

HOUSE No. 1370

Bill accompanying the petition of the Massachusetts State Branch of the American Federation of Labor that all employers and workmen be included in the provision of the law for the compensation of injured employees. Joint Judiciary. January 20.

The Commonwealth of Massachusetts.

In the Year One Thousand Nine Hundred and Sixteen.

AN ACT

To extend the Benefits of the Workmen's Compensation to
Certain Employees not now receiving them.

*Be it enacted by the Senate and House of Representatives
in General Court assembled, and by the authority of the
same, as follows:*

1 SECTION 1. Chapter seven hundred and fifty-one of
2 the acts of the year nineteen hundred and eleven, as
3 heretofore amended, is hereby further amended as
4 follows:—

5 First, by striking out Part I of said act as hereto-
6 fore amended and inserting in place thereof the fol-
7 lowing:—

PART I.

MODIFICATION OF REMEDIES.

7 Section 1. This act shall apply to all public and
8 (except as stated in section two) to all industrial em-

9 ployment, both as hereinafter defined. If an employee
10 receives personal injury arising out of and in the course
11 of such employment, his employer or the insurer, as the
12 case may be, shall pay compensation in the amounts
13 and to the person or persons hereinafter specified.

14 *Section 2.* The provisions of this act shall not apply
15 to domestic servants and farm laborers.

16 *Section 3.* This act shall apply to employees of the
17 commonwealth and all counties, cities, towns and
18 districts having the power of taxation, as hereinafter
19 defined. For the purpose of this act all such employees
20 paid by the commonwealth, but serving under boards
21 or commissions, exercising power within defined dis-
22 tricts, shall also be deemed to be in the service of the
23 commonwealth.

24 *Section 4.* The rights and remedies herein granted to
25 an employee on account of a personal injury for which
26 he is entitled to compensation under this act shall
27 exclude all other rights and remedies of such employee,
28 his personal representatives, dependents or next of
29 kin, at common law or otherwise, on account of such
30 injury.

31 Second, by amending Part II of said act, as hereto-
32 fore amended, by striking out section one thereof.

33 Third, by inserting in section three of Part III of
34 said act, as heretofore amended, after the sentence
35 "Process and procedure under this act shall be as sum-
36 mary as reasonably may be", the following:— The
37 board or its members, or committees of arbitration
38 (in making an investigation or inquiry or conducting a
39 hearing) shall not be bound by common law or statutory
40 rules of evidence or by technical or formal rules of
41 procedure, except as provided by said chapter.

42 Fourth, by striking out section twenty-two of Part

43 IV of said act as heretofore amended; and also by add-
44 ing to said Part IV, as heretofore amended, the follow-
45 ing: —

46 *Section 25.* All employers (but not including the
47 commonwealth or the municipal bodies mentioned in
48 section three of Part I) shall secure compensation to
49 their employees in the following manner.

50 By becoming and continuing as subscribers in the
51 association or in some stock or mutual liability insurance
52 company authorized to do business within this com-
53 monwealth.

54 *Section 26.* If the employer fails to comply with the
55 provisions of the preceding section, an injured employee,
56 or his legal representative or dependents in case death
57 results from the injury, may at his or their option elect
58 either to claim compensation under this act or to bring
59 an action against his employer to recover damages on
60 account of said injury or death; and in such action it
61 shall not be a defense: —

62 (a) That the employee was negligent.

63 (b) That the injury was caused by the negligence of a
64 fellow employee.

65 (c) That the employee had assumed the risks of in-
66 jury.

67 If an injured employee or his legal representative or
68 dependents elect to claim compensation, as aforesaid,
69 the board may order the employer to furnish sufficient
70 security for the payment of such compensation as may
71 be awarded.

72 Furthermore, if an employer shall be in default under
73 the provisions of the preceding section for a period of
74 thirty days, he may be enjoined by the superior court
75 from carrying on his business while such default con-
76 tinues.

77 *Section 27.* Every policy of insurance covering the
78 liability of the employer for compensation, whether
79 issued by the association or by a stock company or by
80 a mutual association authorized to transact workmen's
81 compensation insurance business in this state, shall
82 cover the entire liability of the employer to his employ-
83 ees covered by the policy or contract, and also shall
84 contain a provision setting forth the right of the em-
85 ployees to enforce in their own names, either by at
86 any time filing a separate claim or by at any time mak-
87 ing the insurer a party to the original claim, the liability
88 of the insurer, in whole or in part, for the payment of
89 such compensation; *provided, however,* that payment in
90 whole or in part of such compensation, by either the
91 employer or the insurer, shall to the extent thereof be a
92 bar to the recovery against the other of the amount so
93 paid.

94 *Section 28.* Every such policy and contract shall
95 contain a provision that, as between the employer and
96 the insurer, the notice to or knowledge of the occurrence
97 of the injury on the part of the employer shall be
98 deemed notice or knowledge, as the case may be, on the
99 part of the insurer; that jurisdiction of the employer
100 shall, for the purpose of this act, be jurisdiction of the
101 insurer, and that the insurer shall in all things be bound
102 by and subject to the orders, findings, decisions or
103 awards rendered against the employer for payment of
104 compensation under the provisions of this act.

105 *Section 29.* Every such policy and contract shall con-
106 tain a provision to the effect that the insolvency or
107 bankruptcy of the employer and his discharge therein
108 shall not relieve the insurer from the payment of com-
109 pensation for injuries or death sustained by an employee
110 during the life of such policy or contract.

111 *Section 30.* No policy or contract of insurance issued
112 by the association or by a stock company or a mutual
113 association against liability arising under this act shall
114 be canceled within the time limit in such contract for
115 its expiration until at least ten days after notice of
116 intention to cancel such contract, on a date specified in
117 such notice, shall have been filed in the office of the
118 state insurance commissioner and also served on the
119 employer.

120 *Section 31.* No agreement by an employee to pay
121 any portion of the premiums paid by his employer to an
122 insurer, or to the cost of mutual or other insurance,
123 maintained for or carried for the purpose of securing
124 compensation as herein required, shall be valid; and
125 any employer who makes a deduction for such purpose
126 from the wages or salary of an employee entitled to the
127 benefits of the act shall be guilty of a misdemeanor, and
128 liable to a fine not exceeding one hundred dollars for
129 each offense.

130 Fifth, by striking out section one of Part V of said
131 act as heretofore amended; and also by adding to sec-
132 tion two thereof, as heretofore amended, the follow-
133 ing:—

134 “Employment” in the case of private employers
135 shall include employment only in a trade or occupation
136 which is carried on by the employer for the sake of
137 pecuniary gain.

138 “Public employment” shall mean employment by the
139 commonwealth or by a county, city, town or district, as
140 defined by section three of Part I, but shall include only
141 laborers, workmen and mechanics.

1 SECTION 2. This act shall affect the liability of em-
2 ployers to employees engaged in interstate or foreign

3 commerce or otherwise only so far as the same is per-
4 missible under the laws of the United States.

1 SECTION 3. If any part or section of this act be
2 decided by the court to be unconstitutional or invalid,
3 the same shall not affect the validity of the act as a
4 whole or any part thereof which can be given effect
5 without the part so decided to be unconstitutional or
6 invalid.

1 SECTION 4. All acts or parts of acts inconsistent with
2 this act are hereby repealed.

1 SECTION 5. This act shall take effect on the first day
2 of October, nineteen hundred and fifteen.