

[CHAPTER 684]

AN ACT

June 25, 1938
[H. R. 5805]
[Public, No. 726]

To amend an Act entitled "An Act to provide for the exercise of sole and exclusive jurisdiction by the United States over the Hawaii National Park in the Territory of Hawaii, and for other purposes", approved April 19, 1930.

Hawaii National
Park.

46 Stat. 228.
16 U. S. C. § 395e.

Acting Commission-
er; power, jurisdiction,
etc.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 6 of the Act entitled "An Act providing for the exercise of sole and exclusive jurisdiction by the United States over Hawaii National Park in the Territory of Hawaii, and for other purposes", approved April 19, 1930 (46 Stat. 228; U. S. C., title 16, sec. 395e), be amended by adding at the end thereof the following:

"That during such time or times as the office of the Commissioner for the Hawaii National Park shall be or remain unfilled, or when the presence of such Commissioner cannot be conveniently procured, any United States commissioner duly appointed by the United States District Court for the Territory of Hawaii and residing in such district shall have full power, authority, and jurisdiction to hear and act upon all complaints made with respect to offenses or violations of law or regulations occurring within the limits of the Hawaii National Park, as the United States Commissioner for the Hawaii National Park may now act with respect to offenses or violations of law or regulations occurring within the limits of said park."

46 Stat. 229.
16 U. S. C. § 395h.

SEC. 2. That section 9 of the said Act of April 19, 1930 (46 Stat. 229; U. S. C., title 16, sec. 395h), be amended by adding at the end thereof the following:

Fees allowed.

"That any United States commissioner in and for the Territory of Hawaii, while acting in such capacity as United States Commissioner for the Hawaii National Park as authorized by section 6 hereof, shall be allowed the fees prescribed by section 21 of the Act of May 28, 1896 (29 Stat. 184), upon the rendition of an itemized account."

29 Stat. 184.
28 U. S. C. § 597.

Repeal of conflicting
laws.

SEC. 3. All laws or parts of laws, either Federal or Territorial, in conflict herewith are hereby repealed.

Approved, June 25, 1938.

[CHAPTER 685]

AN ACT

June 25, 1938
[H. R. 5690]
[Public, No. 727]

To amend the Longshoremen's and Harbor Workers' Compensation Act.

Longshoremen's and
Harbor Workers'
Compensation Act,
amendments.

44 Stat. 1425.
33 U. S. C. § 902.
Definitions.
"Child."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subdivision (14) of section 2 of the Longshoremen's and Harbor Workers' Compensation Act be, and it is hereby, amended to read as follows:

"Grandchild."

"Brother", "sister."

Age and depend-
ency.

"(14) 'Child' shall include a posthumous child, a child legally adopted prior to the injury of the employee, a child in relation to whom the deceased employee stood in loco parentis for at least one year prior to the time of injury, and a stepchild or acknowledged illegitimate child dependent upon the deceased, but does not include married children unless wholly dependent on him. 'Grandchild' means a child as above defined of a child as above defined. 'Brother' and 'sister' include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but does not include married brothers nor married sisters unless wholly dependent on the employee. 'Child', 'grandchild', 'brother', and 'sister' include only persons who are under eighteen years of age, and also persons who, though eighteen years of age or over, are wholly dependent upon the deceased employee and incapable of self-support by reason of mental or physical disability."

SEC. 2. That subdivision (a) of section 7 of said Act, as amended, be, and it is hereby, amended to read as follows:

"(a) The employer shall furnish such medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for such period as the nature of the injury or the process of recovery may require. If the employer fails to provide the same, after request by the injured employee, such injured employee may do so at the expense of the employer. The employee shall not be entitled to recover any amount expended by him for such treatment or services unless he shall have requested the employer to furnish the same and the employer shall have refused or neglected to do so, or unless the nature of the injury required such treatment and services and the employer or his superintendent or foreman having knowledge of such injury shall have neglected to provide the same; nor shall any claim for medical or surgical treatment be valid and enforceable, as against such employer, unless within twenty days following the first treatment the physician giving such treatment furnish to the employer and the deputy commissioner a report of such injury and treatment, on a form prescribed by the Commission. The deputy commissioner may, however, excuse the failure to furnish such report within twenty days when he finds it to be in the interest of justice to do so, and he may, upon application by a party in interest, make an award for the reasonable value of such medical or surgical treatment so obtained by the employee. If at any time during such period the employee unreasonably refuses to submit to medical or surgical treatment, the deputy commissioner may, by order, suspend the payment of further compensation during such time as such refusal continues, and no compensation shall be paid at any time during the period of such suspension, unless the circumstances justified the refusal."

SEC. 3. That section 7 of said Act, as amended, be, and it is hereby, further amended by adding thereto the following new subdivision:

"(d) The liability of an employer for medical treatment as herein provided shall not be affected by the fact that his employee was injured through the fault or negligence of a third party, not in the same employ, unless and until notice of election to sue has been given as required by section 33 (a) or suit has been brought against such third party without the giving of such notice. The employer shall, however, have a cause of action against such third party to recover any amounts paid by him for such medical treatment in like manner as provided in section 33 (b) of this Act."

SEC. 4. That paragraph (22) of subdivision (c) of section 8 of said Act, as amended, be, and it is hereby, amended to read as follows:

"(22) In any case in which there shall be a loss of, or loss of use of, more than one member or parts of more than one member set forth in paragraphs (1) to (19) of this subdivision, not amounting to permanent total disability, the award of compensation shall be for the loss of, or loss of use of, each such member or part thereof, which awards shall run consecutively, except that where the injury affects only two or more digits of the same hand or foot, paragraph (17) of this subdivision shall apply."

SEC. 5. That section 8 of said Act, as amended, be, and it is hereby, further amended by adding thereto the following new subdivisions:

"(h) The wage-earning capacity of an injured employee in cases of partial disability under subdivision (c) (21) of this section or under subdivision (e) of this section shall be determined by his actual earnings if such actual earnings fairly and reasonably represent his wage-earning capacity: *Provided, however,* That if the employee has no actual earnings or his actual earnings do not fairly and reasonably represent his wage-earning capacity, the deputy com-

44 Stat. 1427.
33 U. S. C. § 907 (a).

Medical, etc., services to be furnished by employer.

Refusal by employer; recovery of expense by employee.
Conditions.

Unreasonable refusal by employee to submit to treatment.

44 Stat. 1427.
33 U. S. C. § 907.

Liability of employer through fault of a third party.

44 Stat. 1440.
33 U. S. C. § 933.

44 Stat. 1428; 48 Stat. 806.
33 U. S. C. § 908.

Specified injuries not amounting to permanent total disability.

44 Stat. 1427.
33 U. S. C. § 908.

Determination of wage-earning capacity.

Proviso.
Employee without actual earnings, etc.

missioner may, in the interest of justice, fix such wage-earning capacity as shall be reasonable, having due regard to the nature of his injury, the degree of physical impairment, his usual employment, and any other factors or circumstances in the case which may affect his capacity to earn wages in his disabled condition, including the effect of disability as it may naturally extend into the future.

"(i) In cases under subdivision (c) (21) and subdivision (e) of this section, whenever the deputy commissioner determines that it is for the best interests of an injured employee entitled to compensation, he may, with the approval of the Commission, approve agreed settlements of the interested parties, discharging the liability of the employer for such compensation, notwithstanding the provisions of section 15 (b) and section 16 of this Act: *Provided*, That the sum so agreed upon shall be payable in installments as provided in section 14 (b), which installments shall be subject to commutation under section 14 (j): *And provided further*, That if the employee should die from causes other than the injury after the Commission has approved an agreed settlement as provided for herein, the sum so approved shall be payable, in the manner prescribed in this subdivision, to and for the benefit of the persons enumerated in subdivision (d) of this section."

SEC. 6. That subdivisions (b), (c), and (d) of section 9 of this Act be, and they are hereby, amended to read as follows:

"(b) If there be a surviving wife or dependent husband and no child of the deceased, to such wife or dependent husband 35 per centum of the average wages of the deceased, during widowhood, or dependent widowhood, with two years' compensation in one sum upon remarriage; and if there be a surviving child or children of the deceased, the additional amount of 10 per centum of such wages for each such child; in case of the death or remarriage of such surviving wife or dependent husband, any surviving child of the deceased employee shall have his compensation increased to 15 per centum of such wages: *Provided*, That the total amount payable shall in no case exceed 66 $\frac{2}{3}$ per centum of such wages. The deputy commissioner having jurisdiction over the claim may, in his discretion, require the appointment of a guardian for the purpose of receiving the compensation of a minor child. In the absence of such a requirement the appointment of a guardian for such purposes shall not be necessary.

"(c) If there be a surviving child or children of the deceased, but no surviving wife or dependent husband, then for the support of each such child 15 per centum of the wages of the deceased: *Provided*, That the aggregate shall in no case exceed 66 $\frac{2}{3}$ per centum of such wages.

"(d) If there be no surviving wife or dependent husband or child or if the amount payable to a surviving wife or dependent husband and to children shall be less in the aggregate than 66 $\frac{2}{3}$ per centum of the average wages of the deceased; then for the support of grandchildren or brothers and sisters, if dependent upon the deceased at the time of the injury, 15 per centum of such wages for the support of each such person and for the support of each parent, or grandparent, of the deceased if dependent upon him at the time of the injury, 25 per centum of such wages during such dependency. But in no case shall the aggregate amount payable under this subdivision exceed the difference between 66 $\frac{2}{3}$ per centum of such wages and the amount payable as hereinbefore provided to surviving wife or dependent husband and for the support of surviving child or children."

Approval of agreed settlement of interested parties in designated cases.
44 Stat. 1428, 1429.
33 U. S. C. § 908.

44 Stat. 1434.
33 U. S. C. §§ 915, 916.

Proviso.
Installment payments.
44 Stat. 1432, 1433.
33 U. S. C. § 914.

Death of employee from other causes.

44 Stat. 1429.
33 U. S. C. § 908.
44 Stat. 1430.
33 U. S. C. § 909.

Compensation for death.
Surviving wife or dependent husband and no child.

Surviving child or children.

Death or remarriage of wife or husband.

Proviso.
Maximum amount.

Surviving child or children, but no surviving wife or dependent husband.

Proviso.
Maximum amount.

Support of dependent grandchildren, brothers, and sisters.

Dependent parent or grandparent.

Maximum amount.

SEC. 7. That subdivision (f) of section 14 of said Act be, and it is hereby, amended to read as follows:

“(f) If any compensation, payable under the terms of an award, is not paid within ten days after it becomes due, there shall be added to such unpaid compensation an amount equal to 20 per centum thereof, which shall be paid at the same time as, but in addition to, such compensation, unless review of the compensation order making such award is had as provided in section 21 and an interlocutory injunction staying payments is allowed by the court as provided therein.”

SEC. 8. That section 17 of said Act be, and it is hereby, amended to read as follows:

“SEC. 17. Any person entitled to compensation under the provisions of this Act shall have a lien against the assets of the carrier or employer for such compensation without limit of amount, and shall, upon insolvency, bankruptcy, or reorganization in bankruptcy proceedings of the carrier or employer, or both, be entitled to preference and priority in the distribution of the assets of such carrier or employer, or both.”

SEC. 9. That subdivision (g) of section 19 of said Act be, and it is hereby, amended to read as follows:

“(g) At any time after a claim has been filed with him, the deputy commissioner may, with the approval of the Commission, transfer such case to any other deputy commissioner for the purpose of making investigation, taking testimony, making physical examinations or taking such other necessary action therein as may be directed.”

SEC. 10. That section 22 of said Act, as amended, be, and it is hereby, amended to read as follows:

“SEC. 22. Upon his own initiative, or upon the application of any party in interest, on the ground of a change in conditions or because of a mistake in a determination of fact by the deputy commissioner, the deputy commissioner may, at any time prior to one year after the date of the last payment of compensation, whether or not a compensation order has been issued, or at any time prior to one year after the rejection of a claim, review a compensation case in accordance with the procedure prescribed in respect of claims in section 19, and in accordance with such section issue a new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation, or award compensation. Such new order shall not affect any compensation previously paid, except that an award increasing the compensation rate may be made effective from the date of the injury, and if any part of the compensation due or to become due is unpaid, an award decreasing the compensation rate may be made effective from the date of the injury, and any payment made prior thereto in excess of such decreased rate shall be deducted from any unpaid compensation, in such manner and by such method as may be determined by the deputy commissioner with the approval of the Commission.”

SEC. 11. That section 30 of said Act be, and it is hereby, amended by adding thereto the following new subdivision:

“(f) Where the employer or the carrier has been given notice, or the employer (or his agent in charge of the business in the place where the injury occurred) or the carrier has knowledge, of any injury or death of an employee and fails, neglects, or refuses to file report thereof as required by the provisions of subdivision (a) of this section, the limitations in subdivision (a) of section 13 of this Act shall not begin to run against the claim of the injured employee or his dependents entitled to compensation, or in favor of either the

44 Stat. 1433.
33 U. S. C. § 914.

Payment of compensation.
Additional, if not paid when due.

Stay by court order.
44 Stat. 1436.
33 U. S. C. § 921.

44 Stat. 1434.
33 U. S. C. § 917.

Compensation a lien against assets.

Preference in bankruptcy, etc.

44 Stat. 1436.
33 U. S. C. § 919.

Transfer of cases.

44 Stat. 1437.
33 U. S. C. § 922.

Modification of awards.
Procedure for review, etc.

44 Stat. 1435.
33 U. S. C. § 919.
New compensation order.

Previous payments not affected; exception.

44 Stat. 1439.
33 U. S. C. § 930.

Failure to file report of injury or death.

44 Stat. 1432.
33 U. S. C. § 913.

employer or the carrier, until such report shall have been furnished as required by the provisions of subdivision (a) of this section."

SEC. 12. That subdivisions (b) and (e) of section 33 of said Act be, and are hereby, amended to read as follows:

"(b) Acceptance of such compensation under an award in a compensation order filed by the deputy commissioner shall operate as an assignment to the employer of all right of the person entitled to compensation to recover damages against such third person."

"(e) Any amount recovered by such employer on account of such assignment, whether or not as the result of a compromise, shall be distributed as follows:

"(1) The employer shall retain an amount equal to—

(A) the expenses incurred by him in respect to such proceedings or compromise (including a reasonable attorney's fee as determined by the deputy commissioner);

(B) the cost of all benefits actually furnished by him to the employee under section 7;

(C) all amounts paid as compensation;

(D) the present value of all amounts thereafter payable as compensation, such present value to be computed in accordance with a schedule prepared by the Commission, and the present value of the cost of all benefits thereafter to be furnished under section 7, to be estimated by the deputy commissioner, and the amounts so computed and estimated to be retained by the employer as a trust fund to pay such compensation and the cost of such benefits as they become due, and to pay any sum finally remaining in excess thereof to the person entitled to compensation or to the representative; and

"(2) The employer shall pay any excess to the person entitled to compensation or to the representative."

SEC. 13. That section 33 of said Act be, and it is hereby, further amended by adding thereto the following new subdivision:

"(i) Where the employer is insured and the insurance carrier has assumed the payment of the compensation, the insurance carrier shall be subrogated to all the rights of the employer under this section."

SEC. 14. That section 38 of said Act be, and it is hereby, amended to read as follows:

"SEC. 38. (a) Any employer required to secure the payment of compensation under this Act who fails to secure such compensation shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both such fine and imprisonment; and in any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable to such fine or imprisonment as herein provided for the failure of such corporation to secure the payment of compensation; and such president, secretary, and treasurer shall be severally personally liable, jointly with such corporation, for any compensation or other benefit which may accrue under the said Act in respect to any injury which may occur to any employee of such corporation while it shall so fail to secure the payment of compensation as required by section 32 of this Act.

"(b) Any employer who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secretes, or destroys any property belonging to such employer, after one of his employees has been injured within the purview of this Act, and with intent to avoid the payment of compensation under this Act to such employee or his dependents, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both such fine

44 Stat. 1440.
33 U. S. C. § 933.

Injuries where third persons are liable. Acceptance of compensation; assignment of rights to employer.

Distribution of amount recovered.

Amount retained by employer. Expenses.

Cost of benefits furnished employee. 44 Stat. 1427.
33 U. S. C. § 907.
Amounts paid or thereafter payable as compensation.

Disposition of excess.

44 Stat. 1440.
33 U. S. C. § 933.

Where employer insured.

44 Stat. 1442.
33 U. S. C. § 938.

Failure of employer to secure compensation payment; penalty.

Liability of officers of corporation.

44 Stat. 1439.
33 U. S. C. § 932.
Transfer, etc., by employer of assets with intent to avoid payment.

Penalty.

and imprisonment; and in any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable to such penalty of imprisonment as well as jointly liable with such corporation for such fine.

“(c) This section shall not affect any other liability of the employer under this Act.”

Approved, June 25, 1938.

Liability of officers of corporation.

Other liabilities of employer not affected.

[CHAPTER 686]

AN ACT

To amend the Act of Congress entitled “An Act to establish an Alaska Game Commission, to protect game animals, land fur-bearing animals, and birds in Alaska, and for other purposes”, approved January 13, 1925, as amended.

June 25, 1938
[H. R. 7844]
[Public, No. 728]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2 of the Act entitled “An Act to establish an Alaska Game Commission, to protect game animals, land fur-bearing animals, and birds in Alaska, and for other purposes”, approved January 13, 1925 (43 Stat. 739), as amended by the Act of February 14, 1931 (46 Stat. 1111), under the title “Definitions” is amended to read as follows:

Alaska Game Law, amendments.

43 Stat. 739; 46 Stat. 1111.
48 U. S. C. § 206.

“SEC. 2. DEFINITIONS.—That for the purposes of this Act the following shall be construed, respectively, to mean:

Definitions.

“Commission: The Alaska Game Commission.

“Commission.”

“Territory: Territory of Alaska.

“Territory.”

“Person: The plural or the singular, as the case demands, including individuals, associations, partnerships, and corporations, unless the context otherwise requires.

“Person.”

“Indian: Natives of one-half or more Indian blood.

“Indian.”

“Eskimo: Natives of one-half or more Eskimo blood.

“Eskimo.”

“Take: Taking, pursuing, disturbing, hunting, capturing, trapping, or killing game animals, land fur-bearing animals, game or nongame birds; attempting to take, pursue, disturb, hunt, capture, trap, or kill such animals or birds; or setting or using a net, trap, or other device for taking them, or collecting the nests or eggs of such birds, unless the context otherwise requires. Whenever the taking of animals, birds, or nests or eggs of birds is permitted, reference is had to taking by lawful means and in lawful manner.

“Take.”

“Open season: The time during which birds or animals may lawfully be taken. Each period of time prescribed as an open season shall be construed to include the first and last days thereof.

“Open season.”

“Closed season: The time during which birds and animals may not be taken.

“Closed season.”

“Transport: Shipping, transporting, carrying, importing, exporting, or receiving or delivering for shipment, transportation, carriage, or export, unless the context otherwise requires.

“Transport.”

“Game animals: Deer, moose, caribou, elk, mountain sheep, mountain goat, bison, muskox, and the large brown and grizzly bears, and such other animals as have been or may hereafter be transplanted, introduced, or reintroduced into the Territory or any part thereof and found and declared by the Secretary of Agriculture to be game animals, which shall be known as big game.

“Game animals.”

“Land fur-bearing animals: Beaver, muskrat, marmot, raccoon, pika, squirrel, fisher, fox, lynx, marten or sable, mink, weasel or ermine, land otter, wolverine, polar bear, and black bear, including its brown and blue (or glacier bear) color variations, and such other animals as have been or may hereafter be transplanted, introduced, or reintroduced into the Territory or any part thereof and found and declared by the Secretary of Agriculture to be fur-bearing animals;

“Land fur-bearing animals.”