

cold-pressed, double-mounted drawing paper eighteen inches by twenty-four inches in size, with the muslin extending three inches at one end for binding purposes. The plat, diagram or drawing shall be of such a scale, and the lettering of the approvals thereof, and of the dedication and affidavit of the surveyor, shall be of such a size or type as will permit the whole thereof to be placed upon one single sheet of paper, but no part thereof shall come nearer any edge of said sheet than one inch. All of such plat, diagram or drawing shall be on one side or page of the sheet, but the dedication or other written matter may be on the other side or page of such sheet.

Filed in the office of the Secretary of State February 25, 1913.

CHAPTER 112.

Title 37
§ 6605

AN ACT

[H. B. 27.]

Creating the State Industrial Accident Commission and providing an Industrial Accident Fund, making an appropriation for such fund and providing for the administration of the terms of this act, providing for the collection and disbursement of funds for the benefit, compensation and care of workmen, prescribing the duties of employers and workmen subject to this act, and providing penalties for a violation of the terms of this act, and abolishing in certain cases the defenses of assumption of risk, contributory negligence and the negligence of a fellow servant in actions for personal injury and death.

Be it enacted by the People of the State of Oregon:

Section 1. The State of Oregon recognizes that the prosecution of the various industrial enterprises which must be relied upon to create and preserve the wealth and prosperity of the State involves the injury of large numbers of workmen, resulting in their partial or total incapacity or death, and that under the rules of the common law and the provisions of the statutes now in force an unequal burden is cast upon its citizens, and that in determining the responsibility of the employer on account of injuries sustained by his workmen, a great and unnecessary cost is now incurred in litigation, which cost is divided between the workmen, the employers and the taxpayers, who provide the public funds, without any corresponding benefit, to maintain courts and juries to determine the question of responsibility under the law as it now exists, and that the State and its taxpayers are subjected to a heavy bur-

den in providing care and support for such injured workmen and their dependents, and that this burden should, in so far as may be consistent with the rights and obligations of the people of the State, be more fairly distributed as in this act provided.

Section 2. A commission is hereby created which shall be known as the "State Industrial Accident Commission," to be composed of three commissioners. Immediately upon the taking effect of this act, the Governor shall appoint such commissioners, not more than two of whom shall belong to one political party. Such commissioners shall be appointed for respective terms expiring on the first Monday in January in the years 1915, 1916 and 1917; that thereafter the commissioners shall be appointed for terms of four years by the same authority on the first Monday in December in each year next preceding the expiration of the term of a commissioner. Each Commissioner appointed hereunder shall hold office until his successor is appointed and qualified. Any vacancy shall be filled by appointment by the Governor. Inasmuch as the duties to be performed by such commissioners vitally concern the employers, the employees, as well as the whole people, of the State, it is hereby declared to be the purpose of this act that persons be appointed as commissioners who shall fairly represent the interests of all concerned in its administration.

Section 3. The Governor may at any time remove any commissioner appointed by him for inefficiency, neglect of duty or malfeasance in office. Before such removal he shall give such commissioner a copy of the charges against him and shall fix the time when he can be heard in his own defense, which shall not be less than ten days thereafter, and such hearing shall be open to the public. If such commissioner shall be removed, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against such commissioner and his findings thereon, with a record of the proceedings. Such power of removal shall be absolute and there shall be no right of review in any court whatsoever.

No commissioner shall hold any other office or position of profit or pursue any other business or vocation or serve on or under any committee of any political party, but shall devote his entire time to the duties of his office.

Before entering on the duties of his office, each commissioner shall take and subscribe to an oath or affirmation that he will support the Constitution of the United States and of this State and faithfully and honestly discharge the duties of such office of commissioner; that he holds no other office or position of profit, and that he pursues and will pursue while such commissioner no other calling or vocation, and that he

holds, and while such commissioner will hold, no position under any political party, which oath or affirmation shall be filed in the office of the Secretary of State.

Each of the commissioners shall also, before entering upon the duties of his office, execute a bond payable to the State of Oregon, in the penal sum of \$10,000, with sureties to be approved by the Governor, conditioned for the faithful discharge of the duties of his office, which bond when so executed and approved shall be filed in the office of the Secretary of State.

Each of the commissioners shall receive an annual salary of thirty-six hundred dollars (\$3,600), payable from the fund hereinafter provided.

Section 4. The commissioners so appointed under this act shall, within twenty days after their appointment, meet at the State Capitol and organize by electing one of their number chairman, who shall serve until the commissioner to be appointed for the term commencing in January, 1915, shall have qualified and taken office. Immediately after the qualification of the commissioner for the term commencing in January, 1915, and biennially thereafter, the commissioners shall meet at the office of the commission, which shall be maintained at the State Capitol, and shall elect a chairman, who shall serve for two years and until his successor is chosen.

Section 5. A majority of the commissioners shall constitute a quorum to transact business, and the act or decision of any two of the commissioners shall be deemed the act or decision of the commission. No vacancy shall impair the right of the remaining commissioners to exercise all the powers of the commission.

Section 6. The commission may employ and terminate the employment of such assistants, experts and clerks as may be required in the administration of this act at a total expense not exceeding twenty-five thousand dollars (\$25,000) per annum.

Section 7. The commission, in its name, may sue and be sued, and the commission shall have a seal which shall bear the name of the commission. The commission is hereby charged with the administration of the provisions of this act, and to that end may hold sessions at any place within the State, and is hereby authorized to issue subpoenas requiring the attendance of witnesses and the production of documents, and obedience to such subpoenas may be compelled, on application of the commission, by the circuit court for the county where such subpoenas shall be returnable.

Section 8. The commission is hereby authorized to make and declare all rules and regulations which shall reasonably

be required in the administration of the provisions of this act, and shall require the making of reports of accidents, reports of amounts paid or agreed to be paid as wages by employers to workmen and may prescribe and require the use of the payroll form by employers which shall carry such specific information as may be deemed necessary by the commission, and may incur such expenses as the commission shall determine reasonably necessary in the administration of this act.

Section 9. The commission is hereby required to render to the Governor of the State, quarter yearly, a report with full statistical information covering the acts of the commission and the receipt and disbursement of moneys hereunder.

Section 10. All persons, firms and corporations engaged as employers in any of the hazardous occupations hereafter specified shall be subject to the provisions of this act; *provided, however*, that any such person, firm or corporation may be relieved of certain of the obligations hereby imposed, and shall lose the benefits hereby conferred by filing with the commission written notice of an election not to be subject thereto in the manner hereinafter specified; *provided, however*, that where an employer is engaged in a hazardous occupation, as hereinafter defined, and is also engaged in another occupation or other occupations not so defined as hazardous, he shall not be subject to this act as to such non-hazardous occupations, nor shall his workmen wholly engaged in such non-hazardous occupations be subject thereto except by an election as authorized by Section 31 thereof; *provided, however*, that employers and employees who are engaged in an occupation partly hazardous and partly non-hazardous shall come within the terms of this act the same as if said occupation were wholly hazardous.

Section 11. All workmen in the employ of persons, firms or corporations who as employers are subject to this act shall also be subject thereto; *provided, however*, that any such workman may be relieved of the obligations hereby imposed and shall lose the benefits hereby conferred by giving to his employer written notice of an election not to be subject thereto in the manner hereinafter specified. Any workman of the age of 16 years and upwards shall himself exercise the election hereby authorized. The right of election hereby authorized shall be exercised on behalf of any workman under the age of 16 years by his parent or guardian. This act shall not apply to workmen of less than the minimum age prescribed by law for the employment of minors in the occupation in which such workmen shall be engaged.

Section 12. Every workman subject to this act while employed by an employer subject to this act, who after June 30th

next following the taking effect of this act, while so employed sustains personal injury by accident arising out of and in the course of his employment and resulting in his disability, or the beneficiaries as hereinafter defined, of such workman in case such injury results in death, shall be entitled to receive from the Industrial Accident Fund hereby created the sum or sums hereinafter specified and the right to receive such sum or sums shall be in lieu of all claims against his employer on account of such injury or death except as hereinafter specially provided; *provided, however*, that if the injury to a workman occurring away from the plant of his employer is due to the negligence or wrong of another not in the same employ, the injured workman, or if death result from the injury, his widow, children or dependents, as the case may be, shall elect whether to take under this act or seek a remedy against such other, such election to be in advance of any suit, and if he take under this act the cause of action against such other shall be assigned to the State for the benefit of the accident fund. If the other choice is made the accident fund shall contribute only the deficiency, if any, between the amount of recovery against such third person actually collected and the compensation provided or estimated by this act for such case. Any such cause of action assigned to the State may be prosecuted or compromised by the department in its discretion. Any compromise by the workman of any such suit which would leave a deficiency to be made good out of the accident fund may be made only with the written approval of the department.

Section 13. The hazardous occupations to which this act is applicable are as follows:

Factories, mills and workshops where machinery is used; printing, electrotyping, photo-engraving and stereotyping plants where machinery is used; foundries, blast furnaces, mines, wells, gas works, water works, reduction works, breweries, elevators, wharves, docks, dredges, smelter, powder works, laundries operated by power; quarries; engineering works; logging, lumbering and ship-building operations; logging, street and interurban railroads not engaged in interstate commerce; buildings being constructed, repaired, moved or demolished; telegraph, telephone, electric light or power plants, or lines, steam heating or power plants, railroads not engaged in interstate commerce, steamboats, tugs and ferries.

Section 14. In the sense of this act words employed mean as here stated, to wit:

Factories mean undertakings in which the business of working at commodities is carried on with power-driven machinery, either in manufacture, repair or change, and shall include the premises, yard and plant of the concern.

Workshop means any plant, yard, premises, room or place wherein power-driven machinery is employed and manual labor is exercised by way of trade for gain or otherwise in or incidental to the process of making, altering, repairing, printing or ornamenting, finishing or adapting for sale or otherwise any article or part of article, machine or thing, over which premises, room or place the employer of the person working therein, has the right of access or control.

Mill means any plant, premises, room or place where machinery is used, any process of machinery, changing, altering or repairing any article or commodity for sale or otherwise, together with the yards and premises which are part of the plant, including elevators, warehouses and bunkers.

Mine means any mine where coal, clay, ore, mineral, gypsum or rock is dug or mined underground.

Quarry means an open cut from which coal is mined, or clay, ore, mineral, gypsum, sand, gravel, or rock is cut or taken for manufacturing, building or construction.

Engineering work means any work of construction, improvement or alteration or repair of buildings, structures, streets, highways, sewers, street railways, railroads not then engaged in interstate commerce, logging roads, interurban railroads not then engaged in interstate commerce, harbors, docks, canals, electric, steam or water-power plants, telegraph and telephone plants and lines; electric light or power lines, and includes any other works for the construction, alteration or repair of which machinery driven by mechanical power is used.

The term "employer" used in this act shall be taken to mean any person, firm or corporation, but not including municipal corporations, that shall contract for and secure the right to direct and control the services of any person, and the term "workman" shall be taken to mean any person, male or female, who shall engage to furnish his or her services subject to the direction or control of an employer.

Dependent means any of the following named relatives of a workman whose death results from any injury and who leaves surviving no widow, widower or child under the age of sixteen years, viz: Invalid child over the age of sixteen years, daughter between sixteen and eighteen years of age, father, mother, grandfather, grandmother, stepfather, stepmother, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-sister, half-brother, niece, nephew, who, at the time of the accident are dependent in whole or in part for their support upon the earnings of the workman. Except where otherwise provided by treaty, aliens other than father or

mother, husband and wife or children, not residing within the United States at the time of the accident, are not included.

Beneficiary means a husband, wife, child or dependent of a workman, in whom shall vest a right to receive payment under this act.

Invalid means one who is physically or mentally incapacitated from earning.

The word "child", as used in this act, includes a posthumous child, a child legally adopted prior to the injury, and an illegitimate child legitimated prior to the injury.

Any member or officer of any corporate employer who shall be carried upon the pay rolls at a salary or wage not less than the average salary or wage of such pay roll, but not otherwise, shall be deemed to be a workman.

Section 15. Any employer engaged in any of such hazardous occupations who would otherwise be subject to this act, may on or before June 15th next following the taking effect of this act file with the commission a statement in writing declaring his election not to contribute to the Industrial Accident Fund hereby created, and thereupon such employer shall be relieved from all obligations to contribute thereto, and such employer shall be entitled to none of the benefits of this act, and shall be liable for injuries to or death of his workmen, which shall be occasioned by his negligence, default or wrongful act as if this act had not been passed, and in any action brought against such an employer on account of an injury sustained after June 30th next following the taking effect of this act, it shall be no defense for such employer to show that such injury was caused in whole or in part by the negligence of a fellow-servant of the injured workman, that the negligence of the injured workman, other than in his wilful act, committed for the purpose of sustaining the injury, contributed to the accident, or that the injured workman had knowledge of the danger or assumed the risk which resulted in his injury.

Any person, firm or corporation hereafter engaging as an employer in any of said hazardous occupations may file a like notice with said commission within ten days after becoming such employer and shall thereby and thereupon become relieved from making contributions to said fund and shall be liable to his workmen as in the case of existing employers so electing and shall as in the case of such employers lose all benefit of the defenses above described. From and after June 30th next following the taking effect of this act, all employers engaged in said hazardous occupations shall display in a conspicuous manner about their works and in a sufficient number of places reasonably to inform their workman of the fact, printed

notices stating that they are or are not, as the case may be, contributors to the fund. The failure of an employer to display such notices shall be a misdemeanor.

Section 16. All such employers who shall not as herein provided give to the commission written notice of their election not to contribute to said fund, shall be subject to all of the provisions of this act until and including the next succeeding 30th day of June, and thereafter until and including June 30th of each succeeding year, unless at least 60 days prior to June 30th in some year written notice shall be given to said commission of an election to cease contributing to such fund, whereupon from and after the succeeding first day of July the status of the employer giving such notice shall be that resulting from the giving of the notice first above prescribed.

Section 17. An employer who has so elected not to contribute hereunder may at any time by giving to said commission 30 days' written notice recall such election, and from and after the expiration of such 30 days such employer shall become and continue in all respects subject to this act.

Section 18. On or before June 30th next following the taking effect of this act any workman in the employ of an employer subject to this act may give notice in writing to his employer of his election not to become subject to this act, and any workman entering the employment of such an employer after such date may at such time give a like notice and thereupon such workman shall be in no wise subject to the provisions or entitled to any of the benefits hereof. Any workman in the employ of an employer who shall have elected not to contribute to the fund hereby created and who shall have recalled such election, may within 15 days after such recall by his employer has become effective, give notice in writing to his employer of his election not to become subject to this act, and thereupon such workman shall in no wise be subject to the provisions or entitled to any of the benefits hereof. But if such workman shall sustain an injury within such period of 15 days and before he shall have elected not to become subject to this act, he shall have the option to be exercised before suit brought, of taking the benefits hereby provided or of proceeding against his employer as if this act had not been passed. Any workman who shall be in the employ of an employer who shall hereafter engage in any of said hazardous occupations and who shall have become subject to this act, may give notice in writing to his employer within 15 days after his employer shall have engaged in such hazardous occupations, of his election not to become subject to this act, and thereupon and thereafter such workman shall be in no wise

subject to the provisions or entitled to any of the benefits hereof, but if such workman shall sustain an injury within such period of 15 days and before he shall have elected not to become subject to this act, he shall have the option, to be exercised before suit brought, of taking the benefit hereby provided or of proceeding against his employer as if this act had not been passed. Any workman who has so elected not to become subject to this act may at any time by giving to his employer who is then subject to this act, 30 days' notice, recall such election, and after expiration of such 30 days such workman shall become and continue in all respects subject to this act.

Any workman who has become subject to this act shall, if he remains in the service of the same employer, continue subject to this act to and including the next succeeding 30th day of June and thereafter until and including the 30th day of June of each succeeding year unless at least 30 days prior to June 30th in some year he shall give written notice to his employer of his election not to be longer subject to this act, whereupon and after the succeeding first day of July such workman shall be no longer subject to this act.

Section 19. Every employer engaged in any of said hazardous occupations who shall not have served notice of his election not to contribute hereunder is hereby authorized and required to retain from the moneys earned by each of his workmen who is subject to the act a sum equal to five-tenths of one per cent of the moneys so earned in each calendar month, and in any event at least 25 cents each month, and is hereby required, on or before the 15th day of the next succeeding month to pay to the commission the sum so retained and an additional sum equal to six times such amount.

Employers and workmen shall be relieved from contribution to said fund under the following conditions:

For the purpose of this section all employers shall be held to be included in Class A or Class B.

Class A shall include the following industries:

Electric light and power companies, telephone and telegraph companies, railroads and street railroads, water works, mining of all kinds, logging and lumbering operations, quarries, smelting and reduction works, ship building and stevedoring, stone crushing works, grain elevators, ice factories and cold storage plants, general construction work of all kinds, including excavation, erection of structures and wrecking and repair of same, grading, cement and concrete work, manufactories of chemicals, lumber, mineral waters, rope and cordage, fire-works, pulp and paper, paper boxes and bags, cement and

furniture, wood-working plants of all kinds, including cooperage, packing houses, powder works, iron, steel and metal works, foundries, breweries, gas works, oil works, and cereal mills.

Class B shall include all other industries subject to this act, including those brought under its operation in pursuance of the provisions of Section 31 hereof.

Whenever an employer included in Class A shall have made payments into said fund, not including, however, moneys retained from his workmen's wages, of an amount equal to three per cent of his annual pay roll computed by taking twelve times his current monthly pay roll of workmen subject to this act, he shall thereafter be exempted from making further payment to such fund, provided that such employer shall not be entitled to such exemption if there shall have been paid out of said fund or set apart therefrom as hereinafter provided, on account of injuries sustained by his workmen, sums which when deducted from the amount so paid by him shall reduce his payments to an amount less than three per cent of his annual pay roll. Such exemption shall continue until the amount paid by the employer shall either by subtracting therefrom payments made from such fund together with moneys set apart therefrom on account of injuries sustained by his workmen or by an increase in his pay roll fall below a sum equal to three per cent of his annual pay roll, so computed, whereupon his obligation to make such payments shall be the same as hereinbefore required.

Whenever an employer included in Class B shall have made payment into said fund, not including, however, moneys retained from his workmen's wages, of an amount equal to one and one-half per cent of his annual pay roll computed by taking twelve times his current monthly pay roll of workmen subject to this act, he shall thereafter be exempted from making further payment to such fund, provided that such employer shall not be entitled to such exemption if there shall have been paid out of said fund or set apart therefrom as hereinafter provided, on account of injuries sustained by his workmen, sums which when deducted from the amount so paid by him, shall reduce his payments to an amount less than one and one-half per cent of his annual pay roll. Such exemption shall continue until the amount paid by the employer shall either by subtracting therefrom payments made from such fund together with moneys set apart therefrom on account of injuries sustained by his workmen or by an increase in his pay roll fall below a sum equal to one and one-half per cent of his annual pay roll, so computed, where-

upon his obligation to make such payments shall be the same as hereinbefore required.

In computing the amount paid out or set apart from said fund by reason of injuries sustained by the workmen of an employer for the purpose of determining the right of such employer to exemption from contributions hereunder, no account shall be taken of sums paid out or set apart in any calendar year in excess of six per cent of such employer's total pay roll for such year. Whenever any employer shall have been relieved of the obligation to continue payments to such fund as in this section provided, he shall during the period of such exemption cease retaining any sums hereunder from the wages of any workmen. Neither the employer nor the workman shall be entitled to the exemption provided by this section unless there shall be in said Industrial Accident Fund sufficient moneys to meet all payments which shall have then accrued with a surplus of ten per cent (10%) thereon, and unless there shall have been set apart by the State Treasurer from said fund the amounts hereinafter required, on account of injuries resulting in death or permanent disability.

Section 20. There is hereby created a fund to be known as the "Industrial Accident Fund," which fund shall be held by the State Treasurer and by him deposited in such banks as are authorized to receive deposits of the general funds of the State. All moneys received by the commission hereunder shall be by it paid over forthwith to the State Treasurer and shall become a part of the Industrial Accident Fund, and there is hereby appropriated out of any moneys in the general fund in the State Treasury not otherwise appropriated the sum of fifty thousand dollars (\$50,000), which shall become a part of such fund. There is also appropriated annually out of any moneys in the State treasury not otherwise appropriated a sum equal to one-seventh of the total sum which shall be received by the State Treasurer under the provisions of Section 19 hereof, and the moneys so appropriated shall become a part of such fund. All payments authorized by this act, including all salaries, clerk hire and all other expenses, shall be made from the Industrial Accident Fund.

Section 21. If any workman while he is subject to this act and in the service of an employer who is thus bound to contribute to the Industrial Accident Fund shall sustain a personal injury by accident arising out of and in the course of his employment caused by violent or external means he, or his beneficiaries or dependents, if the injury result in death, shall receive compensation according to the following schedule:

(a) Where death results from the injury the expenses of burial shall be paid in all cases not to exceed one hundred dollars (\$100) in any case, and

1. If the workman leaves a widow or invalid widower, a monthly payment of thirty dollars (\$30) shall be paid throughout the life of the surviving spouse, to cease at the end of the month in which remarriage shall occur; and the surviving spouse shall also receive six dollars (\$6) per month for each child of the deceased under the age of sixteen years at the time of the occurrence of the injury until such minor shall reach the age of sixteen years, but the total monthly payment under this paragraph (1) shall not exceed fifty dollars (\$50). Upon remarriage of a widow she shall receive once and for all a lump sum equal to ten times her monthly allowance, viz.: The sum of three hundred dollars (\$300), but the monthly payments for the child or children shall continue as before.

(2) If the workman leaves no wife or husband but a child or children under the age of sixteen years, a monthly payment of fifteen dollars (\$15) shall be made to each child until such child shall reach the age of 16 years; *provided, however*, that if any child is under the age of 16 years and over the age of 15 years, he shall be entitled to recover such payments for a period of one year, but the total monthly payment shall not exceed fifty dollars (\$50), and any deficit shall be deducted proportionately among the beneficiaries.

(3) If the workman leaves no widow, widower, or child under the age of 16 years, but leaves a dependent or dependents, a monthly payment shall be made to each dependent equal to 50 per cent of the average monthly support actually received by such dependent from the workman during the 12 months next preceding the occurrence of the injury, but the total payment to all dependents in any case, shall not exceed thirty dollars (\$30) per month. If any dependent is under the age of 16 years at the time of the occurrence of the injury, the payment to such dependent shall cease when such dependent shall reach the age of 16 years, excepting a daughter, the payment to whom shall cease when she shall have reached the age of 18 years; *provided, however*, that if any child is under the age of 16 years and over the age of 15 years, he shall be entitled to recover such payments for a period of one year. The payment to any dependent shall cease if, and when, under the same circumstances, the necessity creating the dependency would have ceased if the injury had not happened.

If the workman is under the age of 21 years and unmarried

at the time of his death, the parents or parent of the workman shall receive twenty-five dollars (\$25) per month for each month after his death until the time at which he would have arrived at the age of 21 years; *provided, however*, that such parents shall be entitled thereafter to compensation as dependents under the provisions of the first clause of this paragraph three.

(4) In the event a surviving spouse receiving monthly payments shall die leaving a child or children under the age of 16 years, the sum he or she shall be receiving on account of such child or children shall thereafter, until such child shall arrive at the age of 16 years, be paid to the child increased to fifteen dollars per month; *provided, however*, that if any such child is under the age of 16 years and over the age of 15 years he shall be entitled to recover such payments for a period of one year, but the total to all children shall not exceed the sum of fifty dollars (\$50) per month.

(b) Permanent total disability means the loss of both legs or both arms, or one leg and one arm, total loss of eyesight, paralysis, or other condition permanently incapacitating the workman from performing any work at any gainful occupation.

When permanent total disability results from the injury, the workman shall receive monthly during the period of such disability:

(1) If unmarried at the time of the injury the sum of thirty dollars (\$30).

(2) If the workman have a wife or invalid husband, but no child under the age of 16 years, the sum of thirty-five dollars (\$35). If the husband is not an invalid the monthly payment of thirty-five dollars (\$35) shall be reduced to thirty dollars (\$30).

(3) If the workman have a wife or husband and a child or children under the age of 16 years, or being a widow or widower, have any such child or children, the monthly payment provided in the preceding paragraph shall be increased by six dollars (\$6.00) for each such child until such child shall arrive at the age of 16 years, but the total monthly payment shall not exceed fifty dollars (\$50).

(c) If the injured workman die during such period of total disability, whatever the cause of death, leaving a widow, invalid widower, or child under the age of 16 years, the surviving widow, or invalid widower, shall receive thirty dollars (\$30) per month until death or remarriage, to be increased six dollars (\$6.00) per month for each child under the age of 16 years until such child shall arrive at the age of 16 years; but

if such child is, or shall be, without father or mother, such child shall receive fifteen dollars (\$15) per month until arriving at the age of 16 years; *provided, however*, that if any child is under the age of 16 years and over the age of 15 years, he shall be entitled to recover such payment for the period of one year. The total combined monthly payment under this paragraph shall in no case exceed fifty dollars (\$50). Upon remarriage, the payments on account of a child or children shall continue as before to the child or children.

(d) When the total disability is only temporary the schedule of payments contained in paragraphs 1, 2 and 3 of the foregoing subdivision (b), shall apply so long as the total disability shall continue, increased 50 per cent for the first six months of such continuance, but in no case shall the increase operate to make the monthly payment exceed 60 per cent of the monthly wage (the daily wage multiplied by 26) the workman was receiving at the time of his injury.

(e) When the disability is or becomes partial only and is temporary in character, the workman shall receive for a period not exceeding two years that proportion of the payments provided for total disability which his earning power at any kind of work bears to that existing at the time of the occurrence of the injury.

(f) Permanent partial disability means the loss of either one arm, one hand, one leg, one foot, loss of hearing in one or both ears, loss of one eye, one or more fingers, any dislocation where ligaments are severed, or any other injury known in surgery to be permanent partial disability. Where permanent partial disability shall result from any injury, the workman shall receive the sum of twenty-five dollars (\$25) a month for the period stated against such injury, respectively as follows:

In case of the loss by separation of one arm at or above the elbow joint, or the permanent and complete loss of the use of one arm, ninety-six (96) months.

The loss by separation of one hand at or above the wrist joint, or the permanent and complete loss of the use of one hand, seventy-six (76) months.

The loss by separation of one leg, at or above the knee joint, or the permanent and complete loss of the use of one leg, eighty-eight (88) months.

The loss by separation of one foot at or above the ankle joint, or the permanent and complete loss of the use of one foot, sixty-four (64) months.

The permanent and complete loss of hearing in both ears, ninety-six (96) months.

The permanent and complete loss of hearing in one ear, forty-eight (48) months, or, at the option of the workman, nine hundred dollars (\$900) in a lump sum.

The permanent and complete loss of the sight of one eye forty (40) months, or, at the option of the workman, eight hundred and fifty dollars (\$850) in a lump sum.

The loss by separation of a thumb twenty-four (24) months, or, at the option of the workman, six hundred dollars (\$600) in a lump sum.

The loss by separation of a first finger, sixteen (16) months, or, at the option of the workman, three hundred fifty dollars (\$350) in a lump sum; the second finger nine (9) months, or, at the option of the workman, two hundred dollars (\$200) in a lump sum; a third finger, eight (8) months, or, at the option of the workman, one hundred and seventy-five dollars (\$175) in a lump sum; a fourth finger, six (6) months, or, at the option of the workman, one hundred and fifty dollars (\$150) in a lump sum.

The loss of one phalange of the thumb shall be considered equal to the loss of one-half a thumb; the loss of one phalange of a finger, equal to the loss of one-third of a finger, and the loss of two phalanges of a finger, equal to the loss of one-half a finger, and compensation for the respective proportions of the above period or in the respective proportions of the above lump sum shall be payable. The loss of more than one phalange of a thumb, or more than two phalanges of a finger shall be considered as the loss of an entire thumb or finger.

The loss by separation of a great toe, ten (10) months, or, at the option of the workman, two hundred and fifty dollars (\$250) in a lump sum; any other toe, four (4) months, or, at the option of the workman, one hundred dollars (\$100) in a lump sum.

In all other cases of injury resulting in permanent partial disability, the compensation shall bear such relation to the periods stated in this clause as the disabilities bear to those produced by the injuries named in this schedule, and payments shall be made for proportionate periods, not exceeding, however, ninety-six (96) months, and in all such cases where the period of payment shall not exceed twelve (12) months, but in none other, shall the workman be entitled to a lump sum equal to the present value of such monthly payments computed at an interest rate of four per cent per annum.

If any workman entitled to compensation on account of a permanent disability shall have received compensation for either temporary total disability or temporary partial disability by reason of the same injury which shall entitle him

to compensation for permanent partial disability, the number of months during which he shall be entitled to payments for such permanent partial disability shall be reduced by the number of monthly payments which he shall have received on account of such temporary total disability or temporary partial disability.

(g) For every case of injury resulting in death, or permanent total disability or permanent partial disability on account of which deferred payments are provided for a period exceeding twenty-four (24) months, it shall be the duty of the commission forthwith to notify the State Treasurer in writing of the amount required to equal at four per cent interest per annum the present worth of the monthly installments payable on account of such injury, the number of such payments being computed in case of permanent total disability according to the age of the injured workman, and in the case of death according to the ages of the beneficiaries, both of such computations being according to the American Mortality Table and the expectation of life thereunder, and in the case of permanent partial disability according to the schedule above prescribed. Thereupon the State Treasurer shall transfer from the accident fund to a fund to be known as the "Segregated Accident Fund" the amount so specified by the commission. All moneys comprised in the segregated accident fund shall be invested by the State Treasurer in the class of securities authorized for the investment by banks of savings deposits under the laws of this State. The segregated accident fund and its earnings shall be charged with the payment of the installments on account of which such segregations shall be made. The State Treasurer shall keep an accurate account of the earnings of and payments from the segregated accident fund and may borrow from the accident fund to meet monthly payments pending conversion into cash of any security and in such case shall repay such temporary loan out of the cash realized from the security. Any deficiency in the segregated accident fund shall be made good out of and any balance or overplus shall revert to the accident fund.

(h) Should a further accident occur to a workman already receiving a monthly payment under this section for a disability, or who has been previously the recipient of a lump sum payment under this act, his future compensation shall be adjusted according to the other provisions of this section and with regard to the combined effect of his injuries and his past receipt of money under this act.

(i) If aggravation, diminution or termination of disability

takes place or be discovered after the rate of compensation shall have been established or compensation terminated in any case, the commission may, upon the application of the beneficiary, or upon its own motion, readjust for future application the rate of compensation in accordance with the rules in this section provided, or, in a proper case, terminate the payments.

(j) A husband or wife of an injured workman, who has deserted said injured workman for more than one year prior to the time of the injury or subsequently shall not be a beneficiary under this act.

(k) If a beneficiary shall reside or remove out of the State and shall have been such non-resident for a period of one year, the commission may, in its discretion, convert any monthly payments thereafter to become due to such beneficiary into a lump sum payment, not in any case exceeding four thousand dollars (\$4,000), by paying a sum equal to three-fourths of the present value of such monthly payments, estimated as to duration by the life expectancy of the beneficiary in case of death or total permanent disability and computed according to the American Mortality Table and on the basis of interest at the rate of four per cent per annum, or, with the consent of the beneficiary for a lesser sum, and in any case the commission may, in its discretion, pay over to any beneficiary in a lump sum an amount not exceeding one-fourth of the present value of the monthly installments payable to such beneficiary and computed as aforesaid, and thereupon all subsequent monthly installments shall be proportionately reduced.

Section 22. If injury or death results to a workman from the deliberate intention of the workman himself to produce such injury or death, neither the workman nor the widow, widower, child or dependent of the workman shall receive any payment whatsoever out of the accident fund. If injury or death results to a workman from the deliberate intention of his employer to produce such injury or death, the workman, the widow, widower, child or dependent of the workman shall have the privilege to take under this act, and also have cause of action against the employer, as if this act had not been passed, for damages over the amount payable hereunder.

A minor working at an age legally permitted under the laws of this State shall be deemed *sui juris* for the purpose of this act, and no other person shall have any cause of action or right to compensation for an injury to such minor workman except as expressly provided herein, but in the event of a lump sum payment becoming due under this act to such minor workman, the control and management of any sum so paid

shall be within the jurisdiction of the courts as in the case of other property of minors.

Section 23. The commission shall have authority to provide, under uniform rules and regulations, first aid to workmen who are entitled to benefits hereunder, together with transportation, medical and surgical attendance and hospital accommodations for injured workmen at an expense not exceeding two hundred and fifty dollars (\$250) in any one case, and to contract therefor in its discretion. The commission may in its discretion authorize employers to furnish or provide, at the expense of the commission and upon terms fixed by it, such transportation, attendance and accommodations; *provided, however*, that all such transportation, attendance and accommodations shall be at all times subject to the supervision and control of the commission.

Section 24. If any employer shall default in any payment to the accident fund hereinbefore required, the amount of such payment shall be collected by an action at law in the name of the commission as plaintiff, and such right of action shall be in addition to any other right of action or remedy. In respect to any injury happening to any of his workmen during the period of such default in any payment required hereunder, the defaulting employer shall not, if such default be after demand for payment, be entitled to any of the benefits of this act, but shall be liable to the injured workman (or the husband, wife, child or dependent of such workman in case death result from the injury) as he would have been prior to the passage of this act.

In case the recovery actually collected from the employer shall equal or exceed the compensation to which the claimant would be entitled under this act, the claimant shall be entitled to nothing out of the accident fund; if such amount shall be less than the compensation herein provided, the accident fund shall contribute such deficiency. The person entitled to claim under this section shall have the choice, to be exercised before commencing suit against such defaulting employer, of proceeding by suit against such employer or of taking under this act. If such person shall elect to take under this act, the cause of action shall be assigned to the commission for the benefit of the accident fund. In any suit brought upon such cause of action the defenses withdrawn by Section 15 hereof from employers electing not to contribute hereunder shall be inadmissible. Any such cause of action assigned to the commission may be prosecuted or compromised by it in its discretion. Any compromise by an individual claimant under this section which would result in a deficiency to be

made good out of the accident fund may be made only upon the written approval of the commission.

Section 25. If any workman shall sustain an injury which the commission shall determine to have been caused in whole or in part by the failure of his employer to install or maintain any safety appliance, device or safeguard required by statute, such workman, or, if such injury result in death, then the husband, wife, child or dependent of such workman, shall have the same rights against such employer as in the case of an employer defaulting in payments due hereunder, and all of the provisions of the preceding section shall apply with respect to such claim; *provided*, in case the workman or his beneficiary proceeds against the employer he shall have no claim against the accident fund.

Section 26. No moneys payable on account of injuries or death hereunder shall be subject to assignment prior to the receipt thereof by the beneficiary entitled thereto, nor shall the same pass by operation of law. All moneys paid or payable hereunder and the right to receive the same shall be exempt from seizure on execution, attachment or garnishment, or by the process of any court.

Section 27. (a) Where a workman is entitled to compensation under this act he shall file with the commission his application for such, together with the certificate of the physician who attended him, and it shall be the duty of the physician to inform the injured workman of his rights under this act, and to lend all necessary assistance in making this application for compensation and such proof of other matters as required by the rules of the commission, without charge to the workman.

(b) Where death results from injury, the parties entitled to compensation under this act, or some one in their behalf shall make application for the same to the commission, which application must be accompanied with proof of death and proof of relationship showing the parties to be entitled to compensation under this act, certificates of attending physician, if any, and such other proof as required by the rules of the commission.

(c) If change of circumstances warrant an increase or rearrangement of compensation, like application shall be made therefor. No increase or rearrangement shall be operative for any period prior to application therefor.

(d) No application shall be valid or claim thereunder enforceable unless filed within one year after the day upon which the injury occurred or the right accrued.

Section 28. Any workman entitled to receive compensation

under this act is required, if requested by the commission, to submit himself for medical examination at a time and from time to time at a place reasonably convenient for the workman and as may be provided by the rules of the commission. If the workman refuses to submit to any such examination, or obstructs the same, his rights to monthly payments shall be suspended until such examination has taken place, and no compensation shall be payable during or for account of such period.

Section 29. Whenever any accident occurs to any workman it shall be the duty of the employer to at once report such accident and the injury resulting therefrom to the commission, and also to any local representative of the commission. Such report shall state:

1. The time, cause and nature of the accident and injuries, and the probable duration of the injury resulting therefrom.

2. Whether the accident arose out of or in the course of the injured person's employment.

3. Any other matters the rules and regulations of the commission may prescribe.

Section 30. The books, records and pay rolls of the employer pertinent to the administration of this act shall always be open to inspection by the commission or its traveling auditor, agent or assistant, for the purpose of ascertaining the correctness of the pay roll, the men employed, and such other information as may be necessary for the commission and its management under this act. Refusal on the part of the employer to report accidents or to submit said books, records and pay roll for such inspection to any member of the commission, or any assistant presenting written authority from the commission, shall subject the offending employer to a penalty of one hundred dollars (\$100) for each offense, to be collected by civil action in the name of the State and paid into the accident fund, and the individual who shall personally give such refusal shall be guilty of a misdemeanor.

Section 31. Any employer and his workman engaged in works other than those defined in Section 13 hereof may accept the provisions of this act and become subject thereto and entitled to the benefits thereof by filing with the commission their written election to that effect.

Section 32. Any employer, workman, beneficiary or person feeling aggrieved by any decision of the commission affecting his interests under this act may have the same reviewed by a proceeding in the nature of an appeal and initiated in the circuit court of the county in which the accident occurred, or in which he resides, and such appeal shall have precedence

over all other cases except criminal cases, and the court shall determine whether the commission has justly considered all the facts concerning injury, whether it has exceeded the powers granted it by this act, whether it has misconstrued the law and facts applicable in the case decided. If the court shall determine that the commission has acted within its powers and has correctly construed the law and facts the decision of the commission shall be confirmed; otherwise, it shall be reversed or modified. Upon the hearing of such an appeal the court in its discretion may submit to a jury any question of fact involved in such an appeal. The proceedings in every such appeal shall be informal and summary, but full opportunity to be heard shall be had before judgment is pronounced. No such appeal shall be entertained unless notice of appeal shall have been served by mail or personally upon some member of the commission within 30 days following the rendition of the decision appealed from and actual communication thereof to the person affected thereby. No bond shall be required except that an appeal by the employer from a decision of the commission under Section 25 shall be ineffectual unless within five days following the service of notice thereof a bond with surety satisfactory to the court shall be filed, conditioned to perform the judgment of the court. Except in the case last named an appeal shall not be a stay. If the decision of the commission shall be reversed or modified the fees of the medical and other witnesses and the costs shall be paid out of the industrial accident fund if the industrial accident fund is affected by the litigation. In other respects the practice in civil cases shall apply. Appeal shall lie from the judgment of the circuit court as in other civil cases. The Attorney General shall be the legal adviser of the commission and shall represent it in all proceedings whenever so required by any of the commissioners. In all court proceedings under or pursuant to this act the decision of the commission shall be *prima facie* correct and the burden of proof shall be upon the party attacking same.

Section 33. Disbursement out of the funds shall be made only upon warrants drawn by the Secretary of State upon vouchers therefor transmitted to him by the commission and audited by him. The State Treasurer shall, to such extent as shall appear to him to be advisable, keep the moneys of the unsegregated portion of the accident fund invested at interest in the class of securities authorized for the investment by banks of savings deposits under the laws of this State. The State Treasurer shall be liable on his official bond for the safe custody of the moneys and securities of the accident fund and the segregated accident fund.

Section 34. Nothing in this act shall be deemed to abrogate the rights of the employee under the present employers' liability law, in all cases where the employee, under this act, is given the right to bring suit against his employer for an injury.

Filed in the office of the Secretary of State February 25, 1913.

CHAPTER 113.

AN ACT

[H. B. 96.]

Providing for the terms of the circuit courts in the first judicial district.

Be it enacted by the People of the State of Oregon:

Section 1. The terms of the circuit court in the first judicial district shall be held at the county seats of the respective counties of said district, at the following times: In Josephine County on the second Monday in January, the second Monday in April and the second Monday in September; in Jackson County, on the fourth Monday in February, the fourth Monday in May and the fourth Monday in October; *provided*, that a jury shall be summoned for each of said terms.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Filed in the office of the Secretary of State February 25, 1913.

CHAPTER 114.

AN ACT

[H. B. 102.]

To give incorporated cities and towns police power and authority over their public parks without their boundaries.

Be it enacted by the People of the State of Oregon:

Section 1. Every incorporated city and town or municipal corporation owning or controlling any lands without the boundaries of such city, town or municipal corporation, is hereby granted power to enact any police or penal ordinance