

ACT 116

An Act Relating to Workmen's Compensation.

Be it Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 97 of the Revised Laws of Hawaii 1955, as amended, is hereby further amended to read:

"CHAPTER 97
WORKMEN'S COMPENSATION LAW
PART I. GENERAL PROVISIONS

Sec. 97-1. Definitions. In this chapter, unless the context otherwise requires:

'Appellate board' means the labor and industrial relations appeal board or one of the industrial accident boards.

'Compensation' means all benefits accorded by this chapter to an employee or his dependents on account of a work injury as defined in this section; it includes medical and rehabilitation benefits, income and indemnity benefits in cases of disability or death, and the allowance for funeral and burial expenses.

'Covered employment' means employment of an employee as defined in this section or of a person for whom the employer has provided voluntary coverage pursuant to section 97-4.

'Director' means the director of labor and industrial relations.

'Disability' means loss or impairment of a physical or mental function.

'Department' means the department of labor and industrial relations.

'Employee' means any individual in the employment of another person except where such employment is solely for personal, family or household purposes.

Where an employee is loaned or hired out to another person for the purpose of furthering such other person's trade, business, occupation, or profession, the employee shall, beginning with the time when the control of the employee is transferred to such other person and continuing until such control is returned to the original employer, be deemed to be the employee of such other person regardless of whether he is paid directly by such other person or by the original employer. The employee shall be deemed to remain in the sole employment of the original employer if such other person fails to secure compensation to the employee as provided in section 97-120.

Whenever an independent contractor undertakes to perform work for another person pursuant to contract, express or implied, oral or written, such independent contractor shall be deemed the employer of all employees performing work in the execution of the contract, including employees of his subcontractors and their subcontractors. However, the liability of the direct employer of an employee who suffers a work injury shall be primary and that of the others secondary in their order. An employer secondarily liable who satisfies a liability under this chapter shall be entitled to indemnity against loss from the employer primarily liable.

'Employee in comparable employment' means a person, other than the injured employee, who is employed in the same grade in the same

type of work by the same employer or, if there is no person so employed, a person, who is employed in the same grade in the same type of work by another employer in the same district.

‘Employer’ means any person having one or more persons in his employment. It includes the legal representative of a deceased employer and the State, any county or political subdivision of the State, and any other public entity within the State.

The insurer of an employer is subject to such employer’s liabilities and entitled to his rights and remedies under this chapter as far as applicable.

‘Employment’ means any service performed by an individual for another person under any contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully entered into. It includes service of public officials, whether elected or under any appointment or contract of hire express or implied.

‘Employment’ does not include the following service—

(a) Service for a religious, charitable, educational or nonprofit organization if performed in a voluntary or unpaid capacity;

(b) Service for a religious, charitable, educational or nonprofit organization if performed by a recipient of aid therefrom and the service is incidental to or in return for the aid received;

(c) Service for a school, college, university, college club, fraternity or sorority if performed by a student who is enrolled and regularly attending classes and in return for board, lodging or tuition furnished, in whole or in part;

(d) Service performed by a duly ordained, commissioned or licensed minister, priest, or rabbi of a church in the exercise of his ministry or by a member of a religious order in the exercise of nonsecular duties required by such order.

As used in this paragraph ‘religious, charitable, educational or nonprofit organization’ means a corporation, unincorporated association, community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual.

‘Personal injury’ includes death resulting therefrom.

‘Total disability’ means disability of such an extent that the disabled employee has no reasonable prospect of finding regular employment of any kind in the normal labor market.

‘Trade, business, occupation, or profession’ means all commercial, occupational, or professional activities, whether conducted for pecuniary gain or not. It includes all activities of nonprofit organizations conducted in pursuit of their purposes.

‘Wages’ means all remuneration for services constituting employment. It includes the market value of board, lodging, fuel and other advantages having a cash value which the employer has paid as a part of the employee’s remuneration and gratuities received in the course of employment from others than the employer to the extent that they are customary and expected in that type of employment or accounted for by the employee to the employer.

'Work injury' means a personal injury suffered under the conditions specified in section 97-3.

Sec. 97-2. Definitions relating to family relationships. 'Child' includes a posthumous child, adopted child, stepchild, and illegitimate child acknowledged prior to the personal injury.

'Brother' or 'sister' includes a half brother or half sister, a step-brother or stepsister, and a brother or sister by adoption.

'Grandchild' includes a child of an adopted child and a child of a stepchild, but does not include a stepchild of a child.

'Parent' includes a stepparent or a parent by adoption.

'Grandparent' includes a parent of a parent by adoption, but does not include a parent of a stepparent, a stepparent of a parent or a stepparent of a stepparent.

Sec. 97-3. Injuries covered. If an employee suffers personal injury either by accident arising out of and in the course of the employment or by disease proximately caused by, or resulting from the nature of, the employment his employer or the special compensation fund shall pay compensation to the employee or his dependents as hereinafter provided.

Accident arising out of and in the course of the employment includes the wilful act of a third person directed against an employee because of his employment.

No compensation shall be allowed for an injury incurred by an employee by his wilful intention to injure himself or another or by his intoxication.

Sec. 97-4. Voluntary coverage. Any employer who has individuals in his employment who are not employees as defined in section 97-1 may elect to provide coverage for them under this chapter. During the period for which such election is effective the employer and the individual in his employment covered thereby shall be deemed to be employees and be subject in all respects to the provisions of this chapter.

Election by any employer to provide coverage under this chapter shall be made by securing compensation to the individuals in his employment affected thereby in the manner provided in section 97-120 and giving the notice prescribed by section 97-121.

Every employer who elects to provide coverage under the terms of this section shall be bound by such election until January 1 of the next succeeding year and for terms of one year thereafter. Any such employer may elect to discontinue such coverage for personal injuries occurring after the expiration of any such calendar year by filing notice of such election with the director at least sixty days prior to the expiration of any such calendar year and at the same time posting notices to that effect conspicuously in such places of work that they can reasonably be expected to come to the attention of all individuals affected thereby.

Sec. 97-5. Exclusiveness of right to compensation. The rights and remedies herein granted to an employee or his dependents on account of a work injury suffered by him shall exclude all other liability of the employer to the employee, his legal representative, spouse, dependents, next of kin or any one else entitled to recover damages from such employer, at common law or otherwise, on account of the injury.

Sec. 97-6. Territorial applicability. The provisions of this chapter

shall be applicable to all work injuries sustained by employees within the territorial boundaries of the State.

If an employee who has been hired in the State suffers work injury, he shall be entitled to compensation under the provisions of this chapter even though such injury was sustained without the State. Such right to compensation shall exclude all other liability of the employer for damages as provided in section 97-5. All contracts of hire of employees made within the State shall be deemed to include an agreement to that effect.

If an employee who has been hired without the State is injured while engaged in his employer's business, and is entitled to compensation for the injury under the law of the state or territory where he was hired, he shall be entitled to enforce against his employer his rights in this State if his rights are such that they can reasonably be determined and dealt with by the director, the appellate board and the court in this State.

Sec. 97-7. Interstate and foreign commerce and maritime employment. To the extent permissible under the constitution and the laws of the United States, the provisions of this chapter shall apply to employees and employers engaged in interstate and foreign commerce and to employees in maritime employment and their employers not otherwise provided for by the laws of the United States.

Sec. 97-8. Liability of third person. When a work injury for which compensation is payable under this chapter has been sustained under circumstances creating in some person other than the employer or another employee of such employer acting in the course of his employment a legal liability to pay damages on account thereof, the injured employee or his dependents (hereinafter referred to collectively as the employee) may claim compensation under this chapter and recover damages from such third person.

If the employee commences an action against such third person he shall without delay give the employer written notice of the action and the name and location of the court in which the action is brought by personal service or registered mail. The employer may, at any time before trial on the facts, join as party plaintiff.

If within nine months after the date of the personal injury the employee has not commenced an action against such third person, the employer, having paid or being liable for compensation under this chapter, shall be subrogated to the rights of the injured employee. Except as limited by chapter 241, the employee may at any time commence an action or join in any action commenced by the employer against such third person.

No release or settlement of any claim or action under this section is valid without the written consent of both employer and employee. The entire amount of such settlement is subject to the employer's right of reimbursement for his compensation payments under this chapter and his expenses and costs of action.

If the employer has not joined in the action, the court on his application shall allow, as a first lien against the entire amount of any judgment for damages recovered by the employee, the amount of the employer's compensation payments under this chapter. After reimbursement for his compensation payments the employer shall be relieved

from the obligation to make further compensation payments to the employee under this chapter up to the entire amount of the balance of the judgment, if satisfied, without any deduction.

The amount of compensation paid by the employer or the amount of compensation to which the injured employee is entitled shall not be admissible in evidence in any action brought to recover damages.

Another employee of the same employer shall not be relieved of his liability as a third party, if the personal injury is caused by his wilful and wanton misconduct.

Sec. 97-9. Contracting out forbidden. No contract, rule, regulation or device whatsoever shall operate to relieve the employer in whole or in part from any liability created by this chapter.

PART II. COMPENSATION

A. Medical and Rehabilitation Benefits

Sec. 97-20. Medical services and supplies. Immediately after a work injury sustained by an employee and so long as reasonably needed the employer shall furnish to the employee all medical, surgical, and hospital services and supplies as the nature of the injury requires.

Whenever medical care is needed, the injured employee may select any physician or surgeon who is practicing on the island where the injury was incurred to render such care. If the services of a specialist are indicated, the employee may select any such physician or surgeon practicing in the State. The director may authorize the selection of a specialist practicing outside the State where no comparable medical attendance within the State is available. Upon procuring the services of such physician or surgeon, the injured employee shall give proper notice of his selection to the employer within a reasonable time after the beginning of the treatment. If for any reason during the period when medical care is needed, the employee wishes to change to another physician or surgeon, he may do so in accordance with rules prescribed by the director. If the employee is unable to select a physician or surgeon and the emergency nature of the injury requires immediate medical attendance, or if he does not desire to select a physician or surgeon and so advises the employer, the employer shall select the physician or surgeon. Such selection, however, shall not deprive the employee of his right of subsequently selecting a physician or surgeon for continuance of needed medical care.

The liability of the employer for medical, surgical, and hospital services and supplies required shall be limited to such charges as prevail in the community in which the physician or surgeon selected has his office for similar treatment of injured persons of a like standard of living, when the treatment is paid for by the patient. The director shall from time to time make determinations of such charges and shall promulgate fee schedules based upon such determinations. The liability of the employer may exceed the amounts set forth in such fee schedule only under conditions prescribed by the director.

If it appears to the director that the injured employee has wilfully refused to accept the services of a competent physician or surgeon selected as provided in this section, or has wilfully obstructed such physician or surgeon or medical, surgical or hospital services or sup-

plies, the director may in his discretion consider such refusal or obstruction on the part of the injured employee to be a waiver by him in whole or in part of his right to medical, surgical and hospital services and supplies, and may in his discretion suspend the weekly benefit payments, if any, to which such employee is entitled so long as such refusal or obstruction continues.

Sec. 97-21. Artificial member and other aids. Where an injury results in the amputation of an arm, hand, leg or foot, or the enucleation of an eye, or the loss of natural or artificial teeth, or the loss of vision which may be partially or wholly corrected by the use of lenses, the employer shall furnish an artificial member to take the place of each member lost and, in the case of correctible loss of vision, a set of suitable glasses. Where it is certified to be necessary by a licensed physician or surgeon chosen by agreement of the employer and the employee, the employer shall furnish such other aids, appliances, apparatus and supplies as are required to cure or relieve the effects of the injury. When a licensed physician or surgeon, chosen as above, certifies that it is necessitated by ordinary wear, the employer shall repair or replace such artificial members, aids, appliances or apparatus.

Where an employee suffers the loss of or damage to any artificial member, aid, appliance or apparatus by accident arising out of and in the course of his employment, the employer shall repair or replace such member, aid, appliance or apparatus whether or not the same was furnished initially by the employer.

The liability of the employer for artificial members, aids, appliances, apparatus or supplies as is imposed by this section shall be limited to such charges as prevail in the same community for similar equipment of a person of a like standard of living when the equipment is paid for by that person.

Sec. 97-22. Services of attendant. When the director finds that the service of an attendant for the injured employee is constantly necessary he may award a sum of not more than \$150 a month, as the director may deem necessary, for the procurement of such service.

Sec. 97-23. Medical rehabilitation. The medical services and supplies to which an employee suffering a work injury is entitled shall include such services, aids, appliances, apparatus and supplies as are reasonably needed for his greatest possible medical rehabilitation. The director, on competent medical advice, shall determine the need for or sufficiency of medical rehabilitation services furnished or to be furnished to the employee and may order any needed change of physician, hospital or rehabilitation facility.

Sec. 97-24. Vocational rehabilitation. (a) The director shall refer employees who have become permanently disabled as a result of work injuries and who in his opinion can be physically and vocationally rehabilitated to the state agency responsible for administering the vocational rehabilitation program which agency shall provide such physical and vocational rehabilitation services as are feasible under the provisions of chapter 42.

(b) When the agency responsible for administering the vocational rehabilitation program has provided all feasible physical and vocational rehabilitation to such an injured employee, or has determined, with the

approval of the director, that physical and vocational rehabilitation are not possible or feasible, it shall certify such determination to the director.

(c) The eligibility of any injured employee to receive other benefits under this chapter shall in no way be affected by his entrance upon a course of physical and vocational rehabilitation as herein provided, but, upon demonstrating cooperativeness and satisfactory progress and upon the certification to the director by the agency responsible for administering the vocational rehabilitation program, he may be paid for (1) his actual and necessary travel expenses from his place of residence to the place of training and return, (2) his living expenses while in training away from home in an amount not in excess of \$35 per week, and (3) his expenses for tuition, books and necessary equipment in training. The director may make expenditures from the special compensation fund for such expenses and for any additional expenses for evaluation and instruction, but no more than \$5,000 shall be paid to or on behalf of any one disabled person; provided, that the cost of vocational rehabilitation services and benefits shall be paid for first with federal or state funds, if and when available, and if no such funds are available, then and in such event, may be paid from the special compensation fund.

B. Income and Indemnity Benefits

I. FOR DISABILITY

Sec. 97-30. Total disability. (a) Permanent total disability. Where a work injury causes permanent total disability the employer shall pay the injured employee a weekly benefit equal to sixty-six and two-thirds per cent of his average weekly wages, but no more than \$75 nor less than \$18 a week.

In the case of the following injuries, the disability caused thereby shall be deemed permanent and total:

- (1) The permanent and total loss of sight in both eyes;
- (2) The loss of both feet at or above the ankle;
- (3) The loss of both hands at or above the wrist;
- (4) The loss of one hand and one foot;
- (5) An injury to the spine resulting in permanent and complete paralysis of both legs or both arms or one leg and one arm;
- (6) An injury to the skull resulting in incurable imbecility or insanity.

In all other cases the permanency and totality of the disability shall be determined on the facts. No adjudication of permanent total disability shall be made until after two weeks from the date of the injury.

After the employer has paid the maximum amount of weekly benefit payments specified in subsection (c), the disabled employee shall receive further compensation at the same rate from the special compensation fund.

(b) Temporary total disability. Where a work injury causes total disability not determined to be permanent in character, the employer, for the duration of such disability but not including the first two days thereof shall pay the injured employee a weekly benefit at the rate of sixty-six and two-thirds per cent of his average weekly wages, but not more than \$75 nor less than \$18 a week, or, if his average weekly wages are less than \$18 a week, at the rate of one hundred per cent of his

average weekly wages. In case the total disability exceeds seven days, the compensation shall be allowed from the date of such disability.

(c) Maximum benefits chargeable to employer. The aggregate liability of the employer for weekly benefit payments under both preceding subsections shall not exceed the sum of \$25,000.

Sec. 97-31. Partial disability. (a) Permanent partial disability. Where a work injury causes permanent partial disability the employer shall pay the injured worker a weekly benefit at the rate of sixty-six and two-thirds per cent of his average weekly wages, but not more than \$112.50 nor less than \$35 a week, for the period named in the schedule as follows:

Thumb. For the loss of thumb, seventy-five weeks;

First finger. For the loss of a first finger, commonly called index finger, forty-six weeks;

Second finger. For the loss of a second finger, commonly called the middle finger, thirty weeks;

Third finger. For the loss of a third finger, commonly called the ring finger, twenty-five weeks;

Fourth finger. For the loss of a fourth finger, commonly called the little finger, fifteen weeks;

Phalanx of thumb or finger. Loss of the first phalanx of the thumb shall be equal to the loss of three-fourths of the thumb, and compensation shall be three-fourths of the amount above specified for the loss of the thumb. The loss of the first phalanx of any finger shall be equal to the loss of one-half of the finger, and compensation shall be one-half of the amount above specified for loss of the finger. The loss of more than one phalanx of the thumb or any finger shall be considered as loss of the entire thumb or finger;

Great toe. For the loss of a great toe, thirty-eight weeks;

Other toes. For the loss of one of the toes other than the great toe, sixteen weeks;

Phalanx of toe. Loss of the first phalanx of any toe shall be equal to the loss of one-half of the toe; and the compensation shall be one-half of the amount specified for the loss of the toe. The loss of more than one phalanx of any toe shall be considered as the loss of the entire toe;

Hand. For the loss of a hand, two hundred and forty-four weeks;

Arm. For the loss of an arm, three hundred and twelve weeks;

Foot. For the loss of a foot, two hundred and five weeks;

Leg. For the loss of a leg, two hundred and eighty-eight weeks;

Eye. For the loss of an eye by enucleation, one hundred and sixty weeks. For loss of vision in an eye, one hundred and forty weeks. Loss of binocular vision or of eighty per cent of the vision of an eye shall be considered loss of vision of the eye.

Ear. For the permanent and complete loss of hearing in both ears, two hundred weeks. For the permanent and complete loss of hearing in one ear, fifty-two weeks. For the loss of both ears, eighty weeks. For the loss of one ear, forty weeks.

Loss of use. Permanent loss of the use of a hand, arm, foot, leg, thumb, finger, toe or phalanx shall be equal to and compensated as the loss of a hand, arm, foot, leg, thumb, finger, toe or phalanx.

Partial loss or loss of use of member named in schedule. Where a work injury causes permanent partial disability resulting from partial loss or partial loss of use of a member named in this schedule and where such disability is not otherwise compensated in this schedule, compensation shall be paid for a period which stands in the same proportion to the period specified for the total loss or loss of use of such member as the partial loss or loss of use of that member stands to the total loss or loss of use thereof.

More than one finger or toe of same hand or foot. In cases of permanent partial disability resulting from simultaneous injury to the thumb and one or more fingers of one hand, or to two or more fingers of one hand, or to the great toe and one or more toes other than the great toe of one foot, or to two or more toes other than the great toe of one foot, the disability may be rated as a partial loss or loss of use of the hand or the foot and the period of benefit payments shall be measured accordingly. In no case shall the compensation for loss or loss of use of more than one finger or toe of the same hand or foot exceed the amount provided in this schedule for the loss of a hand or foot.

Amputation. Amputation between the elbow and the wrist shall be rated as the equivalent of the loss of a hand. Amputation between the knee and the ankle shall be rated as the equivalent of the loss of a foot. Amputation at or above the elbow shall be rated as the loss of an arm. Amputation at or above the knee shall be rated as the loss of a leg.

Disfigurement. In cases of personal injury resulting in disfigurement the director may, in his discretion, award such compensation as he deems proper and equitable in view of such disfigurement but not to exceed \$7,000. Disfigurement is separate from other permanent partial disability and includes scarring and other disfiguring consequences caused by medical, surgical and hospital treatment of the employee.

Other cases. In all other cases of permanent partial disability resulting from the loss or loss of use of a part of the body or from the impairment of any physical function, weekly benefits shall be paid at the rate and subject to the limitations specified in this subsection for a period which bears the same relation to a period named in the schedule as the disability sustained bears to a comparable disability named in the schedule. In cases in which the permanent partial disability must be rated as a percentage of total disability the maximum compensation shall be computed on the basis of the corresponding percentage of \$35,100.

Unconditional nature and time of commencement of payment. Compensation for permanent partial disability shall be paid regardless of the earnings of the disabled employee subsequent to the injury. Payments shall not commence until after termination of any temporary total disability that may be caused by the injury.

(b) Temporary partial disability. Where a work injury causes partial disability, not determined to be permanent, which diminishes the employee's capacity for work, the employer, beginning with the first day of such disability and during the continuance thereof, shall pay the injured employee weekly benefits equal to sixty-six and two-thirds per cent of the difference between his average weekly wages before the injury and the weekly wages he is capable of earning thereafter, but not more than \$50 a week.

(c) Provisions common to permanent and temporary partial disability; maximum benefits. No determination of partial disability shall be made until two weeks from the date of the injury. The aggregate liability of an employer for benefits under this section and section 97-30(b) shall not exceed \$25,000 except that in cases where the application of subsection (a) of this section by itself produces a higher amount of compensation, that amount shall constitute his total liability for weekly benefits under these sections.

Sec. 97-32. Subsequent injuries which would increase disability. If an employee receives an injury which of itself would cause a permanent partial disability but which, combined with a previous disability, results in a greater permanent partial disability or in permanent total disability, the employer shall pay compensation only for such disability as would have been caused by the injury without the previous disability. The employee shall be entitled to full compensation for his actual permanent partial or total disability, and, after receipt of the compensation payable by the employer, weekly payments of the balance of the compensation to which the employee is entitled shall be made out of the special compensation fund by orders of the director.

Sec. 97-33. Payment after death. Where an employee is entitled to weekly income and indemnity benefits for permanent total or permanent partial disability and dies from any cause other than the compensable work injury, payment of any unpaid balance of such benefits to the extent that the employer is liable therefor, but limiting the extent of his total liability for weekly income and indemnity benefits in such case to \$25,000, shall be made to his dependents specified in section 97-41, as follows:

(a) To a dependent widow or widower, for the use of the widow or widower and the dependent children, if any. The director may from time to time apportion such compensation among the widow or widower and any dependent children.

(b) If there be no dependent widow or widower, but one or more dependent children, then to such child or children to be divided equally among them if more than one.

(c) If there be no dependent widow, widower, or child, but there be a dependent parent, then to such parent, or if both parents be dependent, to both of them, to be divided equally between them; or if there be no such parents, but a dependent grandparent, then to such grandparent, or if more than one, then to all of them to be divided equally among them.

(d) If there be no dependent widow, widower, child, parent, or grandparent, but there be a dependent grandchild, brother, or sister, then to such dependent, or if more than one, then to all of them to be divided equally among them.

(e) If there be no such dependents, the unpaid balance of the compensation shall be paid in a lump sum into the special compensation fund.

II. FOR DEATH

Sec. 97-40. Entitlement to and rate of compensation. (a) Funeral and burial allowance. Where a work injury causes death, the employer shall pay funeral and burial expenses not to exceed \$1,000 to the mortu-

cian selected by the family or next of kin of the deceased or in the absence of such family or next of kin, by the employer.

(b) Weekly benefits for dependents. In addition, the employer shall pay weekly benefits to the deceased's dependents at the percentages of the deceased's average weekly wages specified below, taking into account not more than \$112.50 and not less than \$30 per week:

To the dependent widow or widower, if there be no dependent children, fifty per cent.

To the dependent widow or widower, if there be one or more dependent children of the deceased, sixty-six and two-thirds per cent. The compensation to the widow or widower shall be for the use and benefit of the widow or widower and of the dependent children, and the director may from time to time apportion the compensation between them in such way as he deems best.

If there be no dependent widow or widower, but a dependent child, then to such child forty per cent, and if there be more than one dependent child, then to such children in equal parts sixty-six and two-thirds per cent.

If there be no dependent widow, widower or child, but there be a dependent parent, then to the parent, if wholly dependent fifty per cent, or if partially dependent twenty-five per cent; if both parents be dependent, then one-half of the foregoing compensation to each of them; if there be no dependent parent, but one or more dependent grandparent, then to each of them the same compensation as to a parent.

If there be no dependent widow, widower, child, parent or grandparent, but there be a dependent grandchild, brother or sister, or two or more of them, then to such dependents thirty-five per cent for one dependent, increased by fifteen per cent for each additional dependent, to be divided equally among such dependents if more than one.

(c) Maximum weekly amounts. The sum of all weekly benefits payable to the dependents of the deceased employee shall not exceed sixty-six and two-thirds per cent of his average weekly wages, computed by observing the limits specified in subsection (b). If necessary, the individual benefits shall be proportionally reduced.

(d) Liability to special compensation fund in the absence of dependents. If there be no dependents who are entitled to benefits under this section the employer shall pay the sum of \$2,000 for any one death into the special compensation fund, pursuant to an order made by the director. The employer, pursuant to an order made by the director, shall pay any remaining balance into the special compensation fund, if the weekly benefits to which dependents are entitled terminate without totalling the sum of \$2,000.

Sec. 97-41. Dependents. (a) The following persons, and no others, shall be deemed dependents and entitled to income and indemnity benefits under this chapter:

A child who is (1) unmarried and either under eighteen years or incapable of self-support, regardless of whether or not actually dependent upon deceased or (2) married and under eighteen years, if actually dependent upon deceased;

The widow, if either living with the deceased at the time of the injury or actually dependent upon him;

The widower, if incapable of self-support and actually dependent upon deceased;

A parent or grandparent, if actually dependent upon the deceased;

A grandchild, brother or sister, if (1) under eighteen years or incapable of self-support and (2) actually and wholly dependent upon the deceased.

(b) A person shall be deemed to be actually dependent upon deceased, if he or she contributed all or a substantial portion of the living expenses of such person at the time of the injury.

(c) Alien dependents not residing in the United States at the time of the injury or leaving the United States subsequently shall be limited to the dependent widow and children of the deceased or, in the absence of such widow or child, to his dependent parent or parents. The aggregate amount of weekly benefit payments to alien dependents not residing in the United States shall not exceed \$10,000 for any one death and such dependents shall maintain annual proof of such dependency as required by the director.

Sec. 97-42. Duration of dependents' weekly benefits. (a) The weekly benefits to dependents shall continue:

To a widow, until death or remarriage, with two years' compensation in one sum upon remarriage.

To a widower, until termination of his incapability of self-support or until remarriage.

To or for a child, (1) so long as unmarried, until attainment of the age of eighteen or until termination of his incapability of self-support, or (2) until marriage; except that in the case of a married child under eighteen weekly benefits shall continue during the period of actual dependency until attainment of the age of eighteen.

To a parent or grandparent, for the duration, whether continuous or not, of such actual dependency, provided that the amount of the weekly benefits shall at no time exceed the amount payable at the time of death.

To or for a grandchild, brother or sister, for the period in which he or she remains actually and wholly dependent until attainment of the age of eighteen or termination of the incapability of self-support.

(b) The aggregate weekly benefits payable on account of any one death shall not exceed \$25,000, but this limitation shall not apply with respect to benefits to a widow who is physically or mentally incapable of self-support and unmarried as long as she remains in that condition and to benefits to a child except in the case of an unmarried child over eighteen incapable of self-support as long as he or she is otherwise entitled to such compensation.

(c) Upon the cessation under this section of compensation to or for any person, the benefits of the remaining dependents in the same class for any further period during which they are entitled to weekly payments shall be in the amounts which they would have received, had they been the only dependents entitled to benefits at the time of the employee's death.

Sec. 97-43. Effect of erroneous payment; insanity of beneficiary. If an employer in good faith pays weekly benefits to a dependent who is inferior in right to another dependent or with whom another dependent

is entitled to share, such payment shall discharge the employer, unless and until such other dependent notifies the employer of his claim. In case the employer is in doubt as to the respective rights of rival claimants, he may institute proceedings before the director for determination of the proper beneficiary.

Benefits to a person who is insane shall be paid to his guardian.

III. PROVISIONS COMMON TO BENEFITS FOR DISABILITY AND DEATH

Sec. 97-50. Computation of average weekly wages. Average weekly wages shall be computed in such a manner that the resulting amount represents most fairly, in the light of his employment pattern and the duration of his disability, the injured employee's average weekly wages from all covered employment at the time of the personal injury.

1. Where appropriate and feasible such computation shall be made on the basis of the injured employee's earnings from covered employment during the twelve months preceding his personal injury; but if during that period, the employee, because of sickness or similar personal circumstances was unable to engage in employment for one or more weeks then the number of such weeks shall not be included in the computation of the average weekly wage.

2. Where an employee at the time of the injury was employed at higher wages than during any other period of the preceding twelve months then his average weekly wages shall be computed exclusively on the basis of such higher wages.

3. Where, by reason of the shortness of the time during which the employee has been in the employment or the casual nature or terms of the employment, it is not feasible to compute the average weekly wages on the basis of the injured employee's own earnings from such employment, regard may be had to the average weekly wages which during the twelve months preceding the injury was being earned by an employee in comparable employment.

4. In no case shall the total average weekly wages of any employee be computed as a lower amount than the average weekly wages earned at the time of the injury by an employee in comparable employment engaged as a full-time employee on an annual basis in the type of employment in which the injury occurred.

5. Where an employee is engaged in concurrent full-time and part-time employment covered by this Act and sustains a personal injury in his part-time employment under the conditions specified in section 97-3, the liability of the employer shall be limited to such benefits as would be payable to an employee in comparable employment, engaged as full-time employee on an annual basis in the type of employment in which the injury occurred. The balance of his benefits shall be paid by the special compensation fund.

6. If an employee, while under twenty-five years of age, sustains a work injury causing permanent disability or death, his average weekly wages shall be computed on the basis of the wages which he would have earned in his employment had he been twenty-five years of age.

7. The director is authorized to issue rules for the determination of the average weekly wages in particular classes of cases, consistent with the principles laid down in the first paragraph of this section.

Sec. 97-51. Credit for voluntary payments and supplies in kind. (a) Any payments made by the employer to the injured employee during his disability or to his dependents which by the terms of this chapter were not payable when made, may, subject to the approval of the director, be deducted from the amount payable as compensation; provided that the deduction shall be made by shortening the period during which the compensation must be paid, or by reducing the total amount for which the employer is liable and not the amount of weekly benefits.

(b) If the employer continues to furnish to the injured employee, during his disability, or to his dependents, during their entitlement to weekly benefits, board, lodging, fuel and other advantages the value of which has been included in the calculation of wages as provided in section 97-1, the furnishing of such advantages may be considered as payment in kind of that portion of the compensation which is based on such remuneration in kind; but if at any time during the compensation period the employer ceases to furnish such advantages, no further deduction of the value of such advantages as payment in kind from the compensation shall be permissible.

Sec. 97-52. Nonweekly periodic payments. The director, upon the application of either party, may, in his discretion, having due regard for the welfare of the employee or his dependents and the convenience of the employer, authorize compensation to be paid monthly or quarterly instead of weekly.

Sec. 97-53. Commutation of periodic payments. Upon application of the disabled employee, his dependents or the employer, the director may order that the periodic benefit payments be commuted to one or more lump sum payments equal to the present value at the time when the lump sum payments are due of the future benefit payments, computed at four per cent true discount compounded annually, if he finds that such commutation is in the best interest of the employee or his dependents and does not impose undue hardship upon the employer.

The probability of the death of the disabled employee or of a dependent entitled to benefits before the expiration of the period during which he is entitled to receive such payments and the probability of the remarriage of the widow shall be determined in accordance with the latest United States Life Tables and the American Remarriage Tables, respectively, as adjusted and corrected on the basis of the most recent available experience, or in accordance with any other appropriate actuarial tables selected by the director, upon advice of the chief actuary of the Social Security Administration. The probability of the happening of any other contingency affecting the amount or duration of the benefit payments shall not be considered.

Payment of such lump sums shall discharge the employer of his liability for the corresponding income and indemnity benefits.

Sec. 97-54. Trustee in case of lump sum payments. Whenever for any reason the director deems it advisable, any lump sum which is payable as provided in the preceding section shall be paid to a suitable individual or corporation appointed by the circuit judge in whose jurisdiction the work injury occurred as trustee to administer or apply the same for the benefit of the disabled worker or the dependent entitled

thereto in the manner determined by the director. The receipt of the trustee for the amount so paid shall discharge the employer of his liability.

Sec. 97-55. Payment from the special compensation fund in case of default. Where an injured employee or his dependents fail to receive prompt and proper compensation and this default is caused through no fault of the employee, the director shall pay the full amount of all compensation awards and benefits from the special compensation fund to such employee or dependent.

The employer, upon order of the director, shall reimburse the special compensation fund for the sums paid therefrom under this section, and the fund, represented by the director, shall be subrogated to all the rights and remedies of the individual receiving such payments.

Sec. 97-56. Legal status of right to compensation and compensation payments. (a) The right to compensation under this chapter shall not be assignable, and the right to compensation and compensation payments received shall be exempt from the reach of creditors.

(b) The right to compensation under this chapter shall have the same status as a lien or the same priority for the whole thereof with respect to the assets of the employer as are accorded by law to any unpaid wages for labor.

PART III. ADMINISTRATION

Sec. 97-70. Duties and powers of the director in general. The director shall be in charge of all matters of administration pertaining to the operation and application of this chapter. He shall have and exercise all powers necessary to facilitate or promote the efficient execution of the provisions of this chapter and, in particular, shall supervise, and take all measures necessary for, the prompt and proper payment of compensation.

If an injury which may be compensable under this chapter is reported to, or comes to the notice of, the department, the director and his staff shall investigate such injury to the extent as may appear necessary. The director shall cause to be printed and furnished free of charge to any employer or employee such blank forms as he deems requisite to the performance of his functions. The blanks shall also be supplied by the director to the clerks of the respective circuit courts, who shall furnish the same to any employer or employee free of charge pursuant to any rules issued by the director.

Sec. 97-71. Rule-making powers. In conformity with and subject to the provisions of chapter 6C, the director shall make rules, not inconsistent with the provisions of this chapter, which he deems necessary for or conducive to its proper application and enforcement.

Sec. 97-72. Original jurisdiction over controversies. Unless otherwise provided, the director shall have original jurisdiction over all controversies and disputes arising under this chapter. The decisions of the director shall be enforceable by the circuit court as provided in section 97-100. There shall be a right of appeal from the decisions of the director to the appellate board and thence to the circuit court as provided in sections 97-96 and 97-97, but in no case shall an appeal operate as a supersedeas or stay unless the director or the appellate board or the circuit court so orders.

Sec. 97-73. Appeals to labor and industrial relations appeal board. The labor and industrial relations appeal board provided for by chapter 88 and section 14A-26 shall exercise all powers and functions conferred by this chapter on the appellate board with respect to any work injury sustained in the city and county of Honolulu or sustained by an employee of a resident of such city and county while the employee is without the State or on a vessel operated by a resident of such city and county.

Sec. 97-74. Industrial accident boards in Hawaii, Maui and Kauai, composition, functions, remuneration. There shall be a board to be known as the industrial accident board in each of the counties of Hawaii, Maui and Kauai, consisting of three members to be appointed and removable by the governor in the manner prescribed in section 14A-3. One member of each board shall be designated by the governor as chairman.

Each such board shall exercise all powers and functions conferred by this chapter on the appellate board with respect to any work injury occurring within the county for which it is appointed or work injury sustained by an employee of a resident of such county while the employee is without the State or on a vessel operated by a resident of such county. The board shall have no other functions or duties.

The members of such boards shall be entitled to the same remuneration and expenses as the members of the labor and industrial relations appeal board which, together with the necessary administrative expenses of such boards, shall be paid as provided in section 88-10.

Sec. 97-75. Majority control. Any decision or order of the appellate board to be made under this chapter requires the assenting vote of a majority of the members of the board.

Sec. 97-76. Assistance of county attorney. The county attorney of any county wherein a hearing is held or an investigation is made under this chapter on request shall act as attorney for the director or the appellate board whenever requested so to act by the director or the board.

Sec. 97-77. Agreement or compromise. No agreement or compromise in regard to a claim for compensation shall be valid unless it is approved by decision of the director as conforming to the provisions of this chapter and made part of such decision.

No compromise in regard to a claim for compensation shall be effected and approved in any appeal until after the director has been notified of the proposed terms thereof and has had an opportunity to be heard relative thereto.

Sec. 97-78. Medical examination by employer's physician. After an injury and during the period of disability, the employee, whenever ordered by the director, shall submit himself to examination, at reasonable times and places, by a duly qualified physician or surgeon designated and paid by the employer. The employee shall have the right to have a physician or surgeon designated and paid by himself present at the examination, which right, however, shall not be construed to deny to the employer's physician the right to visit the injured employee at all reasonable times and under all reasonable conditions during total disability.

If an employee refuses to submit himself to, or in any way obstructs, such examination his right to claim compensation for the work injury shall be suspended until the refusal or obstruction ceases and no compensation shall be payable for the period during which the refusal or obstruction continues.

In cases where the employer is dissatisfied with the progress of the case or where major and elective surgery, or either, is contemplated, he may appoint a physician or surgeon of his choice who shall examine the injured employee and make a report to the employer. If the employer remains dissatisfied this report may be forwarded to the director.

Sec. 97-79. Examination by impartial physician. The director may appoint a duly qualified impartial physician to examine the injured employee and to report. The fees for such examination shall be paid from the funds appropriated by the legislature for the use of the department.

Sec. 97-90. Notice of injury; waiver. No proceedings for compensation under this chapter shall be maintained unless written notice of the injury has been given to the employer as soon as practicable after the happening thereof. Such notice may be given by the injured employee or by some other person on his behalf. Failure to give such notice shall not bar a claim under this chapter if (1) the employer or his agent in charge of the work in the place where the injury was sustained had knowledge of the injury; or (2) medical, surgical or hospital service and supplies have been furnished to the injured employee by the employer; or (3) for some satisfactory reason such notice could not be given and the employer has not been prejudiced by such failure.

Unless the employer is prejudiced thereby notice of injury shall be deemed to have been waived by the employer if objection to the failure to give such notice is not raised at the first hearing on a claim in respect of such injury of which the employer is given reasonable notice and opportunity to be heard.

Sec. 97-91. Claim for compensation; limitation of time. The right to compensation under this chapter shall be barred unless a written claim therefor is made to the director (1) within two years after the date at which the effects of the injury for which the employee is entitled to compensation have become manifest, and (2) within five years after the date of the accident or occurrence which caused the injury.

The foregoing limitations of time shall not apply to a claim for injury caused by compressed air or due to occupational exposure to, or contact with, arsenic, benzol, beryllium, zirconium, cadmium, chrome, lead or fluorine or to exposure to X-rays, radium, ionizing radiation or radioactive substances, but such claim shall be barred unless it is made to the director, in writing, within two years after knowledge that the injury was proximately caused by, or resulted from the nature of, the employment. The claim may be made by the injured employee or his dependents or by some other person on his or their behalf. The claim shall state in ordinary language the time, place, nature and cause of the injury.

Sec. 97-92. When claim within specified time is unnecessary or waived. (a) If payments of income and indemnity benefits have been made voluntarily by the employer, the making of a claim within the

time prescribed in section 97-91 shall not be required. No such payments shall be deemed to have been made if the payments are in the nature of a gift and not intended as compensation, or are made by welfare or benefit organizations operating under direction or control of the employer, or are for medical, surgical or hospital services and supplies, or are made as wages during periods of partial or total disability if the employer notifies the director at the time in writing that such payments of wages are not in lieu of and shall not be considered as compensation.

(b) Unless the employer is prejudiced thereby, failure to make a claim within the time prescribed in section 97-91 shall not bar a claim to compensation if objection to such failure is not raised at the first hearing on the claim of which the employer is given reasonable notice and opportunity to be heard.

Sec. 97-93. Limitation of time with respect to minors and mentally incompetent. No limitation of time provided in this chapter shall run as against any person who is mentally incompetent or a minor dependent so long as he has no guardian or next friend.

Sec. 97-94. Presumptions. In any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of substantial evidence to the contrary:

- (1) that the claim is for a covered work injury;
- (2) that sufficient notice of such injury has been given;
- (3) that the injury was not caused by the intoxication of the injured employee; and
- (4) that the injury was not caused by the wilful intention of the injured employee to injure himself or another.

Sec. 97-95. Proceedings upon claim. If a claim for compensation is made the director shall make such further investigation as he deems necessary and render a decision awarding or denying compensation, stating his findings of fact and conclusions of law. The decision shall be filed with the record of the proceedings and a copy of the decision shall be sent immediately to each party.

Sec. 97-96. Appeals. A decision of the director shall be final and conclusive between the parties, except as provided in section 97-98, unless within thirty days after a copy has been sent to each party, either party appeals therefrom by filing a written notice of appeal with the director or his county representative.

In all cases of appeal the appellate board shall be notified of the pendency thereof by the director and no compromise shall be effected in the appeal except in compliance with the provisions of section 97-77.

The appellate board shall hold a full hearing de novo on the appeal and make its decision in writing, and such decision shall be filed with the records of the proceedings. A copy of the decision shall be sent to each party.

The appellate board may certify questions of law to the supreme court for determination.

Sec. 97-97. Appeals from appellate board. The decision of the appellate board upon any appeal to it shall be final and conclusive between the parties except as provided in section 97-98, unless within thirty days after service of a certified copy of the decision, either party appeals to the circuit court in the county wherein the injury was sus-

tained or wherein the employer resides if the injury was sustained while the employee was without the State or on a vessel operated by a resident of the county.

In all cases of such appeal the director and the appellate board shall be notified of the pendency thereof by the clerk of the court in which the proceedings are pending and no compromise shall be effected except in compliance with the provisions of section 97-77.

In all appeal cases in which a trial by jury is had the cause shall be submitted to the jury on questions of fact stated to them by the court pursuant to section 231-27. The right of trial by jury shall be deemed to be waived unless claimed within ten days from the date the appeal is entered. The court may, by proper rules, prescribe the procedure to be followed in the case of such appeals, and shall give such appeals precedence over all other civil cases.

Sec. 97-98. Reopening of cases; continuing jurisdiction of director.

(a) In the absence of an appeal and within thirty days after a copy of the decision has been sent to each party, the director may upon his own motion or upon the application of any party reopen a case to permit the introduction of newly discovered evidence, and may render a revised decision.

(b) The director may at any time, either of his own motion or upon the application of any party, reopen any case on the ground that fraud has been practiced on the director or on any party and render such decision as is proper under the circumstances.

(c) On the application of any party in interest, supported by a showing of substantial evidence, on the ground of a change in, or of a mistake in a determination of fact related to, the physical condition of the injured employee, the director may, at any time prior to ten years after date of the last payment of compensation, whether or not a decision awarding compensation has been issued, or at any time prior to ten years after the rejection of a claim, review a compensation case and issue a decision which may award, terminate, continue, reinstate, increase or decrease compensation. No compensation case may be reviewed oftener than once in six months, and no case in which a claim has been rejected shall be reviewed more than once if on such review the claim is again rejected. Such decision shall not affect any compensation previously paid, except that an increase of the compensation may be made effective from the date of the injury, and if any part of the compensation due or to become due is unpaid, a decrease of the compensation may be made effective from the date of the injury, and any payment made prior thereto in excess of such decreased compensation shall be deducted from any unpaid compensation in such manner and by such method as may be determined by the director. In the event any such decision increases the compensation in a case where the employee has received damages from a third party pursuant to section 97-8 in excess of compensation previously awarded, the amount of such excess shall constitute a pro tanto satisfaction of the amount of the additional compensation awarded. This paragraph shall not apply when the employer's liability for compensation has been discharged in whole or in part by the payment of a lump sum in accordance with section 97-53.

Sec. 97-99. Conforming prior decisions on appeal. Upon the filing

of a certified copy of a decision of the director rendered pursuant to section 97-98 with the appellate board or the circuit court, the board or court shall revoke or modify its prior decision so that it will conform to the decision of the director.

Sec. 97-100. Enforcement of decisions awarding compensation; judgment rendered thereon. (a) Any party in interest may file in the circuit court in the jurisdiction of which the injury occurred, a certified copy of (1) a decision of the director awarding compensation, from which no appeal has been taken within the time allowed therefor; or (2) a decision of the director awarding compensation, from which decision an appeal has been taken but as to which decision no order has been made by the director or the appellate board or the court that the appeal therefrom shall operate as a supersedeas or stay; or (3) a decision of the appellate board awarding compensation, from which no appeal has been taken within the time allowed therefor; or (4) a decision of the appellate board awarding compensation, from which an appeal has been taken but as to which decision no order has been made by the appellate board or the court that the appeal therefrom shall operate as a supersedeas or stay. The court shall render a judgment in accordance with such decision and notify the parties thereof. The judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though the judgment had been rendered in an action duly heard and determined by the court, except that there shall be no appeal therefrom.

(b) In all cases where an appeal from the decision concerned has been taken within the time provided therefor, but where no order has been made by the director or the appellate board or the court that the appeal shall operate as a supersedeas or stay, the decree or judgment of the circuit court shall provide that the decree or judgment shall become void in the event that the decision or award of the director or appellate board, as the case may be, is finally set aside.

Sec. 97-101. Default in payments of compensation, penalty. If any compensation payable under the terms of a final decision or judgment is not paid by a self-insured employer or an insurance carrier within thirty-one days after it becomes due, as provided by such final decision or judgment, there shall be added to such unpaid compensation an amount equal to ten per cent thereof, payable at the same time as, but in addition to, such compensation, unless the nonpayment is excused by the director after a showing by the employer or insurance carrier that the payment of the compensation could not be made on the date prescribed therefor owing to conditions over which he had no control.

Sec. 97-102. Costs. (a) If the director, appellate board or any court finds that proceedings under this chapter have been brought, prosecuted or defended without reasonable ground the whole costs of the proceedings may be assessed against the party who has so brought, prosecuted or defended such proceedings.

(b) If an employer appeals a decision of the director, appellate board or circuit court, the costs of the proceedings of the appellate board, circuit court or the supreme court of the State of Hawaii, together with reasonable attorney's fees shall be assessed against the employer, if the employer loses.

Sec. 97-103. Attorneys', physicians' and other fees. Claims of attorneys and physicians for services under this chapter and claims for any other services rendered in respect of a claim for compensation, to or on account of any person shall not be valid unless approved by the director or, if an appeal is had, by the appellate board or court deciding the appeal. Any claims so approved shall be a lien upon such compensation in the manner and to the extent fixed by the director, the appellate board or the court.

Any person who receives any fee, other consideration or gratuity on account of services so rendered, without approval of such fee, other consideration or gratuity in conformity with the preceding paragraph shall be fined not more than \$1,000, or imprisoned not more than one year, or both.

Sec. 97-110. Reports of injuries, other reports, penalty. Every employer shall keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment, when known to him or brought to his attention.

Within fifteen days after the employer has knowledge of such injury causing absence from work for one day or more or requiring medical treatment beyond ordinary first aid, he shall make a report thereon to the director. The report shall set forth the name, address, and nature of the employer's business and the name, age, sex, wages and occupation of the injured employee and shall state the date and hour of the accident, if the injury is produced thereby, and the nature and cause of the injury and such other information as the director may require.

On June 30 and December 31 of each year the employer shall make a report to the director with respect to each injury on which he is continuing to pay compensation, showing all amounts theretofore paid by him on account of such injury.

The reports required by this section shall be made on forms to be obtained from the director pursuant to section 97-70 and deposit of reports in the United States mails, addressed to the director, within the time specified shall be deemed compliance with the requirements of this section.

When an injury results in immediate death, the employer shall within forty-eight hours notify personally or by telephone a representative of the department in the county where the injury occurred.

Any employer who wilfully refuses or neglects to make any of the reports or give any notice required by this section shall be fined not more than \$100, or imprisoned not more than ninety days, or both.

Sec. 97-111. Reports of physicians, surgeons and hospitals. Within thirty days after being requested to do so by the employer or the director, any physician, surgeon or hospital that has given any treatment or rendered any service to an injured employee shall make to the employer and to the director a report of such injury and treatment, on a form to be obtained from the director for that purpose pursuant to section 97-70.

No claim under this chapter for medical or surgical treatment, or hospital services and supplies, shall be valid and enforceable unless the reports are made as hereinbefore provided, except that the director

may excuse the failure to make such report within thirty days when he finds it in the interests of justice to do so.

The director shall furnish to the injured employee a copy of the final report of the attending physician or surgeon or, if more than one physician or surgeon should treat or examine the employee, a copy of the final report of each such physician or surgeon.

Within thirty days after being requested to do so by the injured employee or his duly authorized representative, the employer shall furnish said employee or his duly authorized representative with copies of all medical reports relating to the employee's injury which are in the possession of the employer. The copies shall be furnished at the expense of the employer. Any employer who fails to furnish medical reports as required by this paragraph shall be fined in an amount not to exceed \$100.

Deposit of the reports required by the first paragraph of this section in the United States mail, addressed to the director and to the employer, within the time limit specified, shall be deemed compliance with the requirements of this section.

Sec. 97-112. Inspections. The director may inspect the plants and establishments of all employers in the State and the inspectors designated by the director shall have free access to such premises during regular working hours, and at other reasonable times.

Sec. 97-113. Penalties for false representations. If for the purpose of obtaining any benefit or payment under the provisions of this chapter, either for himself or for any other person, any one wilfully makes a false statement or representation, he shall be fined not more than \$250.

PART IV. SECURITY FOR COMPENSATION; EMPLOYMENT RIGHTS OF INJURED EMPLOYEES; FUNDS

A. Security for Compensation

Sec. 97-120. Security for payment of compensation; misdemeanor. (a) Employers, except the State, any county or political subdivision of the State or other public entity within the State, shall secure compensation to their employees in one of the following ways:

(1) By insuring and keeping insured the payment of compensation with any stock, mutual, reciprocal or other insurer authorized to transact the business of workmen's compensation insurance in the State;

(2) By depositing and maintaining with the state director of budget security satisfactory to the director securing the payment by the employer of compensation according to the terms of this chapter;

(3) Upon furnishing satisfactory proof to the director of his solvency and financial ability to pay the compensation and benefits herein provided, no insurance or security shall be required, and the employer shall make payments directly to his employees, as they may become entitled to receive the same under the terms and conditions of this chapter.

Any person who wilfully misrepresents any fact in order to obtain the benefits of paragraph (3) of this subsection shall be guilty of a misdemeanor.

(b) Any decision of the director rendered under the provisions of paragraphs (2) and (3) of subsection (a) of this section with respect

to the amount of security required or refusing to permit no security to be given shall be subject to review on appeal in conformity with sections 97-96 and 97.

Sec. 97-121. Notice of insurance. If the insurance so effected is not under paragraphs (2) or (3) of subsection (a) of section 97-120 the employer shall forthwith file with the director in form prescribed by the director a notice of his insurance together with a copy of the contract or policy of insurance.

Sec. 97-122. Failure to give security for compensation; penalty; injunction. If an employer fails to comply with the provisions of section 97-120 he shall be liable to a penalty of not less than \$25 or of \$1 for each employee for every day during which such failure continues, whichever sum is greater, to be recovered in an action brought by the director in the name of the State, and the amount so collected shall be paid into the special compensation fund created by section 97-140. The director may, however, in his discretion, for good cause shown, remit all or any part of such penalty in excess of \$25, provided the employer in default forthwith complies with section 97-120. With respect to such actions, the attorney general or any county attorney or public prosecutor shall prosecute the same if so requested by the director.

Furthermore, if any employer is in default under section 97-120, for a period of thirty days, he may be enjoined by the circuit court of the circuit in which his principal place of business is from carrying on his business any place in the state so long as the default continues, such action for injunction to be prosecuted by the attorney general or any county attorney if so requested by the director.

Sec. 97-123. The insurance contract. Every policy of insurance issued by an insurer of an employer in section 97-1 which covers the liability of the employer for compensation shall cover the entire liability of the employer to his employees covered by the policy or contract, and also shall contain a provision setting forth the right of the employees to enforce in their own names either by filing a separate claim or by making the insurance carrier a party to the original claim, the liability of the insurance carrier in whole or in part for the payment of the compensation. Payment in whole or in part of compensation by either the employer or the insurance carrier shall, to the extent thereof, be a bar to the recovery against the other of the amount so paid.

All insurance policies shall be of a standard form, the form to be designated and approved by the commissioner of insurance of the State. No policy of insurance different in form from the designated and approved form shall be approved by the director.

Sec. 97-124. Knowledge of employer imputed to insurance carrier. Every policy and contract shall contain a provision that, as between the employee and the insurance carrier, the notice to or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be, on the part of the insurance carrier; that jurisdiction of the employer shall, for the purpose of this chapter, be jurisdiction of the insurance carrier, and that the insurance carrier shall in all respects be bound by and subject to the orders, findings and decisions rendered against the employer for the payment of compensation under the provisions of this chapter.

Sec. 97-125. Insolvency of employer not to release insurance carrier. Every policy and contract shall contain a provision to the effect that the insolvency or bankruptcy of the employer and his discharge therein shall not relieve the insurance carrier from the payment of compensation for an injury suffered by a covered employee during the life of the policy or contract:

Sec. 97-126. Cancellation of insurance contracts. No policy or contract of insurance issued by a stock company or mutual association against liability arising under this chapter shall be canceled within the time limited in the contract for its expiration until at least ten days after notice of intention to cancel such contract, on a date specified in the notice, has been filed with and served on the director and the employer.

Sec. 97-127. Insurance by the State, counties and municipalities. The State, any county or other political subdivision of the State, and any other public entity within the State which is liable to its employees for compensation, may insure with any authorized insurance carrier.

Sec. 97-128. Employees not to pay for insurance; penalty. No agreement by an employee to pay any portion of the premium paid by his employer, or to contribute to a benefit fund or department maintained by the employer, or to the cost of mutual or other insurance maintained for or carried for the purpose of securing compensation as herein required, shall be valid; and any employer who makes a deduction for that purpose from the wages or salary of any employee entitled to the benefits of this chapter shall be fined not more than \$250.

B. Employment Rights of Injured Employees

Sec. 97-135. Employment rights of injured employees; penalty. No employer shall discharge or dismiss any employee or deny such employee the right to return to his employment solely because he suffers any work injury which is compensable under this chapter and which arises out of and in the course of employment with such employer unless it is shown to the satisfaction of the director that the employee will no longer be capable of performing his work as a result of the work injury and that the employer has no other available work which the employee is capable of performing. Any employee who is discharged or dismissed because of such work injury shall be given first preference of reemployment by the employer in any position which the employee is capable of performing and which becomes available after such dismissal or discharge and during the period thereafter until the employee secures new employment.

The foregoing provisions shall not apply to any employer in whose employment there are less than three employees or who is a party to a collective bargaining agreement which prevents the continued employment or reemployment of such injured employee.

Any employer who violates the provisions of this section shall be fined in an amount not to exceed \$200 or be imprisoned for a period not to exceed ninety days or both.

C. Special Compensation Fund

Sec. 97-140. Special compensation fund established and maintained. There is hereby created a fund to be known as the special compensation fund which shall consist of payments made to it as provided by law.

The director of budget of the State shall be custodian of the fund, and all disbursements therefrom shall be paid by him upon orders by the director.

Every employer, pursuant to an order made by the director, shall pay into the fund the amounts specified in sections 97-33(e) and 97-40(d) under the conditions prescribed for such payment. Whenever such amount is paid into the fund and it is subsequently determined by the director, the appellate board or the circuit court having jurisdiction that a dependent is entitled to benefits excluding or diminishing the entitlement of the fund, the director, appellate board or court shall order the refund of the sum to which the fund is not entitled and the director of budget of the State as custodian shall immediately make such refund upon receipt by him of a certified copy of this order. In cases where an order of the director ordering payment into the fund is reversed on appeal the employer is relieved of any duty to make payments into the fund.

PART V. APPLICABILITY TO HAWAII GUARD AND VOLUNTEER PERSONNEL

A. Hawaii Guard

Sec. 97-150. Who entitled to compensation. If a member of the Hawaii national guard or Hawaii state guard suffers a personal injury arising out of and in the performance of his duty therein, compensation shall be paid to him or his dependents by the State for such injury in the manner and in the amounts provided for in this chapter; provided that if in any case arising after May 10, 1951, any such member or his dependents receive compensation from the federal government by reason of such injury, the amount of such compensation shall be deducted from the amount which may thereafter become due from the State.

Sec. 97-151. Terms defined. 'Personal injury', 'compensation' and 'dependents' within the meaning of the foregoing section has the same meaning as is given to these terms in sections 97-1 and 97-41.

Sec. 97-152. Administration. This part shall be administered by the director. He may promulgate such additional rules and regulations relative thereto as he deems necessary or convenient for carrying out the purposes of this part. Procedure in respect of claims hereunder, including procedure upon appeals, shall correspond to the procedure provided in this chapter, except that notice of injury shall be given to the commanding officer of the unit to which the injured person is attached and the commanding officer shall in turn report the same to the division.

Sec. 97-153. Appropriation. So much of the state insurance fund as may be necessary is hereby appropriated for the purpose of section 97-150 and for the purpose of paying compensation awarded under the provisions of Act 131 of the Session Laws of Hawaii 1943, Act 160 of the Session Laws of Hawaii 1945, and Act 169 of the Session Laws of Hawaii 1947.

B. Volunteer Personnel

Sec. 97-160. Volunteer personnel, medical, etc., expenses. Any person who is injured in performing service for the State or any county in any voluntary or unpaid capacity under the authorized direction of a public

officer or employee, and who has not secured payment of his hospital and medical expenses from the state or the county under any other provision of law and has not secured payment thereof from any third person, shall be paid his reasonable hospital and medical expenses under the provisions of this chapter.

Sec. 97-161. Administration and procedure. The provisions of section 97-160 shall be administered by the director. Procedure in respect of claims hereunder, including procedure upon appeals, shall correspond to the procedure provided under this chapter. Notice of injury shall be given to the head of the department for which the injured person is performing service, and the department head shall report the injury to the director. The director may make such rules and regulations as he may deem necessary or convenient for carrying out the provisions of section 97-160.

Sec. 97-162. Time for giving notice, etc. Any time fixed for giving of notice of injury or for any other substantive purpose as to any injuries within the purview of section 97-160 which may have occurred prior to May 25, 1945, but subsequent to December 7, 1941, shall be construed to run from May 25, 1945.

Sec. 97-163. Appropriation. So much of the state insurance fund as may be necessary is hereby appropriated and shall, with the approval of the governor, be expended to pay claims found to be due under section 97-160 for services performed under the authorized direction of a public officer or employee."

SECTION 2. This Act shall take effect on July 1, 1963.

(Approved May 31, 1963.) **S.B. 853.**
