, and a copy or copies thereof forwarded to the department as required by rules and regulations. It shall be the duty of the department to examine the agreement to determine whether it conforms to the provisions of this act and rules and regulations hereunder.

All notices of compensation payable and agreements for compensation and all supplemental agreements for the modification, suspension, reinstatement, or termination thereof, and all receipts executed by any injured employe of whatever age, or by any dependent to whom compensation is payable under section three hundred and seven, and who has attained the age of sixteen years, shall be valid and binding unless modified or set aside as hereinafter provided.

Section 410. If, after any **[accident] injury**, the employer or his insurer and the employe or his dependent, concerned in any **[accident] injury**, shall fail to agree upon the facts thereof or the compensation due under this act, the employe or his dependents may present a claim petition for compensation to the department.

In case any claimant shall die before the final adjudication of his claim, the amount of compensation due such claimant to the date of death shall be paid to the dependents entitled to compensation, or, if there be no dependents, then to the estate of the decedent.

Whenever any claim for compensation is presented [**and the injury and accident are not denied, or are resolved**] and the only issue involved is the liability as between the defendant or the carrier or two or more defendants or carriers, the referee of the department to whom the claim in such case is presented shall forthwith order payments to be immediately made by the defendants or the carriers in said case. After the department's referee or the board on appeal, render a final decision, the payments made by the defendant or carrier not liable in the case shall be awarded or assessed against the defendant or carrier liable in the case, as costs in the proceedings, in favor of the defendant or carrier not liable in the case.

Section 411. Whenever the employer or his insurer and the employe or his dependent shall, on or after the seventh day after any [**accident**] *injury*, agree on all of the facts on which a claim for compensation depends, but shall fail to agree on the compensation payable, they may petition the department to determine the compensation payable. Such petition shall contain the agreed facts, and shall be signed by all parties in interest. The department or its referee shall fix a time and place for hearing the petition, and shall notify all parties in interest. As soon as may be after such hearing, the department or its referee shall award or disallow compensation in accordance with the provisions of this act.

Section 413. (a) A referee of the department may, at any time, review and modify or set aside a notice of compensation payable and an original or supplemental agreement or upon petition filed by either party with the department, or in the course of the proceedings under any petition pending before such referee, if it be proved that such notice of compensation payable or agreement was in any material respect incorrect.

A referee designated by the department may, at any time, modify, reinstate, suspend, or terminate a notice of compensation payable, an original or supplemental agreement or an award of the department or its referee, upon petition filed by either party with the department, upon proof that the disability of an injured employe has increased, decreased, recurred, or has temporarily or finally ceased, or that the status of any dependent has changed. Such modification, reinstatement, suspension, or termination shall be made as of the date upon which it is shown that the disability of the injured employe has increased, decreased, recurred, or has temporarily or finally ceased, or upon which it is shown that the status of any dependent has changed: Provided, That, except in the case of eye injuries, no notice of compensation payable, agreement or award shall be reviewed, or modified, or reinstated, unless a petition is filed with the department within two years after the date of the most recent payment

of compensation made prior to the filing of such petition: And provided further, That any payment made under an established plan or policy of insurance for the payment of benefits on account of nonoccupational illness or injury and which payment is identified as not being workmen's compensation shall not be considered to be payment in lieu of workmen's compensation, and such payment shall not toll the running of the Statute of Limitations: And provided further, That where compensation has been suspended because the employe's earnings are equal to or in excess of his wages prior to the [accident] *injury* that payments under the agreement or award may be resumed at any time during the period for which compensation for partial disability is payable, unless it be shown that the loss in earnings does not result from the disability due to the injury.

The referee to whom any such petition has been assigned may subpoena witnesses, hear evidence, make findings of fact, and award or disallow compensation, in the same manner and with the same effect and subject to the same right of appeal, as if such petition were an original claim petition.

The filing of a petition to terminate or modify a notice of compensation payable or a compensation agreement or award as provided in this section shall operate as a supersedeas, and shall suspend the payment of compensation fixed in the agreement or by the award, in whole or to such extent as the facts alleged in the petition would, if proved, require only when such petition alleges that the employe has returned to work at his prior or increased earnings or where the petition alleges that the employe has fully recovered and is accompanied by an affidavit of a physician on a form prescribed by the department to that effect which is based upon an examination made within fifteen days of the filing of the petition. In any other case, a petition to terminate or modify a compensation agreement or other payment arrangement or award as provided in this section shall not automatically operate as a supersedeas but may be designated as a request for a supersedeas, which may then be granted at the discretion of the referee hearing the case. A supersedeas shall serve to suspend the payment of compensation in whole or to such extent as the facts alleged in the petition would, if proved, require. The referee hearing the case shall rule on the request for a supersedeas as soon as possible and may approve the request if proof of a change in medical status, or proof of any other fact which would serve to modify or terminate payment of compensation is submitted with the petition. The referee hearing the case may consider any other fact which he deems to be relevant when making the decision on the supersedeas request and the decision shall not be appealable.

(b) Any insurer who suspends, terminates or decreases payments of compensation without submitting an agreement or supplemental agreement therefor as provided in section 408, or a final receipt as provided in section 434, or without filing a petition and either alleging

that the employe has returned to work at his prior or increased earnings or where the petition alleges that the employe has fully recovered and is accompanied by an affidavit of a physician on a form prescribed by the department to that effect which is based upon an examination made within fifteen days of the filing of the petition or having requested and been granted a supersedeas as provided in this section, shall be subject to penalty as provided in section 435.

Section 422. Neither the board nor any of its members nor any referee shall be bound by the common law or statutory rules of evidence in conducting any hearing or investigation, but all findings of fact shall be based upon sufficient [**credible**] *competent* evidence to justify same.

* * *

Section 423. Any party in interest may, within twenty days after notice of a referee's award or disallowance of compensation shall have been served upon him, take an appeal to the board on the ground: (1) that the award or disallowance of compensation is not in conformity with the terms of this act, or that the referee committed any other error of law; (2) that the findings of fact and award or disallowance of compensation [**were not supported by credible evidence or were**] *was unwarranted by sufficient, competent evidence or was* procured by fraud, coercion, or other improper conduct of any party in interest. The board may, upon cause shown, extend the time provided in this article for taking such appeal or for the filing of an answer or other pleading.

In any such appeal the board may disregard the findings of fact of the referee if not supported by [**credible**] *competent* evidence and if it deem proper may hear other evidence, and may substitute for the findings of the referee such findings of fact as the evidence taken before the referee and the board, as hereinbefore provided, may, in the judgment of the board, require, and may make such disallowance or award of compensation or other order as the facts so founded by it may require.

Section 428. Whenever the employer, who has accepted and complied with the provisions of section three hundred five, shall be in default in compensation payments for thirty days or more, the employe or dependents entitled to compensation thereunder may file a certified copy of the agreement and the order of the department approving the same or of the award or order with the prothonotary of the court of common pleas of any county, and the prothonotary shall enter the entire balance payable under the agreement, award or order to be payable to the employe or his dependents, as a judgment against the employer or insurer liable under such agreement or award. Where the compensation so payable is for a total and permanent disability, the judgment shall be in the amount of thirty thousand dollars less such amount as the employer shall have actually paid pursuant to such agreement or award. Such judgment shall be a lien against property of the employer or insurer liable under such agreement or award and execution may issue thereon forthwith.

Whenever, after an [accident] *injury*, any employe or his dependents shall have entered into a compensation agreement with an employer, who has not accepted or complied with the provisions of section three hundred five, or shall file a claim petition against such employer, he may file a certified copy thereof with the prothonotary of the court of common pleas of any county. The prothonotary shall enter the amount stipulated in any such agreement or claimed in any such claim petition as judgment against the employer, and where the amount so stipulated or claimed is for total and permanent disability, such judgment shall be in the sum of thirty thousand dollars. If the agreement be approved by the department, or compensation awarded as claimed in the petition, the amount of compensation stipulated in the agreement or claimed in the petition shall be a lien, as of the date when the agreement or petition was filed with the prothonotary. Pending the approval of the agreement or the award of compensation, no other lien which may be attached to the employer's property during such time shall gain priority over the lien of such agreement or award; but no execution shall issue on any compensation judgment before the approval of the agreement or the award of compensation on the said petition.

If the agreement be disapproved, or, after hearing, compensation shall be disallowed, the employer may file, with the prothonotary of any county in which the petition or agreement is on record as a judgment, a certified copy of the disapproval of the agreement or disallowance of compensation, and it shall be the duty of such prothonotary to strike off the judgment.

If the amount of compensation claimed be disallowed but another amount awarded, the compensation judgment shall be a lien to the extent of the award, as of the date of filing the petition with the prothonotary, with the same effect as to other liens and the same disability to issue execution thereon as if the compensation claimed had been allowed. In such cases the prothonotary shall make such modification of the record as shall be appropriate.

If the compensation payable under any agreement or award upon which judgment has been entered under the provisions of this section shall be modified, suspended, reinstated, or terminated by a supplemental agreement executed under the provisions of section four hundred and eight, or by an award or order made under the provisions of section four hundred and thirteen, any party to such judgment, at any time after such agreement has been approved by the department or after the expiration of the time allowed for an appeal from the award or order, may file with the prothonotary of the court of common pleas of any county in which the judgment is on record a certified copy of such supplemental agreement, award, or order and it shall thereupon be the duty of the prothonotary to modify, suspend, reinstate, or satisfy such judgment in accordance with the terms of such supplemental agreement, award, or order.

Execution may issue by first filing with the prothonotary an affidavit that there has been a default in payments of compensation due on any judgment for compensation, entered prior to the approval of the compensation agreement, or an award on petition, as soon as such agreement shall have been approved by the department or such award made as evidenced by the approval of the board of the award or by a certified copy thereof.

Execution shall in all cases be for the amount of compensation and interest thereon due and payable up to the date of the issuance of said execution, with costs, and further execution may issue from time to time as further compensation shall become due and payable until full amount of the judgment with costs shall have actually been paid.

Section 434. A final receipt, given by an employe or dependent entitled to compensation under a compensation agreement notice or award, shall be prima facie evidence of the termination of the employer's liability to pay compensation under such agreement notice or award: Provided, however, That a referee designated by the department may, at any time within two years from the date to which payments have been made, set aside a final receipt, upon petition filed with the department, or on the department's own motion, if it be shown that all disability due to the **[accident] injury** in fact had not terminated.

Section 442. All counsel fees, **[of claimants' attorneys] agreed upon by claimant and his attorneys**, for services performed in matters before any referee or the board, whether or not allowed as part of a judgment, shall **[first]** be approved by the referee or board as the case may be, **[before payment] providing the counsel fees do not exceed twenty per centum of the amount awarded**. The official conducting any hearing, **upon cause shown**, may allow a reasonable attorney fee **[in any case not]** exceeding twenty per centum of the amount awarded **[: Provided, That upon cause shown the cost of twenty per centum may be exceeded]** at the discretion of the hearing official.

In cases where the efforts of claimants' counsel produce a result favorable to the claimant but where no immediate award of compensation is made such as in cases of termination or suspension the hearing official **[may] shall** allow or award reasonable counsel fees, **as agreed upon by claimant and his attorneys**, without regard to any per centum.

Section 24. Section 501 of the act, amended February 28, 1956 (P.L.1120), is amended to read:

Section 501. No claim or agreement for legal services or disbursements in support of any demand made or suit brought under the provisions of article two of this act shall be an enforceable lien against the amount to be paid as damages, or be valid or binding in any respect, unless the same be approved in writing by the judge presiding at the trial, or, in case of settlement without trial, by a judge of the common pleas court of the county in which the **[accident] injury** occurred.

No claim or agreement for legal services or disbursements in support of any claim for compensation, or in preparing any agreement for compensation, under article three of this act, shall be an enforceable lien against the amount to be paid as compensation, or be valid or binding in any other respect, unless the same be approved by the board. Any such claim or agreement shall be filed with the department, which shall, as soon as may be, notify the person by whom the same was filed of the board's approval or disapproval thereof, as the case may be.

After the approval as herein required, if the employer be notified in writing of such claim or agreement for legal services and disbursements, the same shall be a lien against any amount thereafter to be paid as damages or compensation: Provided, however, That where the employe's compensation is payable by the employer in periodical instalments, the board shall fix, at the time of approval the proportion of each instalment to be paid on account of legal services and disbursements, and the board may upon application made to it commute the sum awarded for legal services and disbursements.

Section 25. Section 503 of the act is amended to read:

Section 503. Nothing in this act shall affect or impair any right of action which shall have accrued before this act shall take effect, except that, because litigation is now pending as to the constitutionality of the compensation schedules contained in the amendment of this act, approved the fourth day of June, one thousand nine hundred and thirty-seven (Pamphlet Laws, one thousand five hundred fifty-two), the department is hereby authorized to approve agreements or supplemental agreements, and the board and referees are hereby authorized to make awards effectuating agreements, compromising disputes between employers and employes or their dependents, as to the amount of compensation payable in cases arising out of [accidents] *injuries* occurring between January first, one thousand nine hundred and thirty-eight and the effective date of this reenactment of this act, if such agreements or supplemental agreements provide for, or the parties to cases pending before the board or referees have agreed to, the payment of compensation at the rates and for the periods specified in this reenactment of this act.

Section 26. The act of June 21, 1939 (P.L.565), entitled "A supplement to the act, approved the second day of June, one thousand nine hundred and fifteen (Pamphlet Laws, seven hundred thirty-six), entitled, as amended 'An act defining the liability of an employer to pay damages for injuries received by an employe in the course of employment; establishing an elective schedule of compensation; providing procedure for the determination of liability and compensation thereunder; and prescribing penalties,' as reenacted and amended, to exempt domestic servants and agricultural workers from the provisions thereof, except in certain cases," is repealed.

Section 27. This act shall take effect May 1, 1972.

APPROVED—The 29th day of March, A. D. 1972.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly No. 61.

A handwritten signature in black ink, reading "C. McLaughlin Tucker". The signature is written in a cursive, flowing style.

Secretary of the Commonwealth.