

more in height, no lumber or timber needed for such construction shall be hoisted or lifted on the outside of such building.

SECTION 2. This act shall take effect and be in force from and after its passage and publication.

Approved May 2, 1911.

No. 12, S.]

[Published May 3, 1911.

CHAPTER 50.

AN ACT to create sections 2394—1 to 2394—32 of the statutes (to be included in a new chapter of the statutes to be numbered chapter 110a), relating to the liability of employers for injuries or death sustained by their employees, providing for compensation for the accidental injury or death of employees, establishing an industrial accident board, defining its powers, providing for a review of its awards, and making an appropriation to carry out the provisions of this act.

The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

SECTION 1. There are added to the statutes thirty-two new sections to read: Section 2394—1. In any action to recover damages for a personal injury sustained within this state by an employee while engaged in the line of his duty as such, or for death resulting from personal injury so sustained, in which recovery is sought upon the ground of want of ordinary care of the employer, or of any officer, agent, or servant of the employer, it shall not be a defense:

1. That the employee either expressly or impliedly assumed the risk of the hazard complained of.

2. When such employer has at the time of the accident in a common employment four or more employees, that the injury or death was caused in whole or in part by the want of ordinary care of a fellow servant.

Any employer who has elected to pay compensation as hereinafter provided shall not be subject to the provisions of this section 2394—1.

Section 2394—2. No contract, rule, or regulation, shall exempt the employer from any of the provisions of the preceding section of this act.

(Am. 1911, c. 664, s. 4, ¶ 1.)

Section 2394—3. Except as regards employees working in shops or offices of a railroad company, who are within the provisions of subsection 9 of section 1816 of the statutes, as amended by chapter 254 of the laws of 1907, the term "employer" as used in the two preceding sections of this act shall not include any

railroad company as defined in subsection 7 of said section 1816 as amended, said section 1816 and amendatory acts being continued in force unaffected, except as aforesaid, by the preceding sections of this act.

(Am. 1911, c. 664, s. 4, ¶ 2.)

Section 2394—4. Liability for the compensation hereinafter provided for, in lieu of any other liability whatsoever, shall exist against an employer for any personal injury accidentally sustained by his employee, and for his death, if the injury shall proximately cause death, in those cases where the following conditions of compensation concur: .

1. Where, at the time of the accident, both the employer and employee are subject to the provisions of this act according to the succeeding sections hereof.

2. Where, at the time of the accident, the employee is performing service growing out of and incidental to his employment.

3. Where the injury is proximately caused by accident, and is not so caused by willful misconduct.

And where such conditions of compensation exist for any personal injury or death, the right to the recovery of such compensation pursuant to the provisions of this act, and acts amendatory thereof, shall be the exclusive remedy against the employer for such injury or death; in all other cases the liability of the employer shall be the same as if this and the succeeding sections of this act had not been passed, but shall be subject to the provisions of the preceding sections of this act.

(Am. 1911, c. 664, s. 4, ¶ 3.)

Section 2394—5. The following shall constitute employers subject to the provisions of this act within the meaning of the preceding section:

1. The state, and each county, city, town, village, and school district therein.

2. Every person, firm, and private corporation (including any public service corporation), who has any person in service under any contract of hire, express or implied, oral or written, and who, at or prior to the time of the accident to the employee for which compensation under this act may be claimed, shall, in the manner provided in the next section, have elected to become subject to the provisions of this act, and who shall not, prior to such accident, have effected a withdrawal of such election, in the manner provided in the next section.

(Am. 1911, c. 664, s. 4, ¶ 5.)

Section 2394—6. Such election on the part of the employer shall be made by filing with the industrial accident board, here-

inafter provided for, a written statement to the effect that he accepts the provisions of this act, the filing of which statement shall operate, within the meaning of section 2394—5 of this act, to subject such employer to the provisions of this act and all acts amendatory thereof for the term of one year from the date of the filing of such statement, and thereafter, without further act on his part, for successive terms of one year each, unless such employer shall, at least sixty days prior to the expiration of such first or any succeeding year, file in the office of said board a notice in writing to the effect that he desires to withdraw his election to be subject to the provisions of the act.

(Am. 1911, c. 664, s. 4, ¶ 6.)

Section 2394—7. The term "employee" as used in section 2394—4 of this act shall be construed to mean:

1. Every person in the service of the state, or of any county, city, town, village, or school district therein, under any appointment, or contract of hire, express or implied, oral or written, except any official of the state, or of any county, city, town, village, or school district therein, provided that one, employed by a contractor, who has contracted with a county, city, town, village, school district, or the state, through its representatives, shall not be considered an employee of the state, county, city, town, village, or school district which made the contract.

2. Every person in the service of another under any contract of hire, express or implied, oral or written, including aliens, and also including minors who are legally permitted to work under the laws of the state (who, for the purposes of the next section of this act, shall be considered the same and shall have the same power of contracting as adult employees), but not including any person whose employment is but casual or is not in the usual course of the trade, business, profession, or occupation of his employer.

(Am. 1911, c. 664, s. 4, ¶ 7.)

Section 2394—8. Any employee as defined in subsection 1 of the preceding section shall be subject to the provisions of this act and of any act amendatory thereof. Any employee as defined in subsection 2 of the preceding section shall be deemed to have accepted and shall, within the meaning of section 2394—4 of this act, be subject to the provisions of this act and of any act amendatory thereof, if, at the time of the accident upon which liability is claimed:

1. The employer charged with such liability is subject to the provisions of this act, whether the employee has actual notice thereof or not; and

2. Such employee shall not, at the time of entering into his

contract of hire, express or implied, with such employer, have given to his employer notice in writing that he elects not to be subject to the provisions of this act; or, in the event that such contract of hire was made in advance of such employer becoming subject to the provisions of the act, such employee shall have given to his employer notice in writing that he elects to be subject to such provisions, or without giving either of such notices, shall have remained in the service of such employer for thirty days after the employer has filed with said board an election to be subject to the terms of this act.

(Am. 1911, c. 664, s. 4, ¶ 8.)

Section 2394—9. Where liability for compensation under this act exists, the same shall be as provided in the following schedule:

1. Such medical and surgical treatment, medicines, medical and surgical supplies, crutches, and apparatus, as may be reasonably required at the time of the injury and thereafter during the disability, but not exceeding ninety days, to cure and relieve from the effects of the injury, the same to be provided by the employer; and in case of his neglect or refusal seasonably to do so, the employer to be liable for the reasonable expense incurred by or on behalf of the employee in providing the same.

2. If the accident causes disability, an indemnity which shall be payable as wages on the eighth day after the injured employee leaves work as the result of the injury, and weekly thereafter, which weekly indemnity shall be as follows:

(a) If the accident causes total disability, sixty-five per cent. of the average weekly earnings during the period of such total disability; provided that, if the disability is such as not only to render the injured employee entirely incapable of work, but also so helpless as to require the assistance of a nurse, the weekly indemnity during the period of such assistance after the first ninety days shall be increased to one hundred per cent. of the average weekly earnings.

(b) If the accident causes partial disability, sixty-five per cent. of the weekly loss in wages during the period of such partial disability.

(c) If the disability caused by the accident is at times total and at times partial, the weekly indemnity during the periods of each such total or partial disability shall be in accordance with said subdivisions (a) and (b), respectively.

(d) Said subdivisions (a), (b), and (c) shall be subject to the following limitations:

Aggregate disability indemnity for injury to a single employee

caused by a single accident shall not exceed four times the average annual earnings of such employee.

The aggregate disability period shall not, in any event, extend beyond fifteen years from the date of the accident.

The weekly indemnity due on the eighth day after the employee leaves work as the result of the injury may be withheld until the twenty-ninth day after he so leaves work; if recovery from the disability shall then have occurred, such first weekly indemnity shall not be recoverable; if the disability still continues, it shall be added to the weekly indemnity due on said twenty-ninth day and be paid therewith.

If the period of disability does not last more than one week from the day the employee leaves work as the result of the injury, no indemnity whatever shall be recoverable.

3. The death of the injured employee shall not affect the obligation of the employer under subsections 1 and 2 of this section, so far as his liability shall have become payable at the time of death; but the death shall be deemed the termination of disability, and the employer shall thereupon be liable for the following death benefits in lieu of any further disability indemnity:

(a) In case the deceased employee leaves a person or persons wholly dependent on him for support, the death benefit shall be a sum sufficient, when added to the indemnity which shall at the time of death have been paid or become payable under the provisions of subsection 2 of this section, to make the total compensation for the injury and death (exclusive of the benefit provided for in subsection 1), equal to four times his average annual earnings; the same to be payable, unless and until the board shall direct payment in gross, in weekly installments corresponding in amount to the weekly earnings of the employee.

(b) In case the deceased employee leaves no one wholly dependent on him for support, but one or more persons partially dependent therefor, the death benefit shall be such percentage of four times such average annual earnings of the employee as the average annual amount devoted by the deceased to the support of the person or persons so partially dependent on him for support bears to such average annual earnings, the same to be payable, unless and until the board shall direct payment in gross, in weekly installments corresponding in amount to the weekly earnings of the employee; provided that the total compensation for the injury and death (exclusive of the benefit provided for in said subsection 1) shall not exceed four times such average annual earnings.

(c) Liability for the death benefits provided for in subdivi-

sions (a) and (b) respectively shall only exist where the accident is the proximate cause of death; provided that, if the accident proximately causes permanent total disability, and death ensues from some other cause before disability indemnity ceases, the death benefit shall be the same as though the accident had caused death; and provided further that, if the accident proximately causes permanent partial disability and death ensues from some other cause before disability indemnity ceases, liability shall exist for such percentage of the death benefits provided for in said subdivision (a) or (b) (as the case may be), as shall fairly represent the proportionate extent of the impairment of earning capacity caused by such permanent partial disability in the employment in which the employee was working at the time of the accident.

(d) If the deceased employee leaves no person dependent upon him for support, and the accident proximately causes death, the death benefit shall consist of the reasonable expense of his burial, not exceeding \$100.

(Am. 1911, c. 664, s. 4, ¶ 9.)

Section 2394—10. 1. The weekly earnings referred to in section 2394—9 shall be one fifty-second of the average annual earnings of the employee; average annual earnings shall not be taken at less than \$375, nor more than \$750, and between said limits shall be arrived at as follows:

(a) If the injured employee has worked in the employment in which he was working at the time of the accident, whether for the same employer or not, during substantially the whole of the year immediately preceding his injury, his average annual earnings shall consist of three hundred times the average daily wage or salary which he has earned in such employment during the days when so employed.

(b) If the injured employee has not so worked in such employment during substantially the whole of such immediately preceding year, his average annual earnings shall consist of three hundred times the average daily wage or salary which an employee of the same class working substantially the whole of such immediately preceding year in the same or a similar employment in the same or a neighboring place shall have earned in such employment during the days when so employed.

(c) In cases where the foregoing methods of arriving at the average annual earnings of the injured employee cannot reasonably and fairly be applied, such annual earnings shall be taken at such sum as, having regard to the previous earnings of the injured employee, and of other employees of the same or most similar class, working in the same or most similar employ-

ment, in the same or neighboring locality, shall reasonably represent the annual earning capacity of the injured employee at the time of the accident in the employment in which he was working at such time.

(d) The fact that an employee has suffered a previous disability, or received compensation therefor, shall not preclude compensation for a later injury, or for death, but in determining compensation for the later injury, or death, his average annual earnings shall be such sum as will reasonably represent his annual earning capacity at the time of the later injury, in the employment in which he was working at such time, and shall be arrived at according to, and subject to the limitations of, the previous provisions of this section.

2. The weekly loss in wages referred to in section 2394—9 shall consist of such percentage of the average weekly earnings of the injured employee, computed according to the provisions of this section, as shall fairly represent the proportionate extent of the impairment of his earning capacity in the employment in which he was working at the time of the accident, the same to be fixed as of the time of the accident, but to be determined in view of the nature and extent of the injury.

3. The following shall be conclusively presumed to be solely and wholly dependent for support upon a deceased employee:

(a) A wife upon a husband with whom she is living at the time of his death.

(b) A husband upon a wife with whom he is living at the time of her death.

(c) A child or children under the age of eighteen years (or over said age, but physically or mentally incapacitated from earning), upon the parent with whom he or they are living at the time of the death of such parent, there being no surviving dependent parent. In case there is more than one child thus dependent, the death benefit shall be divided equally among them.

In all other cases questions of entire or partial dependency shall be determined in accordance with the fact, as the fact may be at the time of the death of the employee; and in such other cases, if there is more than one person wholly dependent, the death benefit shall be divided equally among them, and persons partially dependent, if any, shall receive no part thereof; and if there is more than one person partially dependent, the death benefit shall be divided among them according to the relative extent of their dependency.

4. No person shall be considered a dependent unless a member

of the family of the deceased employee, or bears to him the relation of husband or widow, or lineal descendant, or ancestor, or brother, or sister.

5. Questions as to who constitute dependents and the extent of their dependency shall be determined as of the date of the accident to the employee, and their right to any death benefit shall become fixed as of such time, irrespective of any subsequent change in conditions; and the death benefit shall be directly recoverable by and payable to the dependent or dependents entitled thereto or their legal guardians or trustees; provided that in case of the death of a dependent whose right to a death benefit has thus become fixed, so much of the same as is then unpaid shall be recoverable by and payable to his personal representative in gross. No person shall be excluded as a dependent who is a non-resident alien.

6. No dependent of an injured employee shall be deemed, during the life of such employee, a party in interest to any proceeding by him for the enforcement or collection of any claim for compensation, nor as respects the compromise thereof by such employee.

Section 2394—11. No claim to recover compensation under this act shall be maintained unless, within thirty days after the occurrence of the accident which is claimed to have caused the injury or death, notice in writing, stating the name and address of the person injured, the time and place where the accident occurred, and the nature of the injury, and signed by the person injured or by some one on his behalf, or in case of his death, by a dependent or some one on his behalf, shall be served upon the employer, either by delivering to and leaving with him a copy of such notice, or by mailing to him by registered mail a copy thereof in a sealed and postpaid envelope addressed to him at his last known place of business or residence. Such mailing shall constitute completed service. Provided, however, that any payment of compensation under this act, in whole or in part, made by the employer before the expiration of said thirty days, shall be equivalent to the notice herein required; and provided further, that the failure to give any such notice, or any defect or inaccuracy therein, shall not be a bar to recovery under this act if it is found as a fact in the proceedings for collection of the claim that there was no intention to mislead the employer, and that he was not in fact misled thereby; and provided further, that if no such notice is given and no payment of compensation made, within two years from the date of the accident, the right to compensation therefor shall be wholly barred.

(Am. 1911, c. 664, s. 4, ¶ 10.)

Section 2394—12. Wherever in case of injury the right to compensation under this act would exist in favor of any employee, he shall, upon the written request of his employer, submit from time to time to examination by a regular practicing physician, who shall be provided and paid for by the employer, and shall likewise submit to examination from time to time by any regular physician selected by said industrial accident board, or a member or examiner thereof. The employee shall be entitled to have a physician, provided and paid for by himself, present at any such examination. So long as the employee, after such written request of the employer, shall refuse to submit to such examination, or shall in any way obstruct the same, his right to begin or maintain any proceeding for the collection of compensation shall be suspended; and if he shall refuse to submit to such examination after direction by the board, or any member or examiner thereof, or shall in any way obstruct the same, his right to the weekly indemnity which shall accrue and become payable during the period of such refusal or obstruction, shall be barred. Any physician who shall make or be present at any such examination may be required to testify as to the results thereof.

(Am. 1911, c. 664, s. 4, ¶ 11.)

Section 2394—13. There is hereby created a board which shall be known as the industrial accident board. The commissioner of labor and industrial statistics shall be ex-officio a member of such board. He may, however, authorize the deputy commissioner to act in his place. Within thirty days after the passage of this act, the governor, by and with the advice and consent of the senate, shall appoint a member who shall serve two years, and another who shall serve four years. Thereafter such two members shall be appointed and confirmed for terms of four years each. Vacancies shall be filled in the same manner for the unexpired term. Each member of the board, before entering upon the duties of his office, shall take the oath prescribed by the constitution. A majority of the board shall constitute a quorum for the exercise of any of the powers or authority conferred by this act, and an award by a majority shall be valid. In case of a vacancy, the remaining two members of the board shall exercise all the powers and authority of the board until such vacancy is filled. Each member of the board, including the said commissioner, shall receive an annual salary of \$5,000. This salary shall, as to the commissioner of labor and industrial statistics, be in full for his services as such commissioner of labor and industrial statistics.

(Am. 1911, c. 664, s. 4, ¶ 12.)

Section 2394—14. The board shall organize by choosing one of its members as chairman. Subject to the provisions of this act, it may adopt its own rules of procedure and may change the same from time to time in its discretion. The board, when it shall deem it necessary to expedite its business, may from time to time employ one or more expert examiners for such length of time as may be required, such examiners to be exempt from the operation of chapter 363 of the laws of 1905, and amendatory acts. It may also appoint a secretary, who shall be similarly exempt, and such clerical help as it may deem necessary. It shall fix the compensation of all assistants so appointed. It shall provide itself with a seal for the authentication of its orders, awards, and proceedings, upon which shall be inscribed the words "Industrial Accident Board—Wisconsin—Seal." It shall keep its office at the capitol, and shall be provided by the superintendent of public property with a suitable room or rooms, necessary office furniture, stationery, and other supplies. The members of the board and its assistants shall be entitled to receive from the state their actual and necessary expenses while traveling on the business of the board; but such expenses shall be sworn to by the person who incurred the same, and be approved by the chairman of the board, before payment is made. All salaries and expenses authorized by this act shall be audited and paid out of the general funds of the state, the same as other general state expenses are audited and paid.

(Am. 1911, c. 664, s. 4, ¶13.)

Section 2394—15. Any dispute or controversy concerning compensation under this act, including any in which the state may be a party, shall be submitted to said industrial accident board in the manner and with the effect provided in this act. Every compromise of any claim for compensation under this act shall be subject to be reviewed by, and set aside, modified, or confirmed by the board upon application made within one year from the time of such compromise.

(Am. 1911, c. 664, s. 4, ¶ 14.)

Section 2394—16. Upon the filing with the board by any party in interest of an application in writing stating the general nature of any claim as to which any dispute or controversy may have arisen, it shall fix a time for the hearing thereof, which shall not be more than forty days after the filing of such application. The board shall cause notice of such hearing, embracing a general statement of such claim, to be given to each party interested, by service of such notice on him personally or by mailing a copy thereof to him at his last known postoffice address at least ten days before such hearing. Such hearing may be ad-

journed from time to time in the discretion of the board, and hearings may be held at such places as the board shall designate. Either party shall have the right to be present at any hearing, in person or by attorney, or any other agent, and to present such testimony as may be pertinent to the controversy before the board; but the board may, with or without notice to either party, cause testimony to be taken, or an inspection of the premises where the injury occurred to be had, or the time books and pay-roll of the employer to be examined by any member of the board or any examiner appointed by it, and may from time to time direct any employee claiming compensation to be examined by a regular physician; the testimony so taken, and the results of any such inspection or examination, to be reported to the board for its consideration upon final hearing. The board, or any member thereof, or any examiner appointed thereby, shall have power and authority to issue subpoenas, to compel the attendance of witnesses or parties, and the production of books, papers, or records, and to administer oaths. Obedience to such subpoenas shall be enforced by the circuit court of any county.

Section 2394—17. After final hearing by said board, it shall make and file (1) its findings upon all the facts involved in the controversy, and (2) its award, which shall state its determination as to the rights of the parties. Pending the hearing and determination of any controversy before it, the board shall have power to order the payment of such, or any part, of the compensation, which is or may fall due, as to which the party from whom the same is claimed does not deny liability in good faith within ten days after the giving of notice of hearing provided for in the preceding section; and if the same shall not be paid as required by such order, the facts with respect to the liability therefor, and the determination of the board as to the rights of the parties, shall be embraced in, and constitute a part of, its finding and award; and the board shall have the power to include in its award, as a penalty for non-compliance with any such order, not exceeding twenty-five per cent. of each amount which shall not have been paid as directed thereby.

Section 2394—18. Either party may present a certified copy of the award to the circuit court for any county, whereupon said court shall, without notice, render a judgment in accordance therewith; which judgment, until and unless set aside as hereinafter provided, shall have the same effect as though duly rendered in an action duly tried and determined by said court, and shall, with like effect, be entered and docketed.

Section 2394—19. The findings of fact made by the board acting within its powers shall, in the absence of fraud, be con-

clusive; and the award, whether judgment has been rendered thereon or not, shall be subject to review only in the manner and upon the grounds following: Within twenty days from the date of the award, any party aggrieved thereby may commence, in the circuit court for Dane county, an action against the board for the review of such award, in which action the adverse party shall also be made defendant. In such action a complaint, which shall state the grounds upon which a review is sought, shall be served with the summons. Service upon the secretary of the board, or any member of the board, shall be deemed completed service. The board shall serve its answer within twenty days after the service of the complaint, and, within the like time, such adverse party shall, if he so desires, serve his answer to said complaint. With its answer, the board shall make return to said court of all documents and papers on file in the matter, and of all testimony which may have been taken therein, and of its findings and award. Said action may thereupon be brought on for hearing before said court upon such record by either party on ten days' notice to the other; subject, however, to the provisions of law for a change of the place of trial or the calling in of another judge. Upon such hearing, the court may confirm or set aside such award; and any judgment which may theretofore have been rendered thereon; but the same shall be set aside only upon the following grounds:

1. That the board acted without or in excess of its powers.
2. That the award was procured by fraud.
3. That the findings of fact by the board do not support the award.

Section 2394—20. Upon the setting aside of any award the court may recommit the controversy and remand the record in the case to the board, for further hearing or proceedings; or it may enter the proper judgment upon the findings, as the nature of the case shall demand. An abstract of the judgment entered by the trial court upon the review of any award shall be made by the clerk thereof upon the docket entry of any judgment which may theretofore have been rendered upon such award, and transcript of such abstract may thereupon be obtained for like entry upon the dockets of the courts of other counties.

Section 2394—21. Said board, or any party aggrieved by a judgment entered upon the review of any award, may appeal therefrom within the time and in the manner provided for an appeal from the orders of the circuit court; but all such appeals shall be placed on the calendar of the supreme court and brought

to a hearing in the same manner as state causes on such calendar.

Section 2394—22. No fees shall be charged by the clerk of any court for the performance of any official service required by this act, except for the docketing of judgments and for certified copies of transcripts thereof. In proceedings to review an award, costs as between the parties shall be allowed or not in the discretion of the court, but no costs shall be taxed against said board. In any action for the review of an award, and upon any appeal therein to the supreme court, it shall be the duty of the attorney general, personally, or by an assistant, to appear on behalf of the board, whether any other party defendant shall have appeared or be represented in the action or not. Unless previously authorized by the board, no lien shall be allowed, nor any contract be enforceable, for any contingent attorney's fee for the enforcement or collection of any claim for compensation where such contingent fee, inclusive of all taxable attorneys' fees paid or agreed to be paid for the enforcement or collection of such claim, exceeds ten per cent. of the amount at which such claim shall be compromised, or of the amount awarded, adjudged, or collected.

(Am. 1911, c. 664, s. 4, ¶ 15.)

Section 2394—23. No claim for compensation under this act shall be assignable before payment, but this provision shall not affect the survival thereof; nor shall any claim for compensation, or compensation awarded, adjudged, or paid, be subject to be taken for the debts of the party entitled thereto.

(Am. 1911, c. 664, s. 4, ¶ 16.)

Section 2394—24. The whole claim for compensation for the injury or death of any employee or any award or judgment thereon, shall be entitled to a preference over the unsecured debts of the employer hereafter contracted, but this section shall not impair the lien of any judgment entered upon any award.

Section 2394—25. The making of a lawful claim against an employer for compensation under this act for the injury or death of his employee shall operate as an assignment of any cause of action in tort which the employee or his personal representative may have against any other party for such injury or death; and such employer may enforce in his own name the liability of such other party.

(Am. 1911, c. 664, s. 4, ¶ 17.)

Section 2394—26. Nothing in this act shall affect the organization of any mutual or other insurance company, or any existing contract for insurance of employers' liability, nor the right of the employer to insure in mutual or other companies, in whole

or in part, against such liability, or against the liability for the compensation provided for by this act, or to provide by mutual or other insurance, or by arrangement with his employees, or otherwise, for the payment to such employees, their families, dependents, or representatives, of sick, accident, or death benefits in addition to the compensation provided for by this act. But liability for compensation under this act shall not be reduced or affected by any insurance, contribution, or other benefit whatsoever, due to or received by the person entitled to such compensation, and the person so entitled shall, irrespective of any insurance or other contract, have the right to recover the same directly from the employer; and in addition thereto, the right to enforce in his own name, in the manner provided in this act, the liability of any insurance company which may, in whole or in part, have insured the liability for such compensation; provided, however, that payment in whole or in part of such compensation by either the employer or the insurance company, shall, to the extent thereof, be a bar to recovery against the other of the amount so paid, and provided further, that as between the employer and the insurance company, payment by either directly to the employee, or to the person entitled to compensation, shall be subject to the conditions of the insurance contract between them.

(Am. 1911, c. 664, s. 4, ¶ 18.)

Section 2394—27. Every contract for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this act, and provisions thereof inconsistent with this act shall be void. No company shall enter into any such contract of insurance unless such company shall have been approved by the commissioner of insurance, as provided by law. For the purposes of this act, each employee shall constitute a separate risk within the meaning of section 1898d of the statutes.

(Am. 1911, c. 664, s. 4, ¶ 19.)

Section 2394—28. Any employer against whom liability may exist for compensation under this act may, with the approval of the industrial accident board, be relieved therefrom by:

(Am. 1911, c. 664, s. 4, ¶ 20.)

1. Depositing the present value of the total unpaid compensation for which such liability exists, assuming interest at three per centum per annum, with such trust company of this state as shall be designated by the employee (or by his dependents, in case of his death, and such liability exists in their favor), or in default of such designation by him (or them) after ten days'

notice in writing from the employer, with such trust company of this state as shall be designated by the board; or

2. By the purchase of an annuity, within the limitations provided by law, in any insurance company granting annuities and licensed in this state, which may be designated by the employee, or his dependents, or the board, as provided in subsection 1 of this section.

Section 2394—29. The board shall cause to be printed and furnished free of charge to any employer or employee such blank forms as it shall deem requisite to facilitate or promote the efficient administration of this act; it shall provide a proper record book in which shall be entered and indexed the name of every employer who shall file a statement of election under this act, and the date of the filing thereof, and a separate book in which shall be entered and indexed the name of every employer who shall file his notice of withdrawal of such election, and the date of the filing thereof; and books in which shall be recorded all orders and awards made by the board; and such other books or records as it shall deem required by the proper and efficient administration of this act: all such records to be kept in the office of the board. Upon the filing of a statement of election by an employer to become subject to the provisions of this act, the board shall forthwith cause notice of the fact to be given to his employees, by posting such notice thereof in several conspicuous places in the office, shop, or place of business of the employer, or by publishing, or in such other manner as the board shall deem most effective; and the board shall likewise cause notice to be given of the filing of any withdrawal of such election; but notwithstanding the failure to give, or the insufficiency of, any such notice, knowledge of all filed statements of election and notices of withdrawal of election, and of the time of the filing of the same, shall conclusively be imputed to all employees.

(Am. 1911, c. 664, s. 4, ¶ 21.)

Section 2394—30. A sum sufficient to carry out the provisions of this act is hereby appropriated out of any money in the treasury not otherwise appropriated.

(Am. 1911, c. 664, s. 4, ¶ 22.)

Section 2394—31. All acts or parts of acts inconsistent with this act are to be deemed replaced by this act, and to that end are hereby repealed.

(Am. 1911, c. 664, s. 4, ¶ 23.)

Section 2394—32. The legislature intends the contingency in subdivision 2 of section 2394—1 of this act to be a separable part thereof, and the subdivision likewise separable from the

rest of the act, and that part of said section 2394—1 that follows subdivision 2, likewise separable from the rest of the act; so that any part of said subdivision, or the whole, or that part which follows said subdivision 2, may fail without affecting any other part of the act.

(Am. 1911, c. 664, s. 4, ¶ 24.)

SECTION 2. Sections 2394—3 to 2394—32, inclusive, shall take effect and be in force from and after the passage and publication of this act, and the entire act shall be in force from and after September 1st, 1911.

Approved May 3, 1911.

No. 180, A 1

[Published May 4, 1911.]

CHAPTER 51.

AN ACT to amend subsections 1 and 2, of section 4560a—22, of the statutes, relating to the killing of game birds.

The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

SECTION 1. Subsections 1 and 2, of section 4560a—22, of the statutes, are amended to read: (Section 4560a—22) 1. It shall be unlawful and is hereby prohibited to kill or have in possession, or ship to any point either within or without this state, by common carrier, or convey or cause to be conveyed by private carrier, during any one day:

(a) More than * * * *five* of any variety of grouse, prairie chicken, or woodcock; or more than ten wild geese or brant;

(b) More than * * * *ten* partridge;

(c) More than * * * *fifteen* wild duck of any variety (including American coot or mudhen), plover, snipe, rail and rice hens;

(d) Any Mongolian, Chinese, or English pheasant, swan, bob-white or quail;

(e) The possession of any protected game birds by any person who is not in possession of a hunting license then in force, shall be unlawful.

2. A resident of this state may carry with him as baggage or express or in his personal possession, the full limit of any one kind of game bird provided in this act, or a mixed bag containing not more than * * * *twenty* of the game birds herein enumerated, the bag not to contain more than the limit fixed herein for any one variety of said game birds; and provided that the same be carried or conveyed only to points within the state, and that same must be accompanied by the shipper from point of shipment to point of destination.