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The Problem of Workmen's Compensation in Air Transportation

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I. INTRODUCTION.

Historical Background:

The reasons for the enactment of Workmen's Compensation laws are clear: Under the old common law the rights and remedies of the injured workman and the liabilities of the employer were uncertain and in many ways inequitable; to eliminate the uncertainties and expense, both in time and money, and to transfer the burden of caring for injured workmen and the dependents of those who lost their lives in the service of the master, from the shoulders of the employer to the industry and indirectly to the public at large, the Workmen's Compensation laws were enacted.

This was a new theory and had to be tested. It was tested in the courts and numerous decisions have upheld the theory in declaring the constitutionality of the acts. The theory has also been tested in industry, but inasmuch as the courts have spoken, it is unnecessary for the employers or employees of the country to say whether or not the acts have proven satisfactory. Most of the uncertainties of the common law system of recovering damages for
accidental industrial injuries have disappeared during the quarter of a century or so that the Workmen's Compensation acts have been in existence in this country or have become relatively unimportant. The uncertainties which now exist emanate from the acts themselves, and even these are fewer than they were during the early years of the acts. Workmen's Compensation then, at least so far as the ordinary type of manufacturing and sales industries are concerned, is fairly well established, and comprehensive enough to take care of accidental injuries occurring to the workmen in those industries.

Applicability to Air Transportation:

There is no federal act for compensation or damages to employees engaged in aviation. The federal government could, if it wished, provide for these as it has for interstate railroad transportation. However, since there is no federal act, the state compensation acts must be relied upon. Will they be found inadequate to take care of the hazards of aviation? Will the acts apply at all? Some of them may not, or may apply only partly. For example, Delaware's act expressly excludes injuries occurring outside of the state. The pertinent section provides: "This Act... shall apply to all accidents, occurring within this State, irrespective of the place where the contract of hiring was made, renewed or extended, and shall not apply to any accident occurring outside of this State." Delaware is the only state which expressly says "no" to extraterritorial application. Oklahoma makes no mention as to the applicability of its act to injuries occurring beyond its borders, but decisions of the state deny such applicability. An employee hired in either one of these states, who received an injury in the course of his employment beyond the borders of the state, could not recover compensation in the state. He would be compelled either to file his application for compensation with the proper compensation bureau of the state wherein he was injured—and it is not at all clear that the foreign state would entertain such a claim—or to file an action at law, and take a chance on proving negligence of his employer. The employer, on the other hand, if it were proven that the injury was the result of his negligence, might be confronted with an exorbitant judgment.

In some states, a person receiving an average annual salary of over a certain amount is not considered an "employee," and hence not amenable to the limitations nor entitled to the benefits of the Workmen's Compensation Act. In Missouri, a person earning an average annual income in excess of $3600 is not an employee under the act. This would eliminate from the benefits of the act a pilot earning more than that sum and, in case of injury or death, such pilot or his dependents might be forced to resort to the cumbersome and uncertain method of filing a suit at law for damages. The employer of such a pilot, on the other hand, might have the misfortune of having an unduly heavy judgment entered against him. An example of what might happen in this situation did happen a short time ago. A pilot for one of the large airlines of the country received an injury to his spine as a result of an accident which occurred in Missouri. At first it was believed that the injury was serious. The pilot, on advice of his lawyer, refrained from filing a claim for compensation, because to have done so might have placed him in the category of an employee, making him subject to the schedule of compensation as provided in the act. He likewise refrained from filing a suit at law for damages, because to have done so would have put him in a position where, in order to recover, he would have had to prove negligence on the part of his employer. Instead, he waited until it was definitely determined that there would be no permanent disability, and then settled with the company for compensation as an employee, on the basis of the schedule of compensation of the act. If it had been determined that a permanent disability would result from the injury, he would have filed a suit at law, with the hope of obtaining a much larger judgment in amount than the schedule of compensation of the act allowed. As a matter of fact, if the pilot had filed an application for compensation, it is doubtful that the Commission of the state would have entertained it. In Vermont one whose earnings exceed $2000 per year is not considered an employee under the act unless both the employer and employee agree in writing that the act shall apply. In Rhode Island, the wage limit

4. The section provides: "The word 'employee' as used in this chapter shall be construed ... but shall not include persons whose average annual earnings exceed three thousand six hundred dollars ..." Missouri Stat. Ann., Vol. 12, Ch. 28, §3305(a).

5. A letter from the secretary of the Missouri Workmen's Compensation Commission, Feb. 19, 1934, states: "Replying to your letter of February 15th, we wish to advise that any person who earns in excess of $3600.00 per year is not considered an employee within the meaning of the Compensation Law of this state and under such conditions we are without jurisdiction and have therefore had no occasion to make any rulings on the point."

of an "employee" under the act is $3000. However, the courts of that state have decided that to place one outside the meaning of "employee" under the act, there should be a contract of employment which contemplated, or better, provided for an actual yearly remuneration in excess of $3000 and not merely a provision for remuneration "in excess of the rate of" $3000 per year, and, further, perhaps, that the contract of employment should be for a year's duration at least.

The applicability of Workmen's Compensation laws to accidents in interstate commerce is another matter which might cause concern to airlines and their employees engaged in that type of work. Although there is at present a large volume of intrastate commerce being carried on by the airlines, the greater percentage of all scheduled air transport flying is done in interstate commerce. The Workmen's Compensation Act of Colorado, for example, expressly excludes from the applicability of the act common carriers engaged in interstate commerce. The acts of Alabama and Tennessee exclude from the acts common carriers doing an interstate business while engaged in interstate commerce. It is doubtful that the Colorado act would apply to an interstate airline at all, while in Alabama and Tennessee an employee of an interstate airline, if injured, would be put to the same problematical test, whether before the Workmen's Compensation Commission of the state or in a law court, as to whether or not he was engaged in an interstate or intrastate act at the time of the accident, as so many railroad employees who have been injured in their work have had to prove or disprove in the courts of the country. One of the most serious objections to the Federal Employer's Liability Act has been just that: the difficulty and even impossibility of proving, on the part of the employee in a court of law, or on the part of the employer before the Workmen's Compensation commission, and, conversely, the difficulty or impossibility of disproving, on the part of the employer in a court of law, or on the part of the employee before the commission.

9. Compiled Laws of Colorado, 1921, Ch. 80, §4384, which reads: "The provisions of this Act shall not apply to common carriers engaged in interstate commerce nor to their employees."
10. Alabama Code, 1928, Ann., Ch. 287, §7543, which reads: "Articles 1 and 2 of this chapter shall not be construed or held to apply to any common carrier doing an interstate business while engaged in interstate commerce, . . . ."
11. Code of Tennessee, 1932, Williams, Shannon & Harsh, Ch. 43, §6856, which provides: "This Chapter shall not apply to: (a) Any common carrier doing an interstate business while engaged in interstate commerce, . . . ."
pensation commission, that the employee was engaged in interstate commerce at the time of the accident.\textsuperscript{12}

Iowa's Workmen's Compensation Act provides that employers engaged in interstate commerce and their employees working only within the state are under the act.\textsuperscript{13} Does this mean that a pilot employed by an airline in Des Moines and engaged in an interstate flight, may not recover on a claim for compensation in case of injury? Evidently his only remedy would be at law.

These and other Workmen's Compensation problems are confronting the airlines today. The payrolls of airlines aggregate many millions of dollars a year, and list thousands of employees, some of whom are hired in one state to work exclusively or mainly in other states. There is quite a bit of shifting of employees from one state into another. The residences of the employees are often in states where neither the contracts of employment were made nor the work carried on. With Workmen's Compensation laws in force in forty-four states, no two of which are the same, it can readily be seen that there are problems.

An article such as this can not possibly hope to solve these problems, if solution is what is needed. In the absence of federal legislation on the subject, or in the absence of uniformity among the states' acts, which, at the present time is only a dream, the problems will, for the most part, wait for solution until they actually arise in litigated cases. The purpose of this article is to place before those interested in the subject the results of a study of the Workmen's Compensation acts of all of the United States and surrounding territories, as the same are or might be viewed by air transport services, and to form some conclusion as to what should be done.

II. WORKMEN'S COMPENSATION LEGISLATION.

Number of Acts, and Exceptions:

Forty-four states and two nearby territories, Alaska and Porto Rico, have Workmen's Compensation laws. The exceptions are: Arkansas, Florida, Mississippi, South Carolina and the Canal Zone.

Arkansas has an employer's liability act which applies to every


\textsuperscript{13} Code of Iowa, 1931, Chaps. 70, 71, 72, §1417: "So far as permitted, or not forbidden, by any act of Congress, employers engaged in interstate or foreign commerce and their employees working only in this state shall be bound by the provisions of this chapter in like manner and with the same force and effect in every respect as by this chapter provided for other employers and employees."
corporation in the state except while engaged in interstate commerce. Contributory negligence is no bar to a recovery of damages, but damages may be proportional to the negligence of the employer and of the employee. If the violation of a safety statute by the corporation contributed to the injury, neither contributory negligence of the employee nor the doctrine that the employee assumed the risks of the employment is a defense.¹⁴

Florida has an act making employers engaged in railroading, operating street railways, generating and selling electricity, telegraph and telephone business, express business, blasting and dynamiting, operating automobiles for public use, waterway carriage, boating by steam, gas or electricity, liable for injuries to and death of their employees caused by the negligence of the employer, unless it is made to appear that the employer had exercised all ordinary and reasonable care and diligence—the presumption being against the employer. The negligence of the employee is a defense. If both the employer and employee are at fault, damages are assessed in proportion to the fault of each. The fellow servant rule applies if the employer is not at fault and if the fellow servants were jointly engaged in the act from which the accident occurred. The doctrine of assumption of risk is not a defense.¹⁶ Whether airlines would be included under the operation of this act is doubtful, unless they could be classified under “express business.”

Mississippi has neither a Workmen’s Compensation act nor an Employers’ Liability act, but the Code provides that in all actions for personal injury to or death of an employee, contributory negligence shall not be a bar, but damages shall be diminished by the jury in proportion to the amount of negligence attributable to the person injured;¹⁶ also that the doctrine of assumption of risk shall not be a bar where the injury is due in whole or in part to the negligence of the master.¹⁷

South Carolina has an Employers’ Liability act covering railroads and their employees only.¹⁸

In the Canal Zone the doctrine of respondeat superior is covered by common law rules, but the defenses of contributory negligence, fellow servant rule and assumption of risk are not estab-

¹⁷. Ibid, §513.
lished. Proportionate damages are assessed. There are no laws for the protection of workmen except those applicable to government work, railroads, and employees engaged in shipping pursuits (by water).  

Compulsory Acts—

Thirteen states, the District of Columbia, and Porto Rico, have compulsory acts. Idaho's act is compulsory, but does not apply to "employment of airmen or individuals, including the person in command and any pilot, mechanic or member of the crew, engaged in the navigation of aircraft while under way . . . unless prior to the accident for which the claim is made, the employer had elected in writing filed with the board, that the provisions of the act shall apply." In other words, the Idaho act makes it possible for the airline to exclude pilots and other members of the crew from the operation of the act, while in flight.

California, Idaho, District of Columbia, and Porto Rico have acts which are compulsory, both as to employers and employees in all employments regardless of the nature or type of work carried on or the number of workers employed.

Arizona's act is compulsory on employers of three or more workmen. The employees of such employers may elect not to become subject to the act, in which case the common law rules of liability apply. The acts of Illinois, Maryland, Washington, and Wyoming are compulsory on hazardous employments, without regard to the number of employees engaged by the employer. North Dakota's act is compulsory as to hazardous employments, the term "hazardous" being defined by the act as meaning "any

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20. By "compulsory acts" is meant those acts which are not elective as to private employers—those acts under which the employer finds himself, automatically or without election, either express or implied. Most states exclude farmers, casual or temporary employment, and work not in the usual course of the employer's business, from the operation of the acts. Some acts exclude the state, counties, cities and other governmental bodies from the compulsory provisions of the acts, but make the acts compulsory on private employments, while others are elective as to private employments and compulsory on the state, county, city, etc. Herein, such comparative exceptions have been disregarded for the reason that they have no bearing on this study.
27. Revised Code of Arizona, 1928, Ch. 24, Art. 5, §§1418, 1430.
employment in which one or more employees are regularly employed in the same business or in or about the same establishment.\footnote{32} Oklahoma's act is compulsory on hazardous employments wherein two or more employees are employed,\footnote{33} while the act of New York is compulsory on all hazardous employments and employments wherein four or more are employed.\footnote{34} The acts of Ohio,\footnote{35} Utah,\footnote{36} and Wisconsin\footnote{37} are compulsory on all employments wherein three or more employees are employed. All of the above-mentioned acts allow other employers, not under the act, to elect to come under the acts, except Oklahoma and Wyoming, District of Columbia and Porto Rico.

**Elective Acts—**

The remaining thirty-one states and Alaska have elective acts, varying greatly in their elective provisions. For example, the acts of Indiana,\footnote{38} Iowa,\footnote{39} Minnesota,\footnote{40} Nebraska,\footnote{41} Pennsylvania,\footnote{42} and South Dakota\footnote{43} apply to all employments,\footnote{44} and acceptance of the acts is presumed unless either the employer or employee gives notice, as provided in the acts, of his election not to be bound by the act. New Jersey's act is the same, except that both employer and employee must accept by agreement, either express or implied. If either party rejects the compensation features of the act, such act does not apply.\footnote{45}

In Maine,\footnote{46} Michigan,\footnote{47} and Nevada,\footnote{48} which acts likewise cover all employments,\footnote{49} the acceptance of the act is not presumed as to the employer; his election to be bound by the act must be manifested by written acceptance. In Massachusetts, the act ap-

\footnotesize

32. Suppl. to 1913 Comp. Laws of North Dakota, Ch. 5, Art. 11-A, §§396a3.
34. Cahill's Com. Laws of New York, 1930, Ch. 66, §§2, as amended 1932.
37. Wisconsin Stat., 1931, Ch. 102, §102.04.
39. Code of Iowa, 1931, Ch. 70, §§71, 72, §§1365, 1377, 1380.
42. Purdon's Pennsylvania Stat., Title 77, §§461, 482.
43. Comp. Laws of South Dakota, 1929, Vol. II, Title 6, Ch. 5, Art. 4, §§9427-9438. Failure of an employer to carry insurance required by the act, unless he be a self-insurer, amounts to an election not to be bound by the act. Richardson v. Farmers' Coop., 45 S. D. 357, 187 N. W. 632 (1922); Bower v. Nunnemaker, 46 S. D. 607, 195 N. W. 506 (1923).
44. The possible exceptions are farmers, casual employment, employment not in the usual course of trade or business of the employer, etc., which, for the purposes of this study, are disregarded, as not being pertinent to our study.
45. Comp. Stat. of New Jersey, Sec. 7, 8, 9, 10.
47. Comp. Laws Michigan, 1929, Ch. 150, §§4271, 4272, 4273.
49. See note 44.
plies to all employments, and the employer manifests his election to be bound by the act by taking out insurance.\textsuperscript{50} If the employer accepts the act, the employee is presumed to have accepted it unless he gives notice to the contrary. In these last four named states, the employee can not be under the act unless and until his employer has elected to be under the act. A similar Workmen's Compensation act, applying to all hazardous employments, is found in Montana. Those employments not classified as hazardous may elect to come under the act.\textsuperscript{51}

West Virginia's act is peculiar in that it appears to be compulsory. However, the employer has the election of contributing to the state accident fund or of otherwise providing for payment of compensation, and when the employer has done so, the employee may elect to reject the act. By continuing in the service of such employer the employee is deemed to have waived any other right of action he may have.\textsuperscript{52} Acceptance of the Rhode Island act is likewise not presumed as to employers. The act of that state applies to all employments wherein five or more employees are employed. After the employer has “elected in,” the employee may “elect out,” and if he does not, he is presumed to have accepted the act. Employers of less than five may elect to come under the act.\textsuperscript{53} The Texas act in its elective features is similar to Rhode Island's act, except that it applies to employers of three or more.\textsuperscript{54} In Colorado, the act applies to all employments where four or more are employed. Acceptance of the act by the employer is presumed, but the employee may elect only when his employer is under the act. Employers of less than four may elect to come under the act.\textsuperscript{55}

The act of New Hampshire applies to certain hazardous employments only. Acceptance is not presumed on the part of the employer. To become subject to the act, he must file his written declaration of election. The employee or his personal representative, in case of his death, may elect, after an injury, whether to sue the employer at law or maintain a proceeding for compensation.\textsuperscript{56}

In Kentucky, the act applies to all employments wherein three or more are employed. Others may elect to come under the act by

\begin{itemize}
\item \textsuperscript{50} Anno. Laws of Massachusetts, Vol. 4, Ch. 162, §§19, 22, 24.
\item \textsuperscript{51} Rev. Code Montana, 1921, Suppl., Ch. 213, §§2941 et seq., §2990.
\item \textsuperscript{52} West Virginia Official Code, 1931, Ch. 23, §§1-3.
\item \textsuperscript{53} Rhode Island Gen. Laws, 1923, Ch. 92, §§1207, 1209, 1210.
\item \textsuperscript{54} Complete Stat. Texas, 1928, Title 130, Part I, §§2, 2a, 3c.
\item \textsuperscript{55} Comp. Laws of Colorado, Ch. 80, §§4382, 4390, 4392.
\item \textsuperscript{56} Public Laws of New Hampshire, 1926, Vol. I, Ch. 178, §§4, 11, 12.
\end{itemize}
joint voluntary application. Acceptance is not presumed but both employer and employee, or either, must accept in writing.\textsuperscript{57}

The acts of Louisiana\textsuperscript{58} and Oregon\textsuperscript{59} apply to all hazardous employments; that of New Mexico applies to hazardous employments wherein four or more employees are employed;\textsuperscript{60} that of Kansas applies to hazardous employments wherein five or more are employed;\textsuperscript{61} the acts of Connecticut,\textsuperscript{62} North Carolina,\textsuperscript{63} and Tennessee,\textsuperscript{64} apply to all employments wherein five or more are employed; Georgia's, where ten or more are employed;\textsuperscript{65} Missouri's, where more than ten in a non-hazardous employment, or ten or less in a hazardous employment are employed;\textsuperscript{66} those of Vermont\textsuperscript{67} and Virginia\textsuperscript{68} apply to all employments wherein eleven or more are employed; and that of Alabama, where sixteen or more are employed.\textsuperscript{69} In all of these states, acceptance is presumed unless either the employer or employee gives notice of his non-election, and in all of them, those employers not included in the above categories may elect to come under, in which case their employees are presumed to have elected to be bound by the act, unless they give notice to the contrary as provided in the acts. The acts of Delaware\textsuperscript{70} and Alaska\textsuperscript{71} apply to all employments wherein five or more employees are employed, acceptance is presumed, but those employers employing less than five may not elect to be bound.

The foregoing summary of applicability provisions of the statutes presents quite a confusing picture. However, individually, the elective provisions of the acts are clear and certain.

\textbf{Effect on Common Law Rights and Liabilities:}\textsuperscript{72}

Under the Workmen's Compensation acts, it is not necessary to prove negligence on the part of the employer nor the exercise of due care on the part of the injured employee. The only usual

\begin{itemize}
\item \textsuperscript{57} Carroll's Kentucky Stat., 1930, Ch. 137, §§4880, 4956, 4957.
\item \textsuperscript{58} Louisiana Gen. Stat., 1932, Vol. 2, Title 34, Ch. 11, §§4391, 4993.
\item \textsuperscript{59} Oregon Code Anno., 1930, Vol. 2, Ch. 18, §§49-1810, as amended 1933, 1935, 1937.
\item \textsuperscript{60} New Mexico Stat. Anno., 1929, Ch. 156, Art. 1. §§156-102, 156-104.
\item \textsuperscript{61} 1931 Suppl. to Rev. Stat. of Kansas, Ch. 4, Art. 5, §§44-507, 44-542, 44-543.
\item \textsuperscript{62} Gen. Stat. of Conn., 1930, Vol. II, Ch. 280, §§5223, 5227.
\item \textsuperscript{63} North Carolina Code, 1931, Ch. 135A, §§8081 (1) (a), (u) (b), (k), (l).
\item \textsuperscript{64} Code of Tennessee, 1926, W. S. & Harsh, Ch. 42, §§6582, 6555, 6553.
\item \textsuperscript{65} Georgia Code, 1926, Anno., Sec. 3154, §§2, 4, 6, 15.
\item \textsuperscript{66} Missouri Stat. Anno., Vol. 12, Ch. 28, §§3300, 3302, 3363.
\item \textsuperscript{67} Gen. Laws of Vermont, Title 33, Ch. 421, §§5763, 5765 as amended 1923, 1929, 1932, 1935.
\item \textsuperscript{68} Virginia Code, 1930, Ch. 76A, Sec. 1887, §§4, 6, 15.
\item \textsuperscript{69} Alabama Code, 1926, Ch. 287, §§7048, 7644.
\item \textsuperscript{70} Rev. Code of Delaware, Ch. 90, Art. 5. §§3193d, 3193vv (141b.1929).
\item \textsuperscript{71} Session Laws of Alaska, 1929, Ch. 25, §§31, 33, 35, 36, 37, 41.
\item \textsuperscript{72} For a more complete covering of the effect of the acts on common law rights and liabilities, see the Summary of Workmen's Compensation Acts in the Appendix.
\end{itemize}
requirements are that the injury must have been accidental, must have arisen out of and in the course of the employment, must not have been caused by the wilful want of care of the employee nor be intentionally self-inflicted, nor be caused by the intoxication of the employee. The presumptions here are always against the employer. Some acts prescribe a certain percentage of increase in the amount of compensation to an employee if his injury was due to the wilful failure of his employer to furnish and maintain any safety device or rule prescribed by the Workmen's Compensation Commission or by any “safety statute” of the state. Conversely, if the injury was due to the employee's wilful failure to use any such safety device or to follow any reasonable safety rule, the amount of compensation is reduced.

There is some uniformity among the acts in the matter of the effect the acts have on common law rights and liabilities. Where both employer and employee are under the act, the rights of the injured employee and the liabilities of the employer are determined by the act and are exclusive. Most of the elective acts have been drafted in such a way as to make it highly advisable—if not compulsory—for all employers and employees affected to place themselves under the acts, if they are not already there. The usual elective act speaks like this: “This is a New Deal, and it is up to you to elect whether you want to join up or stay out. But you had better elect to join up, or else.” This “or else” threat is to place the non-member in a position of uncertainty and danger. For the employer, it means that if he elects not to be bound by the act, his injured employee may either file a claim for compensation or file a suit under the Employers' Liability Act or other similar statute of the state, or at common law. The employer, in such case, may not defend on the grounds of contributory negligence, assumption of risk or under the fellow servant rule; and in many states, in such case, it is presumed that the injury arose out of and in the course of the employment, that the employer was negligent, and that the employee exercised due care and caution for his own safety. For the employee it means that in case of injury, he must sue his employer at common law only, stand up under any defenses his employer may interpose, and prove his whole case by a preponderance of the evidence. The reason for these provisions is to embrace within the protection of the acts as many employers and employees in the affected employments as possible. As a matter of practice, in most states neither
the employer nor employee is actually put to an election, for as already stated, under most of the elective acts, acceptance of the act is presumed, unless notice to the contrary is given. In other words, the effect of the elective features is to give those concerned the right to elect to reject the act. This, of course, does not make the act any the less elective. The actual affirmative election is exercised by those employers and employees not included in the industries embraced by the acts.

Under the compulsory acts the employers and employees find themselves under the acts without election. Most of these acts impose a fine or other penalty on employers who fail to comply with the compulsory provisions. The usual provision is that an employer who fails to insure his liability, or fails to make the necessary accident or payroll reports to the commission shall be liable to his injured employee either under the act or at law, and in such case, he is foreclosed from interposing any of the usual common law defenses.

Several of the acts go about this phase in another way. The only mention of it in the Illinois act, for example, is in section six, which declares that "no common law or statutory right to recover damages for injury or death sustained by any employee while engaged in the line of his duty as such employee, other than the compensation herein provided, shall be available to any employee who is covered by the provisions of this Act, . . ." The Illinois act takes it for granted that industries classified as extra-hazardous are automatically under the act, and that there can be no such thing as a failure to comply so as to affect common law rights and liabilities.

The Workmen's Compensation Law of Idaho merely abolishes the common law system governing the remedy of injured workmen, and makes no mention of loss of defenses or loss of rights for failure to comply. Wyoming's act is similar. Oklahoma's

74. Idaho Code Anno., 1932, Vol. 3 §43-902. The section reads: "The common law system governing the remedy of workmen against employers for injuries received in industrial and public work is inconsistent with modern industrial conditions. The administration of the common law system in such cases has produced the result that little of the cost to the employer has reached the injured workman, and that little at large expense to the public. The remedy of the workman has been uncertain, slow and inadequate. Injuries in such employments formerly occasional have become frequent and inevitable. The welfare of the state depends upon its industries, and even more upon the welfare of its wageworkers. The state of Idaho, therefore, exercising herein its police and sovereign power, declares that all phases of the premises are withdrawn from private controversy, and sure and certain relief for injured workmen and their families and dependents is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation, except as is otherwise provided in this act, and to that end all civil actions and civil causes of action for such personal injuries, and all jurisdiction of the courts of the state over such causes are hereby abolished, except as is in this act provided."
act is not intended to apply where death results from the injury.  

*Extraterritoriality of Acts:*

Some of the earlier cases on the question of the extraterritorial applicability of the Workmen's Compensation acts laid down the rule that, in the absence of express provision, if the act of the state wherein the contract of employment was entered into was optional, the act would apply to injuries occurring outside the state, on the ground that by accepting the act it became a part of the contract of employment and followed the employee wherever he went in the course of his employment. The elective act was held to be contractual. It followed that if the act were compulsory, in the absence of express provision, it would not be contractual and would not therefore be a part of the contract of employment so as to give it extraterritorial effect. The later cases do not seem to base their reasoning along this line, with the result that an act is none the less effective beyond the borders of the state merely because it is compulsory.

There are four situations which may arise by reason of an industrial injury: (1) The contract of hire and the injury may be local; (2) the contract of hire may be local, i.e., entered into in the state of the forum, but the injury may have occurred in a foreign state or country; (3) the injury may be local, but the contract foreign; and (4) both the contract and injury may be foreign. These situations can occur in any industry but they are especially pertinent to air transportation. There are about twenty domestic airlines in the country, with their principal offices in no less than sixteen states. Besides the main offices of these airlines, some have geographical division offices and bases. They hire people in one state to work in another state or other states. Quite often, employees are shifted from one state to another. In case of injury to or death of an employee, it becomes important to determine where he was hired and where he was injured or killed, in order to ascertain in what state the claim for compensation should be filed. This is more than just a jurisdictional problem. The schedules of compensation—that is, the amounts of money allowed injured workmen or their dependents—vary among the acts. If the act of the state where the employee was injured allows greater compensation than the act of the state where the employee was hired, he or his dependents would naturally want to take advantage of this and file their claim with the commission of the

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76. Oklahoma Stat., 1931, Vol. II, Ch. 72, §§13402-13404. Section 13403 reads as follows: "It is not intended that any of the provisions of this Act shall apply in cases of accidents resulting in death and no right of action for recovery of damages for injuries resulting in death is intended to be denied or affected."
Another factor is the applicability of the particular act to work in interstate commerce, taken in conjunction with the extraterritorial application of the act. Alabama’s act, for instance, applies to injuries occurring outside of the state if the contract of employment was made in the state, and that compensation for such injury shall be in lieu of any right of action and compensation by the laws of any other state. Yet the act expressly excludes from its operation common carriers doing an interstate business while they are engaged in interstate commerce. A pilot employed by an airline in Alabama, and injured while engaged in an interstate flight in another state, could not recover under the Alabama act. Colorado has a similar act. A further discussion of this feature will be found under Applicability to Interstate Commerce, herein.

Of the forty-four states having Workmen’s Compensation laws, thirty make express provision for extraterritorial application of their acts in cases where the employee or his dependents would be entitled to compensation if the accident had happened within the state, one state expressly denies it, and the remaining thirteen states make no direct provision.

Provisions Asserting Extraterritorial Effect—

The acts of Alabama, Idaho, Illinois, Kansas, Ken-

77. For a fuller discussion of this feature, see page 24, under Conflict of Laws.
78. Alabama Code, 1928, Ch. 287, §7640.
79. Ibid, §7643.
81. Idaho Code Anno., 1932, Vol. 3, §43-1003; “... Employers, who hire workmen within this state to work outside of the state, may agree with such workmen that the remedies under this act shall be exclusive as regards injuries received outside this state by accident arising out of and in the course of such employment; and all contracts of hiring in this state shall be presumed to include such an agreement.” §43-1416: “If a workman who has been hired in this state receives personal injury by accident arising out of and in the course of such employment, he shall be entitled to compensation according to the law of this state even though such injury was received outside of this state. ...” §43-1807 defines “workman” as synonymous with “employee.”
82. Smith-Hurd Rev. St., 1933, Ch. 45; see Title of Act and §142; Beall Bros. Supply Co. v. Ind. Comm., 341 Ill. 194, 173 N. E. 64 (1930), wherein the employee, a travelling salesman for an Illinois corporation, was injured in the course of his employment in Colorado. The employee resided in Denver, his entire activity as such salesman being confined to the territory between Denver and the Pacific Coast, but yearly contracts of employment had been entered into between him and the employer, in Illinois. The court held the employee entitled to compensation, not on the ground that the statute has an extraterritorial effect, but on the ground that when persons contract under it they are conclusively presumed to have accepted its provisions and to be bound thereby. “A law effective in this State may create rights and liabilities arising from acts occurring outside of this State.”
tucky,\textsuperscript{84} Maine,\textsuperscript{86} Missouri,\textsuperscript{86} Tennessee,\textsuperscript{87} Utah,\textsuperscript{88} and Vermont,\textsuperscript{89} are applicable to injuries occurring outside the state, if the contract of employment was made within the state. The condition that the contract of employment must have been made within the state is the only qualification, and the act applies whether the employee was hired to work exclusively or partially within or without the state. The act of Texas is similar, the only further qualification being that the injury must have occurred within one year after leaving the state in order to be compensable.\textsuperscript{90}

\textsuperscript{84} Carroll's Kentucky Stat. 1930, Ch. 137, §4888: "Employers who hire employees within this State to work in whole or in part without the State, may agree in writing with such employees to exempt from the operation of this Act injuries received outside of this State; in the absence of such an agreement, the remedies provided by this Act shall be exclusive as regards injuries received outside this State upon the same terms and conditions as if received within this State.

\textsuperscript{85} Rev. Stat. Maine, 1930, Ch. 55, § 2, II; Saunber's Case, 126 Me. 144, 136 A. 722 (1927).

\textsuperscript{86} Missouri Stat. Anno., Vol. 12, Ch. 28, §3310(b): "This chapter shall apply to all injuries received in this State, regardless of where the contract of employment was made, and also to all injuries received outside of this State under contract of employment made in this State, unless the contract of employment was made, and also to all injuries received outside of this State within one year from the date such injured employe leaves this State; and that such employee, though injured out of the State of Texas, except that in such cases of injury outside of Texas, the State of Texas, shall be entitled to the same rights and remedies as if injured within this State."

\textsuperscript{87} See also, State ex rel. Home Life Accident Co. v. Orchard, 227 S.W. 705 (Tex. Civ. App. 1921); Norwich Union Indemnity Co. v. Wilson, 43 S.W. (2d) 478 (Tex. Civ. App. 1931); Texas Employers' Ins. Assn. v. Votek, 44 S.W. (2d) 796 (Tex. Civ. App. 1931); Texas Emp. Ins. Assn. v. Moore, 56 S.W. (2d) 662 (Tex. Civ. App. 1933), which held that "a contract is made at the time when the last act necessary for its formation is done, and at the place where that final act is done."
Arizona's act has extraterritorial application if the employee was hired in or regularly employed within the state. The acts of Michigan and California have extraterritorial effect if the employee was hired in and is a resident of the state at the time of the injury. However, in California, the constitutionality of that part of Section 58, limiting the extraterritorial application of the act to residents of the state, was denied in the case of *Quong Ham Wah Co. v. Ind. Acc. Com.* The effect of this decision is to extend the applicability of the act to injuries occurring outside of the state to all employees who were hired within the state, regardless of residence.

Under the act of Nevada, if the injury to the employee hired in the state was received in another state while he was engaged in work that was incidental to work within the state, he is entitled to compensation, but not so if he was employed to work wholly or partially outside the state. In such case, to give the act extraterritorial effect, both the employer and employee must elect in writing that in case of injury occurring outside the state, the act shall apply.

Under the Georgia Workmen's Compensation Act, "(a) Where an accident happens while the employee is employed elsewhere than in this state, which would entitle him or his dependents to compensation if it had happened in this State, the employee or his

93. Gen. Laws California, 1931, Vol. 2, Act 4749, §68, which reads: "The commission shall have jurisdiction over all controversies arising out of injuries suffered without the territorial limits of this state in those cases where the injured employee is a resident of this state at the time of the injury and the contract of hire was in this state, and any such employee or his dependents shall be entitled to the compensation or death benefits provided by this act." See *Quong Ham Wah Co. v. Ind. Comm.*, 184 Cal. 26, 192 P. 1021, 255 U. S. 445 (1920); *Globe Mills v. Ind. Acc. Comm.*, 84 Cal. App. 307, 221 P. 668 (1923).
94. 184 Cal. 26, 192 P. 1021, 255 U. S. 448 (1920).
95. Nevada Comp. Laws, 1929, Vol. 2, Sec. 2566, §41, which reads: "If a workman or employee, within the provisions of this act, who has been hired in this state, and whose usual and ordinary duties of such employment are confined to the state, is sent out of the state on business or employment of his employer, and receives personal injury by accident arising out of and in the course of such employment, he shall be entitled to receive compensation according to the provisions of this act, even though such injury was received outside of this state. Any employer of labor in the State of Nevada, and any employee thereof, whether hired in or out of the state and whose duties may be partially or wholly out of the state, may, by their joint election, elect to come under the provisions of this act in the manner following: Both the employer and the employee shall file with the commission a written statement that they accept the provisions of the Nevada industrial insurance act. When filed, such statement shall operate to subject them to the provisions of said act, and all acts amendatory thereof, until such time as the employer or employee shall thereafter file in the office of the commission a notice in writing that he withdraws his election. After such joint election is made, any employee who receives personal injury by accident arising out of and in the course of such employment shall be entitled to receive compensation according to the provisions of this act, even though he was hired outside of this state and received such injury outside of this state."
dependents shall be entitled to compensation, if the contract of employment was made in this State, and the employer’s place of business is in this State, or if the residence of the employee is in this State; provided his contract of employment was not expressly for services exclusively outside of the State. (b) Provided, however, if an employee shall receive compensation or damages under the laws of any other State, nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided for in this Act.”

It is not clear whether the section gives special consideration to a resident of the state. The “or” between the second and third conditions in the section has the effect of dividing the necessary conditions for extraterritorial application into two categories, to wit: one category for any employee hired in the state, whether a resident or not, by an employer whose place of business is in the state, and the other for an employee who is a resident of the state, regardless of whether his employer’s place of business is in the state or his contract of hire was made in the state, provided, of course, in either case, that the contract was not for services exclusively outside the state. The cases in the state do not clarify this section. The case of Empire Glass, etc. Co. v. Bussey,7 not reported in full, states that where the contract of employment is made within the state with an employer whose place of business is within the state, if the contract does not expressly provide that the entire service contracted for shall be performed outside of the state, an injury to an employee under such contract, occurring in another state is compensable. The case of Aetna Life Ins. Co. v. Menees,68 not reported in full, states: “Where an accident happens while the employee is employed elsewhere than in this State, which would entitle him or his dependents to compensation if it had happened in this State, he or his dependents shall be entitled to compensation if the contract of employment was made in this State, and if the employer’s place of business is in this State.”

The language of the pertinent sections of the acts of North Carolina96 and Virginia100 is almost identical with that of the

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96. Georgia Code, 1926, Anno., Sec. 3154, §37.
99. North Carolina Code, 1931, Ch. 133A, §8081(rr): “Where an accident happens while the employee is employed elsewhere than in this State which would entitle him or his dependents to compensation if it had happened in this State, the employee or his dependents shall be entitled to compensation, if the contract of employment was made in this State, if the employer’s place of business is in this State, and if the residence of the employee is in this State; provided his contract of employment was not expressly for service exclusively outside of the State; provided, however, if an employee shall receive compensation or damages under the laws of any other State nothing herein contained shall be construed as to permit a total compensation for the same injury greater than is provided for in this chapter.” See also § N. Car. Law Rev. 427 et seq.
100. Virginia Code, 1930, Anno., Ch. 76A, Sec. 1887, §37, the wording of which is the same as that of section 8081(rr) of the North Carolina Act.
Georgia act, except that the word "or" is replaced by the word "and," making all four conditions necessary to give the acts extraterritorial effect.

The Maryland act applies to injuries occurring outside the state if the employee was regularly employed in the state by a Maryland employer, and the work outside the state was casual, occasional, or incidental.101

In Pennsylvania, if the person who receives an injury outside the state is a Pennsylvania employee whose employer's place of business is in the state and if he was temporarily out of the state for a period no longer than 90 days, he is entitled to compensation.102

In Oregon,103 and West Virginia,104 if the employee is out of the state temporarily and performing duties incidental to the work in the state, he is entitled to compensation for an injury.

North Dakota, which has a compulsory act, and where the only method of insuring the employer's liability to injured workmen is by contributing to the State Compensation Fund, provides that if an employee is injured outside of the state, he shall be entitled to compensation, if the employer and the Compensation Bureau of the state had previously contracted for insurance protection for employees while working outside of the state, if the principal plant and main or general office of the employer is in the state, and if at least two-thirds of the employer's entire payroll is expended for

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(103) 1933 Laws Oregon, Ch. 30, p. 47, §49-1913a, which reads: "If a workman employed to work in this state and subject to this act temporarily leaves the state incidental to such employment and receives an accidental injury arising out of and in the course of his employment, he shall be entitled to the benefits of this act as though he were injured within this state." Query: Would this act apply to a pilot who was hired in Oregon and injured in another state?

(104) West Virginia Official Code, 1931, Ch. 23, Act 22, §1, which provides: "... Provided, That the Chapter shall not apply to... nor to employees of an employer employed without the State;... Any employee within the meaning of this Chapter whose employment necessitates his temporary absence from this State in connection with such employment, and such absence is directly incidental to carrying on an industry in this State, who shall have received injury during such absence in the course of and resulting from his employment, shall not be denied the right to participate in the workmen's compensation fund." See also Gooding v. Ott, 77 W. Va. 487, 87 S. E. 862 (1916); Foughty v. Ott, 89 W. Va. 88, 92 S. E. 148 (1917). Query: Would this act apply to a pilot for an airline, employed in West Virginia?
work within the state. But, if the employer fails to secure compensation, the act is applicable to injuries outside the state, regardless of these conditions.

The acts of Indiana, Ohio, South Dakota, Connecticut, Iowa, Nebraska, and Massachusetts, provide for extraterritorial application without mention of the place of contract. It has been held in Ohio, however, that the act would not apply to an employee injured in another state while there engaged in the performance of his duties, no part of which were to be performed in Ohio.

By an act of May 17, 1928, the Longshoremen's and Harbor Workers' Compensation Act, which heretofore provided compensation for disability or death resulting from injury to employees in certain maritime employments, was made applicable to any employment in the District of Columbia, irrespective of the place where the injury or death occurs.

Provision Denying Extraterritorial Effect—

The only state which expressly denies the applicability of its provisions to injuries outside its own state is South Dakota, which added to its act of 1929 a new section 396a.11(10) as amended 1936, which reads: "Where an employee's accident occurs outside South Dakota, and the contract of hire was made outside South Dakota, for the purpose of performing duties in South Dakota, then the provisions of this act apply. A contract of hire made outside the state of South Dakota shall not be construed to have been made in South Dakota for the purposes of this act."

Other states have made no express provision for extraterritorial application without mention of the place of contract. It has been held in Ohio, however, that the act would not apply to an employee injured in another state while there engaged in the performance of his duties, no part of which were to be performed in Ohio.

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Provision Denying Extraterritorial Effect—

The only state which expressly denies the applicability of its

106. Ibid., §396a.11.
110. Gen. Stat. of Connecticut, 1930, Ch. 280, §5223, which reads: " 'Employee' shall mean any person who has entered into or works under any contract of service or apprenticeship with an employer, whether such contract contemplated the performance of duties within or without the state,..."
111. Code of Iowa, 1931, Chas. 70, 71, 72, §1421(a). It seems that the contract of employment must have been made in the state, for the section to apply. See Parchers v. Bakers v. S. Co., 185 la. 1346, 172 N. W. 191 (1919).
113. Anno. Laws of Massachusetts, Vol. 4, Ch. 155, §§24, 26. Decisions of the Massachusetts courts, however, hold that the contract of employment must have been made in the state. See Pederson's Case, 269 Mass. 590, 169 N. E. 427 (1930); McLaughlin's Case, 274 Mass. 217, 174 N. E. 328 (1931).
115. Code of Laws of the U.S.A., Suppl. VI, 1932, Ch. 18, Title 33.
116. Code of District of Columbia, 1939, Title 19, Ch. 2 (p. 181), §111. The provisions of Chapter 18 of Title 33 of the Code of Laws of the United States, including all amendments that may be made thereto after May 17, 1928, shall apply in respect to the injury or death of an employee of an employer carrying on any employment in the District of Columbia, irrespective of the place where the injury or death occurs; except that in applying such provisions the term 'employee' shall be held to mean every person carrying on any employment in the District of Columbia, and the term 'employee' shall be held to mean every employee of any such person."
Workmen’s Compensation Law to injuries occurring outside the state is Delaware. It provides: “This act . . . shall apply to all accidents, occurring within this State, irrespective of the place where the contract of hiring was made, renewed or extended, and shall not apply to any accident occurring outside of this State.”

**Absence of Extraterritorial Provisions**

An examination of the reported cases in the thirteen states whose Workmen’s Compensation acts make no provision for the applicability of the acts to injuries occurring outside the state, shows that nine of the acts have been held to so apply, under conditions similar to those imposed in the acts heretofore discussed, and one has been held not to so apply. As to the remaining acts, they have not as yet received the benefit of judicial interpretation on the point herein involved.

The courts of Montana, New Jersey, Rhode Island, and Washington, have held that the acts in their respective states apply to injuries occurring beyond their borders if the injured employee was hired within the state.

The courts of Louisiana have gone a step further and declared that if an employee is injured outside the state, he will be entitled to compensation, provided his contract of hiring was made in the state with a resident employer.

In Minnesota, the act so applies if the business of the employer is localized in the state. Apparently, the place of contract is of no determining importance.

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123. Bradtmiller v. Liquid Carbonic Co., 173 Minn. 481, 217 N. W. 680 (1928). In this case the employer’s principal place of business was in Chicago, Illinois, but it had an office in Minneapolis. The employee was a salesman whose territory was in South Dakota. He lived in Minneapolis. The case is silent as to where the contract of employment was made, but it appears that the employee reported to the Minneapolis office and received his instructions there, and it does not appear that he had any connection with the Chicago office. The court said: "There is enough to sustain a holding that there was a localization of the business in Minnesota and that the plaintiff was associated wholly with the work done there." "The facts bring the case within our holding that an employee of a business conducted in Minnesota is entitled to compensation though he works outside." See also Krekelberg v. Ma Floyd Co., 130 Minn. 149, 297 N. W. 193 (1926); State ex rel. v. District Court, 140 Minn. 427, 165 N. W. 177 (1918); and Bramald v. Dickinson Co., 186 Minn. 89, 242 N. W. 466 (1932), wherein the deceased was in the employ of the defendant as a traveling salesman. He worked out of Mason City, Iowa, where he lived. He was furnished an automobile, carried samples, visited the
Colorado\textsuperscript{224} and Wisconsin\textsuperscript{225} courts have decided, that to apply their respective acts to injuries occurring outside the state, the employee must have been hired in the state and the work outside the state must not have been exclusive.

A New York employee, if hired in the state, and injured while working outside the state in work which is incidental to work within the state, comes under the extraterritorial application of the act, but not if he is working at a fixed place outside the state. The test in New York seems to be: Where is the employment located?\textsuperscript{226}

The courts of Oklahoma have not as yet construed their act trade, and kept the record of his transactions at home. It does not appear in the case as to where the contract of employment was made. The defendant, however, corresponded in writing business in Minneapolis. The deceased died in Iowa. The finding of the court was that the employee was within the compensation act.\textsuperscript{227}

The courts of Colorado have applied their act to injuries occurring outside the state, where the claimant was employed in Colorado, and received the compensation therefor, in a fixed place outside the state. The employee was employed in Colorado, and paid the compensation therefor, in a fixed place outside the state. The test in Colorado seems to be: Is the employment within the state, or without the state?\textsuperscript{228}

The courts of Wisconsin have held that the employee was within the compensation act, if he is working at a fixed place outside the state. The test in Wisconsin seems to be: Is the employment within the state, or without the state?\textsuperscript{229}

In New York, the test seems to be: Is the employment within the state, or without the state?\textsuperscript{230}

In Oklahoma, the test seems to be: Is the employment within the state, or without the state?\textsuperscript{231}

In Colorado, the test seems to be: Is the employment within the state, or without the state?\textsuperscript{232}

In Wisconsin, the test seems to be: Is the employment within the state, or without the state?\textsuperscript{233}

In New York, the test seems to be: Is the employment within the state, or without the state?\textsuperscript{234}
as having extraterritorial effect, but on the contrary, have said that it does not have such effect. They feel that the place where the contract of hire is made is of no bearing on the question, and that, in case of injury, the law of the place where the work is performed should govern.127

New Mexico does not have a direct provision covering the effect of its act on injuries occurring outside the state, but the act defines "injuries sustained in extra-hazardous occupations or pursuits," to include "death resulting from injury, and injuries to workmen, as a result of their employment and while at work in or about the premises occupied, used or controlled by the employer, and injuries occurring elsewhere while at work in any place, where their employer's business requires their presence and subjects them

In the Matter of the Claim of Edna Tallman v. Colonial Air Transport, 234 App. Div. 809, affirmed in 250 N. Y. 512 (1932), the claimant's husband, an airplane pilot, was killed in Connecticut while flying a plane for his employer, a corporation from Boston, Massachusetts, to Newark, New Jersey. The State Industrial Board found that claimant's husband, at the time of his death, was serving under a contract entered into with the employer at its main office in New York City, and that the employment of deceased was not at a fixed place outside the state of New York, but at the main office of the employer in the City of New York, and allowed compensation.

In Matter of Baum v. New York Air Terminals, Inc., 230 App. Div. 531, 246 N. Y. S. 357 (1930), the deceased employee had not previously worked for the employer and never did any work within the state of New York, but from the date of his hiring to the date of his death by drowning, had worked exclusively in New Jersey on the construction of a flying field. The deceased was a resident of New York and the employer, a Delaware corporation, had its principal office in New York. The employer was also constructing an airport in New York. There was sufficient testimony to hold that the contract of employment was made in New York. On these facts the Appellate Division reversed the award of the Industrial Board, relying on Matter of Cameron v. Elite Construction Co. (cit. supra), wherein it is said, "employment confined to work at a fixed place in another state is not employment within the state. . . . Hazardous employment elsewhere, though connected with a business conducted here, does not come within its scope. . . . The test in all cases is the place where the employment is located."127

127. Sheehan Pipe Line Const. Co. v. State Ind. Comm., 151 Okla. 275, 2 P. (2d) 129 (1931). In this case, the claimant was a resident and citizen of the state of Oklahoma. The employer, an Oklahoma corporation with its principal place of business in Shawnee, Oklahoma, the claimant had been in the employ of the company on a job at Shawnee. After the completion of that work, he entered into a contract in the state of Oklahoma to perform work in the state of Kansas. While working in Kansas, he was injured. The only question in the case was whether the claimant might recover compensation for the injury received in a foreign state. The court quoted from the case of Waarren City Tank Boiler Co. v. Millham, 132 Okla. 244, 270 P. 132 (1928), wherein it is said, "Section 7316, C. O. S. 1921 (13382 of present act), provides: 'Any investigation, inquiry or hearing with (which) the Commission is authorized to hold or undertake, may be held or taken at any place in the state by or before any Commissioner . . . This gives the Industrial Commission authority to conduct hearings at any place within the borders of this state, but does not give the Industrial Commission authority to conduct a hearing without the state.' The court in the Sheehan case, then says: "There is no provision in any of the statutes that provides that the Industrial Act shall have an extraterritorial effect, and the Warren City case clearly indicates that it does not have such an effect . . . It is generally held that when a contract is made in one state and is to be performed in another state, the law of the place of performance governs the contract. In other words, the laws of the foreign jurisdiction become a part of the contract. Nothing in our statutes suggests that the state of Oklahoma has attempted to draw within the scope of its own regulations the relation of employer and employee in work conducted in a sister state. Where an accident occurs in a foreign jurisdiction, perhaps the relation of employer and employee and the rights of each may better be determined by the law in the jurisdiction where the accident occurred." Continental Oil Co. v. Pitts, 158 Okla. 206, 13 P. (2d) 180 (1932), where the contract of hire was made in Oklahoma, and the work in Texas, where the employee was injured, was merely casual. The court still denied compensation.
to extra-hazardous duties incident to the business, but shall not include injuries to any workman occurring while on his way to assume the duties of his employment or after leaving such duties, the approximate cause of which injury is not the employer's negligence.128 And in the case of Hughes v. Ware,129 the language of the court indicates the attitude of the court, and one gathers from the case that if the question should be presented to the court, the ruling would perhaps be in favor of the employee who was injured outside the state. There, both the employee and employer were residents of Texas; the contract of employment was made in Texas; the employer carried insurance in Texas which insured him on all claims for compensation regardless of the place of injury. The accident occurred in New Mexico and the employee filed claim and was awarded compensation by the Texas commission. Then he filed claim in New Mexico. The court denied his petition on the ground that it was not the intent of the legislature, and against public policy for an injured employee to receive compensation under the acts of two states for one and the same injury. The court says on page 36: "There was but one accident. It is the public policy of this state that, for such accident, compensation shall be made in a certain amount, to secure the injured employee against want, and to avoid his becoming a public charge. The employer is required to carry compensation insurance. This is a device to place upon the industry as a whole the cost of the prescribed compensation. In the case at bar it appears that the industry has already borne the cost imposed upon it by Texas law. That may be more or less than under our law. But, if both laws may be invoked, the charge imposed upon the industry by the public policy of either state will be exceeded."

Alaska's act states that "no action for the recovery of compensation hereunder shall be brought in any court holden outside of the judicial division in which the injury occurred, out of which the right to compensation arises, except in cases where service can not be had on the employer in the judicial division where the injury occurred. No action for the recovery of compensation hereunder shall in any case be brought in any court outside of the Territory of Alaska, except in cases where it is not possible to obtain service of summons upon the defendant in said Territory, and in all such cases the plaintiff must plead and prove his inability to obtain service of summons upon the defendant within the Territory of

128. New Mexico's Stat. Anno., 1929, Ch. 156, § 112(1); italics ours.
129. 34 N. M. 29, 276 P. 27 (1929).
Alaska." But whether this section refers to injuries occurring within or without the territory or both, has not yet been a matter for judicial interpretation. In one case, where the employee was injured in Alaska and filed suit in the United States District Court in the state of Washington, the above section was cited and compensation was denied. 131

Porto Rico's act is also silent on this feature, but does not expressly limit the applicability of the act to injuries received within the territory. 132 The act also provides that: "Upon written requests . . . commissions to take depositions of witnesses in . . . or in foreign countries, or letters rogatory to a court of another state or of a foreign country, shall . . . issue . . ." 133 But whether these sections would be sufficient to give the act extraterritorial effect has not been decided.

Neither the acts of New Hampshire and Wyoming nor the courts of the states have mentioned extraterritoriality.

Conflict of Laws:

Under the Federal Employers' Liability Act, an injured employee, his personal representative or dependent may bring an action in the district court of the United States, in the district of the residence of the defendant or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action, and the jurisdiction of the courts of the United States is concurrent with that of the courts of the several states. 134

The Workmen's Compensation acts, not having primarily the far-reaching objects of the federal act, and dealing principally with local matters, can not provide the employee with a choice of jurisdictions. They can, and do, give to their state compensation bureaus the power to hear and determine controversies arising from extraterritorial accidents. But, suppose an employee should be hired in such state and should be injured in a foreign state, and file his claim before the commission of the foreign state. Would it entertain the claim? If it did, could the employer interpose as a defense the fact that the injured employee was really under the jurisdiction of the state where the contract of employment was made and therefore not under the protection of the local act?

133. Ibid, §9.
Would the commission or the court of that foreign state, if it took the claim, apply its state law or would it apply the law of the state where the contract was entered into? Which would govern, the *lex loci fori* or the *lex loci contractus*? If the commission took the claim and made an award could they enforce it?

If the relation of master and servant existing under a Workmen's Compensation act is contractual, it is a matter of public policy as to whether a foreign court would be bound to enforce it. Unless, however, a foreign compensation act must be considered as contrary to the law or policy of the forum, the court is bound to give it full force and effect, in accordance with the universal rule in respect to contracts generally. The difficulty here is that although the courts of a state, under the above-mentioned rule, might be bound to give full force and effect to a foreign contract or compensation act, the *compensation commission* or bureau, where the claim must be filed in the first instance, could not do so, for its powers are granted and limited by the compensation act, and, not being a judicial tribunal but merely an administrative body, it could apply only the provisions of the act by which it was created. Claims for compensation, with one or two exceptions, are never filed, in the first instance, in a court. If the commission of a state should entertain a claim for compensation where the contract of hire was made in a foreign state, it could not apply the *lex loci contractus* unless expressly given the power to do so. Still the courts of that state would be bound to do that very thing. But how would the court apply the *lex loci contractus* in such a case? Would it enforce the contract of employment, which includes as part of its content the compensation act of the state where entered into, or would it enforce the *compensation act* of the state where the contract was made? Obviously, this depends on the nature of the foreign compensation act. It would seem, in view of the fact that each compensation act sets up its own machinery and prescribes its own method of administration, that a foreign court, much less a foreign compensation commission, could not undertake to enforce rights granted by that act, *a fortiori*, since compensation acts usually provide that the remedies thereunder shall be exclusive.

An examination of the acts and cases of some of the states will give us an idea of the lack of uniformity in the matter. Less than half of the states reveal any expression of thought on the subject.
Applicability of Particular Act to Claims Filed in Foreign State—

The act of Alabama provides: "When an accident occurs while the employee is employed elsewhere than in this State which would entitle him or his dependents to compensation had it happened in this State, the employee or his dependents shall be entitled to compensation under this Act if the contract of employment was made in this State unless otherwise expressly provided by said contract, and such compensation shall be in lieu of any right of action and compensation for injury or death by the laws of any other state." If an Alabama employee should be injured in a foreign state, he would be entitled to compensation under the Alabama act and none other, whether he filed his claim in Alabama or in the foreign state. But what would be the outcome of the claim filed in the foreign state if the commission of that state could apply only its own act?

Idaho's act, as well as Maine's and Vermont's are similar. They provide that "Employers who hire workmen within this state to work outside of the state, may agree with such workmen that the remedies under this act shall be exclusive as regards injuries received outside this state by accident arising out of and in the course of such employment; and all contracts of hiring in this state shall be presumed to include such an agreement." But these sections evidently apply only to the employees who are hired within the state to work wholly outside of the state. For the employee who works within the state and who might receive an injury while outside the state, another section is provided.

The act of Kentucky is also similar: "Employers who hire employees within the State to work in whole or in part without this State, may agree in writing with such employes to exempt from the operation of this act injuries received outside of this State; in the absence of such an agreement, the remedies provided by this act shall be exclusive as regards injuries received outside this State upon the same terms and conditions as if received within this State."

In Massachusetts if an employee is under the act he is "held to have waived his right of action at common law or under the law

138. See footnote 81.
139. See footnote 84.
of any other jurisdiction in respect to an injury therein occurring."\textsuperscript{140}

Under these provisions, if an injury occurred outside of the state, the injured employee would be forced to file his claim in the state where he was hired in order to be certain of receiving compensation.

All Workmen's Compensation acts, with one or two exceptions, make the rights and remedies as provided in the acts exclusive and in lieu of any other right or cause of action of the injured employee. The usual provision reads, in effect, as follows: "... nor shall such employer be subject to any other liability whatsoever for the death of or personal injury to any employee except as in this act provided; and, except as specifically provided in this act, all causes of action, actions at law, suits in equity, and proceedings whatever, and all statutory and common law rights and remedies for and on account of such death of or personal injury to any such employee are hereby abolished;" or "Such agreement or the election hereinafter provided for shall be a surrender by the parties thereto of their rights to any other method, form or amount of compensation or determination thereof than as provided in ... this act, and an acceptance of all the provisions of ... this act, and shall bind the employee himself, and his dependents, as well as the employer, for compensation for death or injury, as provided for by this act."

It would seem only reasonable that all these acts, as well as those of Alabama, Idaho, Kentucky, Maine, Massachusetts, and Vermont, being the only remedy open to the injured employee, would be considered as part of the contract of employment and would therefore be applied,\textit{to the exclusion of the law of the forum}. But whether the commission of the forum state could or would apply the law of the foreign state is problematical, even though the courts of the forum state would be forced to.

A few of the acts, on the other hand, contemplate that a local employee injured in a foreign state, might file a claim or suit in the foreign state, and also file a claim in the local state. These acts limit the total amount of damages or compensation, in such a case, to the amount provided in the schedule of compensation of the act. The Georgia, Maryland, North Carolina, and Virginia acts provide as follows: "... provided, however, if an employee shall receive compensation or damages under the laws of

\textsuperscript{140} Anno. Laws of Massachusetts, Vol. 4, Ch. 152, §§24, 26.
any other State, nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided for in this Act.”\(^{141}\) The act of Texas goes further, and provides: “... and provided, further, that no recovery can be had by the injured employee hereunder in the event he has elected to pursue his remedy and recovers in the State where such injury occurred.”\(^{142}\)

And in Massachusetts the courts have held that an employee under the act, hired there and injured in a foreign state in the course of his employment and receiving compensation under the law of the foreign state, will be entitled to compensation under the Massachusetts act, credit being given for the amount received under the foreign act.\(^{143}\)

**Applicability of Local Act to Injuries, Where Contract of Hire Made in Foreign State—**

So far, in this discussion, we have looked at the question from the viewpoint of what a foreign state should or could do in case of an injury in that state, when the contract of employment was made in another state. In other words, we have looked out from the state where the contract was made. Now, if we reverse the point of view, we find ourselves in the foreign state, and confronted with a claim for compensation, filed for an injury in our state, by an employee who was hired in another state. Shall we allow our commission to entertain the claim?

(1) **By Court Decisions—**Colorado says no. In *Hall v. Industrial Commission*,\(^{144}\) the employer was a resident of Kansas, in which state the employee was hired to work in the western states. He was injured in Colorado and filed claim for compensation in Colorado. Compensation was denied on the ground that the Industrial Commission had no jurisdiction to award compensation to the plaintiff, in view of the fact that his contract of employment was made in another state and his duties were not to be performed principally in Colorado only.

In the New York case of *Proper v. Polley et al.*,\(^{145}\) the employee was a resident of and hired in Pennsylvania by a Pennsylvania employer, to work chiefly in the state. At times he would

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141. Georgia Code, 1926, Anno. Sec. 5154, §37(b); Laws of Maryland, 1938, §56(2); North Carolina Code, 1921, Anno. Ch. 183A, §8091(rr); Virginia Code, 1930, Anno. Ch. 76A, §97(b).

142. Laws of Texas, 1931, Ch. 90.


144. 77 Colo. 338, 239 P. 1012 (1925).

be sent outside the state to do temporary work. On one of such occasions, while working temporarily in New York State, he was injured and killed. His widow filed a claim in New York, which was dismissed on the ground that the employment was a Pennsylvania employment, and that the claim should have been filed in Pennsylvania under the Pennsylvania act.

The Supreme Court of North Dakota, in the case of Paulus v. State of South Dakota held, that on principles of comity, the courts of the state would decline jurisdiction of a suit against another state by an employee of that state for an injury received in its coal mine within North Dakota. The state of South Dakota had, by constitutional provision and legislative enactment, declared the mining of coal a public purpose and governmental function, and had purchased and begun to operate a coal mine in the state of North Dakota. The plaintiff, a resident of South Dakota, while employed in the mine, was injured and brought suit against the State of South Dakota for the recovery of damages on account of such injury. The court refused to assume jurisdiction of the suit, cited section 9453 of the South Dakota Compensation Act, which provides for extraterritorial application, and suggested that the plaintiff seek such relief as he might be entitled to in the courts of his own state. Whether the decision here would have been different had the defendant been a private employer is difficult to say.

It has been held in Connecticut that a contract of employment made in another state to be performed in Connecticut, will be governed—as to compensation to the employee for an injury happening in Connecticut—by the compensation act of the foreign state, provided it be contractual in character (elective), like the Connecticut act, and applicable, like the Connecticut act, to injuries wherever occurring. On the other hand, if the foreign act is not contractual (elective) in character, or not applicable to injuries occurring in other states, or if there be no compensation act in the foreign state, then an employee beginning work in Connecticut for a foreign employer, will automatically have incorporated into his contract of employment, the provisions for compensation under the Connecticut act.

The law of Indiana appears to be: that regardless of where the contract of employment was made, if it contemplates performance or part performance in Indiana, and if the employer is doing

146. 201 N. W. 867 (1924).
business in Indiana, the employee, in case of injury occurring in Indiana, may be compensated under the Indiana Compensation act. However, if the employer had not qualified to do business in Indiana, and if the employment in Indiana was only temporary, the above would not apply. In the case of *Johns-Manville v. Thrane*, the court held that the rights and duties provided for by the Indiana Workmen's Compensation Act as between employer and employee are contractual. The employer in that case was a New York corporation licensed to do business in Indiana. The contract of employment was made in Illinois, and the employee worked in Illinois for some time. At this time nothing was said about his going to Indiana. Later, he was sent to Indiana, where he worked under the direction of a local boss, and was injured. Claim for compensation was filed with the Industrial Board of Indiana. The court held that the contract, express or implied, under which he was working at the time of his injury was different from the one under which he served in Chicago, and whether made in Illinois or Indiana, was made in contemplation of performance in Indiana. The court intimated, however, that if the employer had not qualified to do business in Indiana, and if the employment in Indiana had been only temporary the result would have been different.

Another interesting case is that of *Hagenback, etc. Shows Co. v. Randall*, where the employer and employee entered into a contract of employment in Ohio, which contemplated employment in several states including Indiana, but which expressly stipulated that the rights and liabilities of the parties should be governed by the laws of the District of Columbia. The employer was an Indiana corporation, and at the time of the injury was carrying on its business in that state. The Indiana appellate court held that the employer's obligation under the Indiana Compensation Act was superimposed upon the Ohio contract as a condition of its performance in Indiana, and awarded compensation to the employee.

In *Darsch v. Thearle Duffield, etc. Co.*, it was decided that contracts of employment entered into between citizens residing in a foreign state, if the employee should happen to come temporarily into the state, or if the employer maintained no office in the state for doing business in the state, do not come within the provisions of the Indiana Workmen's Compensation Act.

148. 80 Ind. App. 432 (1923).
149. 75 Ind. App. 417 (1920).
150. 77 Ind. App. 357 (1922). See also *Norman v. Furniture Co.*, 84 Ind. App. 175, 150 N. E. 418 (1925); *Oil Corp. v. Cubbins*, 84 Ind. App. 22, 149 N. E. 919 (1926).
In Minnesota, the necessary condition for the application of the Minnesota act to injuries occurring within or without the state is that the business of the employer be "localized in the state." In *Ginsburg v. Byers*, the employee, a resident of another state and hired therein by the employer, a resident of Minnesota, to work in Minnesota, was awarded compensation under the Minnesota act for an injury occurring in Minnesota, because the business of the employer was localized in Minnesota; and in *Brameld v. Dickinson Co.*, the finding was that the deceased employee came within the provisions of the Minnesota act. There, the employee was a traveling salesman, working out of Mason City, Iowa, where he lived. He was furnished an automobile, carried samples, visited the trade, and kept the record of his transactions at his home. It does not appear where the contract of employment was made. The defendant, however, was a corporation doing business in Minneapolis. The deceased was injured and died in Iowa. Because the business of the employer was localized in the state, the employee was held to come under the act.

In another Minnesota case, *Christ v. C. & N. W. Ry. Co.*, the Wisconsin Workmen's Compensation Act was pleaded as a defense to a suit for damages for personal injuries sustained in Wisconsin. It appeared that both the employer and the employee were under the Wisconsin act. The verdict was for the defendant because "the act, as between the two, provided the exclusive remedy."

Evidently, if an employee is injured in Nebraska, he will be entitled to claim compensation under the Nebraska act, even if he was employed in another state, providing the industry carried on in Nebraska was incidental to the services to be performed in the state where he was hired, for it was held in the case of *Freeman v. Higgins*, that the Nebraska Workmen's Compensation Act is not applicable, where the contract of employment was made in another state for services to be performed there and the employer was not engaged in an industry in Nebraska to which the services to be rendered were incidental.

In Ohio, it seems that if an employee is hired to work in the state, he will come under the Ohio act, in case of injury.
In Oklahoma, the Industrial Commission has jurisdiction when the injury occurs within the state, and the Oklahoma act is applied. In the case of *Associated Indemnity Corp. v. Landers*, the claimant was employed in Kansas, as a linesman to do work in Oklahoma, the place of his residence. The employer was an Oklahoma corporation doing business in Oklahoma. All of the work that the claimant did for the employer was done in Oklahoma. The employer had insured his compensation liability covering contracts of employment made in Kansas and also covering contracts of employment made in Oklahoma. The petitioners contended that since the contract of employment was made in Kansas and since the Kansas Compensation Act has extraterritorial scope, the Oklahoma State Industrial Commission was without jurisdiction to make an award. The court said: “Jurisdiction of the State Industrial Commission is not dependent upon where the contract of employment was made or the place of residence of the injured employee. Under the provisions of the Workmen's Compensation Act, the State Industrial Commission has jurisdiction when the injury occurs within the state of Oklahoma, and the compensation to be awarded is that provided by the provisions of the Workmen's Compensation Act, and not that provided by the provisions of the Workmen's Compensation Act of some other state.”

Wisconsin courts have held that if an employee is injured in Wisconsin, the Wisconsin act applies, without regard to the place where the contract of employment was made. In *Wandersee v. Ind. Com.*, the court said: “... to constitute a person an employee under the provisions of the act such person must render service for another in the state of Wisconsin under a contract of hire, express or implied, oral or written. Until he performs services for another in the state of Wisconsin he is not an employee. The terms of the act do not affect him and he is not bound by it. As soon as he performs service for another in the state of Wisconsin under a contract of hire, then the act enters into and becomes a part of the contract, 'not as a covenant thereof, but to the extent that the law of the land is a part of every contract' ... and he is entitled to compensation under the act for injuries sus-

156. 159 Okla. 190, 14 P. (2d) 950 (1932).
157. 198 Wis. 345 (1929).
became bound thereby. See *Daggett v. Kansas City Structural Steel Co.*, 65 S. W. (2d) 1036 . . . ."

In *Logan v. Missouri Valley Bridge & Iron Co.*, the appellant sought to enforce in the courts of Arkansas the liability of his employer under the Workmen's Compensation act of Oklahoma for an injury which occurred in Oklahoma, but was denied recovery on the grounds that "no machinery is provided by the Oklahoma Workmen's Compensation Act by which plaintiff could avail himself of the benefits of the [Oklahoma] Workmen's Compensation Act in Arkansas. Likewise, there are no judicial processes in Arkansas that could be adapted to the enforcement of the provisions of the Oklahoma Workmen's Compensation Act."

In *Verdicchio v. M'Nab & Harlin Mfg. Co.*, the only question was whether the Workmen's Compensation Act of New Jersey conferred a cause of action for the death of an employee who elected to come under the act, without applying to or action by a judge of the court of common pleas of New Jersey, as therein provided. The defendant, a New York corporation, conducted a business in New Jersey, the contract of employment was made and entered into and the injury occurred there. The New York court, in denying the right, said: "... the foreign statute does not give an independent cause of action enforceable anywhere. It has provided an administrative remedy by prescribed procedure in New Jersey as a substitute for any cause of action that there might otherwise be, and it was optional with the employee to accept it or not, and he stipulated with his employer to accept it." To the same effect is the case of *Prdich v. N. Y. Cent. R. Co.*

The true "contractual theory" was adopted in the case of *Barnhart v. American C. Steel Co.* In that case the employee was hired in New Jersey, and while working in New York, received injuries from which he died. His personal representative filed suit for damages in New York. The court enforced the contract entered into in New Jersey, thereby denying the recovery of damages for the death of the employee, on the ground that the New Jersey Workmen's Compensation act, being contractual, became part of the contract of employment, which contract, unless contrary to the public policy of New York, should be enforced by the New York courts. "The decedent could not have maintained an action at law. Therefore, his personal representatives are

161. 157 Ark. 528, 249 S. W. 21 (1923).
164. 227 N. Y. 631, 125 N. E. 675 (1920).
applicable to an injury outside the state, under the "contract" or "statutory relation" theory, at least where the act is elective, it must be given full effect in a sister state and thus bars any other form of relief.

The reasoning in the *Clapper case* was followed in *Cole v. Industrial Commission* and in *Weiderhoff v. Neal*. In the *Cole case*, the employer and employee were residents of Indiana, where the central headquarters of the business were located and where the contract of employment was entered into. The employee was injured while in the course of his employment in the State of Illinois. Claim for compensation was filed before the Illinois Workmen's Compensation Commission and an award was entered. On writ of error to the Supreme Court, the judgment was reversed, the court saying, page 419: "No substantial distinction is to be made between the law and the facts in the *Clapper case* and in the instant case. The contract of employment herein having been entered into in the State of Indiana between parties who were subject to the terms of the Indiana Compensation Act, the provisions of the act for an exclusive remedy under it must prevail. No other remedy is available."

The *Weiderhoff case* was a proceeding to enjoin the members of the Missouri Workmen's Compensation Commission from entertaining jurisdiction of a claim for compensation filed before it on account of an injury which occurred in that state to an employee who had been hired in Illinois. The plaintiff (employer) contended that the Workmen's Compensation law of Illinois was applicable and that the claimant should seek an adjustment of damages under the laws of Illinois. The court upheld this contention on the ground that the full faith and credit clause demanded it. The court said, page 799: "When plaintiff and its employee entered into their engagement, the Workmen's Compensation Laws of Illinois automatically fixed their relationship and the substantive rights of each one. The contract of the employment was entered into in view of the law, and the statutes became a part of the contract. It was their engagement therefore that in case of a claim for damages, whether accruing in the territorial limits of Illinois or beyond such limits, such claim would be determined and adjusted under the laws of Illinois. This was a valid undertaking and fixed the substantive rights of the parties, and each one

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The pertinent section of the acts of Arizona, Idaho, Utah and Vermont reads as follows: "If a workman who has been hired outside of this state is injured while engaged in his employer's business, and is entitled to compensation for such injury under the law of the state 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 commission, [board, or commissioner] and the court[s] in this state."164

Under this section the act of the state where the contract was made would determine the rights and remedies of the injured employee.

This section has been construed in Arizona as applying only to cases where the status of employer and employee and the injury both arise outside of Arizona.167 The case was one where the contract was made in California and the injury occurred in Arizona. The workman was awarded compensation according to the Arizona act and not by the California act, on the ground that so long as the injury occurred in Arizona, the beneficiaries were governed by the Arizona act.

Delaware's and Pennsylvania's acts apply to "all accidents occurring within this State [Commonwealth], irrespective of the place where the contract of hiring was made, renewed or extended . . . ."168

Missouri's act provides: "This chapter shall apply to all injuries received in this state, regardless of where the contract of employment was made . . . ."169

In Nevada, an employee of a Nevada employer, whether hired within or without the state, and whether injured within or without the state, is entitled to compensation, if both elect to be bound by the act.170


166. Laws of Delaware, 1919, §94; Purdon's Pennsylvania Stat., Title 77, §1.


168. Nevada Comp. Laws, 1929, §2680, §41, which provides: "Any employer of labor in the State of Nevada and any employee thereof, whether hired in or out of the state and whose duties may be partially or wholly out of the state, may, by their joint election, elect to come under the provisions of this act in the manner following: Both the employer and the employee shall file with the commission a written statement that they accept the provisions of the Nevada industrial insurance act. When filed, such statement shall operate to subject them to the provisions of said act and of all acts amendatory thereof, until such time as the employer or employee shall thereafter file in the office of the commission a notice in writing that he withdraws his election. After such joint election is made, any employee who receives personal injury by accident arising out of and in the course of such employment shall be entitled to receive compensation according to the provisions of this act, even though he was hired outside of this state and received such injury outside of this state."
Applicability to Interstate Commerce:

As most of the scheduled air transportation in this country is of an interstate character, it is of some importance to look into the acts of the several states to see what their provisions in respect to this type of work are. Under the Federal Constitution, the Congress has power to regulate interstate commerce. Thus, when Congress enacted the Second Employers' Liability Act to deal with railroad employees injured while engaged in interstate commerce, state compensation acts yielded, wherever applicable to the same injuries. Generally speaking, until Congress legislates in the premises, the states under their police power may enact laws affecting interstate commerce, but not directly burdening it.\textsuperscript{171}

Since there is no federal legislation dealing with injuries to employees in interstate air transportation, the compensation laws of the states can be said to be applicable thereto unless the acts themselves expressly deny such applicability. This conclusion is consistent with an underlying desire by the courts to afford protection to injured employees under Workmen's Compensation acts wherever possible. Recent cases reach this result, which would seem to be the sensible way of handling the problem.\textsuperscript{172}

A recognized exception to this is where there is a conflict with the admiralty jurisdiction of the United States, following the \textit{Jensen} case.\textsuperscript{173} In the case of \textit{Reinhart v. Newport Flying Service Corp.}, a hydroplane, while on the territorial waters of the state, was treated as a ship, subject to admiralty jurisdiction and hence beyond the jurisdiction of the Workmen's Compensation law of New York.\textsuperscript{174}

Provisions Denying Applicability—

With the exception of those of Alabama, Colorado, Iowa and Tennessee, all Workmen's Compensation laws may be said to be


\textsuperscript{172} \textit{Colonial Air Transport Inc. et al. v. Edna Tallman, 259 N. Y. 512 (1932); \textit{Murray v. Ind. Acc. Com., 14 P. (2d) 301 (Cal. 1932). See article by Zollmann, this issue, p. 70.}


\textsuperscript{174} 232 N. Y. 115, 133 N. E. 371 (1921).
applicable to air transport operators engaged in interstate commerce.

The act of Alabama provides: "Articles 1 and 2 of this Chapter shall not be construed or held to apply to any common carrier doing an interstate business while engaged in interstate commerce . . . ."176 That air transport services fall within the legal classification of common carriers is now definitely established.176 The act of Colorado is similar. It provides: "The provisions of this Act shall not apply to common carriers engaged in interstate commerce nor to their employees."177 Tennessee's act provides: "This Chapter shall not apply to: (a) Any common carrier doing an interstate business while engaged in interstate commerce . . . ."178 The act of Iowa provides: "So far as permitted, or not forbidden, by any act of Congress, employers engaged in interstate or foreign commerce and their employees working only in this state shall be bound by the provisions of this chapter . . . ."179

Each of these four states provides that their compensation laws apply to injuries occurring outside the state, if the contract of employment was made within the state. How would a pilot, injured while engaged in an interstate flight, recover compensation in any one of these states? Certainly, the language of these provisions clearly excludes common carriers while engaged in interstate commerce, from the operation of the acts, and leaves them under the common law system or other statutory system.

Provisions Limiting Applicability—

It is not here necessary to classify the acts according to their interstate commerce provisions. In general, they may be placed in four basically similar groups: (1) that group which provides that the acts shall apply to employers engaged in interstate commerce and to their employees, where the Congress has established a rule of liability, only to the extent that the interstate and intrastate work may and shall be clearly separable; (2) that group which provides that the acts shall not apply to businesses or employments which, according to law, are so engaged in interstate commerce as to be not subject to the legislative power of the state; (3) that group which provides that the acts shall not apply to employers and employees

175. Alabama Code, 1928, Ch. 287, §7542.
176. See Fagg, Fred D., Jr., and Fishman, Abraham, "Certificates of Convenience for Air Transport," 3 JOURNAL OF AIR LAW 227, and note 3 (1932).
177. Comp. Laws of Colorado, Ch. 80, §4354.
178. Code of Tennessee, 1932, Ch. 43 §6856.
179. Code of Iowa, 1931, Ch. 70, §1417.
engaged in interstate commerce in case the laws of the United States provide for compensation or for liability for injuries or death in such employments and which laws are exclusive; and, (4) that group which provides that the acts shall not apply to common carriers by railroad. There is nothing in these groups which excludes interstate air transportation, and since there is no federal employers' liability act for this type of transportation, they can be said to apply.

Absence of Applicability Provisions—

The compensation acts of Nevada, New Hampshire, New Jersey, North Carolina, Pennsylvania, Rhode Island and Wisconsin, make no mention of interstate commerce. For the same reason as stated above, it may be said that these acts are applicable to injuries received by employees of interstate air transport operators.

Specific Mention of Aeronautics:

Only four Workmen's Compensation acts specifically mention aviation. They are Idaho, Illinois, New York, and Washington.

The mention of it in the Idaho act is found in the list of employments excepted from the provisions of the act. It provides: “None of the provisions of this act shall apply to: . . . Employment of airmen or individuals, including the person in command and any pilot, mechanic or member of the crew, engaged in the navigation of aircraft while under way; . . . unless prior to the accident for which claim is made, the employer had elected in writing filed with the board, that the provisions of the act shall apply.” 180

The Illinois act mentions aviation in the classification of employments which are subject to the act: “The provisions of this Act hereinafter following shall apply automatically and without election to . . . and to all employers and all their employees, engaged in any department of the following enterprises or businesses which are declared to be extra hazardous, namely:

“. . . 3. Carriage by land, water or aerial service and loading or unloading in connection therewith, . . .” 181

The New York act is similar: “Hazardous employments. Compensation shall be payable for injuries or death incurred by employees in the following employments; Group 6. Manufacture

180. See footnote 21, supra.
The mention of aeronautics in the Washington act is found in the schedule of premiums payable to the accident and medical aid funds of the state. As will be seen later, the only method of insuring compensation in this state is by contributing to the State Fund. All employments are classified by the act, and provided with a basic premium rate which is subject to change by the Department of Labor. The pertinent section provides: "... The basic premium rates for the accident fund and the medical aid fund, effective immediately upon the passage of this act until so modified by the director of the department of labor and industries, shall be in accordance with the following classifications, sub-classifications and schedules: ... Class 34-5 Aeroplane pilots and industry..."\(^{182}\)

**Insurance Requirements:**

Excepting the Workmen's Compensation acts of Alabama and Alaska, neither of which requires employers under the act to insure their compensation liability, all acts make it compulsory on employers who are under the act to insure their risks. There are five states wherein the only method of insuring compensation is by contributing to the state insurance fund. The remaining states allow the employer to select a prescribed method of insurance. The insurance provisions of the acts are various and may be classed into at least sixteen groups. Sufficient space is not allotted here to delve into all phases of the insurance provisions of the acts, but a general survey will give the reader an idea of what an air transport operator should study in order to carry its risks as economically as possible.

**Absence of Insurance Requirements—**

As stated above, under the Alabama act, an employer may at his option insure his liability, or any part of it, for all employees or for only a particular class or classes of employees. This is the most liberal of all acts in this feature.\(^{184}\)

In Alaska, the employer, after injury to or death of an employee, may deposit with the Clerk of the District Court, a sum

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182. Cahill's Consol. Laws of New York, 1930, Ch. 66, §3.
184. Alabama Code, 1928 Ch. 287, §7584.
of money sufficient to pay the amount of compensation, or a bond to insure the payment of any judgment which might be entered against him on account of such injury or death.\textsuperscript{185}

**Provisions for State Funds Only**—

An employer under the act in Nevada, North Dakota, Oregon, Washington or Wyoming has no choice in the matter of insuring his compensation liability. He must contribute a certain prescribed percentage of his payroll into a state insurance or accident fund. This is the only existing method. In general, the “state fund” provisions of these five acts are similar. Usually the compensation commission or like body is given superintendence and control of the fund. All employers are required to make periodical payroll reports and to pay as premium or contribution to the fund a certain percentage of their payrolls. The commission usually classifies all employments and establishes the basic premium rate for each class. These rates may be changed periodically, according to the experience in the various classes of risks. Merit ratings are allowed to employers who have shown a good experience. In some cases, if it is determined that the premiums collected have been larger than required to afford the necessary protection within an employment, refunds are made. The state funds are non-profit earning, and the managers of the funds are enjoined by the act to operate the fund in such a way, after taking out a certain amount for expenses and a reserve or catastrophe fund, so that the fund shall be neither more nor less than self-supporting.\textsuperscript{186}

**Provisions Allowing Choice of Methods**—\textsuperscript{187}

Fifteen other compensation acts make provision for state accident funds for insuring compensation risks, but they are not monopo-
They are provided in addition to and are more or less competitive with other methods of insuring. Thus, we find that in Arizona, California, Colorado, Maryland, Michigan, Montana, New York, Pennsylvania and Porto Rico employers under the act have the choice of: (1) insuring under the state fund, or (2) taking out insurance with some stock company or mutual association authorized to insure workmen's compensation risks, or (3) self-insuring their risks. Within this group there are differences as to the coverage a policy must effect. For example, in Arizona, every policy of insurance for compensation, issued by the commission or by another must cover the entire liability of the employer to his employees covered by the policy, while in California a policy may be issued insuring either the whole or any part of the liability of the employer, and may restrict or limit the insurance in respect to locations, employees, operations, risks, or kinds of compensation.

In Idaho, an employer under the act (1) may insure in the state fund, (2) may deposit security with the Industrial Accident Board securing the payment of compensation, which is really a form of self-insurance, or (3) may enter into agreement with his employees to provide a system of compensation benefits in lieu of the compensation provided by the act.

Ohio's act provides for insurance by the state fund, or under certain conditions, by self-insurance.

Texas has what is known as the Texas Employers' Insurance Association, which is a state organization for the purpose of issuing policies under the Workmen's Compensation law and the Longshoremen's and Harbor Workers' Compensation Act of the United States. Employers may subscribe to the association or the State Fund; the permit to carry his own risks may be revoked at any time for cause.

Some acts permit the employer to maintain a substitute scheme or system of compensation by agreement with his employees, in lieu of the insurance and compensation provided by the act. Such agreement must be approved by the commission, must confer benefits equal to or greater than those provided for in the act, and may be revoked by the commission, for cause. Any contributions by employees into such substitute system must confer benefits in addition to the regular compensation benefits of the act, commensurate with such contributions.

188. Rev. Code of Arizona, 1928, Ch. 24, Act 5, §1422.
190. Comp. Laws Colorado, 1921, Ch. 80, §21.
192. Comp. Laws Michigan, 1929, Ch. 159, §5473.
193. Rev. Codes of Montana, Ch. 213, §§2970 et seq.
194. Cahill's Consol. Laws, New York, Ch. 68, §§60, 64.
take out insurance with a stock, mutual, or reciprocal insurance company.\textsuperscript{201}

Oklahoma employers have the choice of (1) insuring in the state fund, (2) taking out insurance with an insurance company, (3) depositing security in the form of guarantee insurance with the commission, (4) being a self-insurer, or (5) making an agreement with employees for a scheme of compensation benefits or insurance in lieu of the compensation and insurance provided by the act.\textsuperscript{202}

In Utah, an employer may either (1) contribute to the state fund, (2) take out insurance, (3) be a self-insurer, or (4) enter into an agreement with his employees, such as mentioned above.\textsuperscript{203}

West Virginia's act provides for (1) insuring with the state fund, (2) self-insurance, (3) the filing of security to insure the payment of compensation, or (4) the maintenance of benefit funds or systems of compensation to which employees are not required or permitted to contribute.\textsuperscript{204}

The acts of Illinois, Iowa, Connecticut and Rhode Island provide four methods of insuring compensation liabilities: (1) by self-insurance, (2) by depositing security to insure compensation, (3) by taking out insurance, (4) or by an agreement between employer and employee for a substitute scheme or system. The Connecticut act also allows the employer a combine of (2) and (3); the Rhode Island act allows a combination of (1) and (2); and the Illinois act allows the employer to carry excess insurance on (1) and (2).\textsuperscript{205}

The acts of Delaware, Georgia, Indiana, Kansas, Kentucky, Missouri, South Dakota, and Virginia make provision for (1) taking out insurance, (2) self-insurance, or (3) an agreement between employer and employees for a system of insurance and compensation in lieu of the compensation provided for in the act.\textsuperscript{206}

In Maine, the employer may take out insurance or be a self-insurer. The acts of Minnesota, Nebraska, New Jersey, North Carolina, Tennessee, Wisconsin and District of Columbia also give the employer this choice.\textsuperscript{207}

\textsuperscript{201} Complete Stat. Texas, Title 130, Parts III, IV, V, 2.

\textsuperscript{202} Oklahoma Stat., 1931, Ch. 72, §13374; also Ch. 72, Act 2.


\textsuperscript{204} West Virginia Off't Code, 1931, Ch. 23, Act II, §6 et seq.


\textsuperscript{206} See Rev. Code, Delaware, Ch. 90, §§193 et seq.; Georgia Code, 1926, Sec. 2164, §§68, 69, 71; 1931 Suppl. to Rev. Stat. of Kansas, §§32; Carroll's Kentucky Stat., 1930, Ch. 137, §§404 et seq.; Missouri Stat. Anno., Ch. 28, §§323 et seq.; Comp. Laws of South Dakota, §§9439, 9482; Virginia Code, 1930, Ch. 74A, §68 et seq.

\textsuperscript{207} See Rev. Stat. Maine, 1930, Ch. 65, §6; Mason's Minnesota Stat. Ch. 23A, §4289; Comp. Stat. Nebraska, 1929, Ch. 46, Art. 1, §§14-149; Laws of
They are provided in addition to and are more or less competitive with other methods of insuring. Thus, we find that in Arizona, California, Colorado, Maryland, Michigan, Montana, New York, Pennsylvania, and Porto Rico employers under the act have the choice of; (1) insuring under the state fund, or (2) taking out insurance with some stock company or mutual association authorized to insure workmen’s compensation risks, or (3) self-insuring their risks. Within this group there are differences as to the coverage a policy must effect. For example, in Arizona, every policy of insurance for compensation, issued by the commission or by another must cover the entire liability of the employer to his employees covered by the policy, while in California a policy may be issued insuring either the whole or any part of the liability of the employer, and may restrict or limit the insurance in respect to locations, employees, operations, risks, or kinds of compensation.

In Idaho, an employer under the act (1) may insure in the state fund, (2) may deposit security with the Industrial Accident Board securing the payment of compensation, which is really a form of self-insurance, or (3) may enter into agreement with his employees to provide a system of compensation benefits in lieu of the compensation provided by the act.

Ohio’s act provides for insurance by the state fund, or under certain conditions, by self-insurance.

Texas has what is known as the Texas Employers’ Insurance Association, which is a state organization for the purpose of issuing policies under the Workmen’s Compensation law and the Longshoremen’s and Harbor Workers’ Compensation Act of the United States. Employers may subscribe to the association or

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the State Fund; the permit to carry his own risks may be revoked at any time for cause.

Some acts permit the employer to maintain a substitute scheme or system of compensation by agreement with his employees. In lieu of the insurance and compensation provided by the act. Such agreement must be approved by the commission, must confer benefits equal to or greater than those provided for in the act, and may be revoked by the commission, for cause. Any contributions by employees into such substitute system must confer benefits in addition to the regular compensation benefits of the act, commensurate with such contributions.

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188. Rev. Code of Arizona, 1928, Ch. 24, Act 5, §1422.
190. Comp. Laws Colorado, 1921, Ch. 80, §81.
192. Comp. Laws Michigan, 1929, Ch. 150, §5475.
193. Rev. Codes of Montana, Ch. 213, §2970 et seq.
take out insurance with a stock, mutual, or reciprocal insurance
company.201

Oklahoma employers have the choice of (1) insuring in the
state fund, (2) taking out insurance with an insurance company,
(3) depositing security in the form of guarantee insurance with
the commission, (4) being a self-insurer, or (5) making an agree-
ment with employees for a scheme of compensation benefits or
insurance in lieu of the compensation and insurance provided by
the act.202

In Utah, an employer may either (1) contribute to the state
fund, (2) take out insurance, (3) be a self-insurer, or (4) enter
into an agreement with his employees, such as mentioned above.203

West Virginia's act provides for (1) insuring with the state
fund, (2) self-insurance, (3) the filing of security to insure the
payment of compensation, or (4) the maintenance of benefit funds
or systems of compensation to which employees are not required
or permitted to contribute.204

The acts of Illinois, Iowa, Connecticut and Rhode Island pro-
vide four methods of insuring compensation liabilities: (1) by
self-insurance, (2) by depositing security to insure compensation,
(3) by taking out insurance, (4) or by an agreement between
employer and employee for a substitute scheme or system. The
Connecticut act also allows the employer a combine of (2) and
(3); the Rhode Island act allows a combination of (1) and (2);
and the Illinois act allows the employer to carry excess insurance
on (1) and (2).205

The acts of Delaware, Georgia, Indiana, Kansas, Kentucky,
Missouri, South Dakota, and Virginia make provision for (1)
taking out insurance, (2) self-insurance, or (3) an agreement be-
tween employer and employees for a system of insurance and com-
ensation in lieu of the compensation provided for in the act.206

In Maine, the employer may take out insurance or be a self-
insurer. The acts of Minnesota, Nebraska, New Jersey, North
Carolina, Tennessee, Wisconsin and District of Columbia also give
the employer this choice.207

202. Oklahoma Stat., 1931, Ch. 72, §13374; also Ch. 72, Act 2.
204. West Virginia Off'l Code, 1931, Ch. 23, Act II, §6 et seq.
of Iowa, 1931, Ch. 72, §1467 et seq.; Gen. Stat. Connecticut, Ch. 280, §554
et seq.; Rhode Island Off'l Code, 1931, Ch. 23, Act II, §6 et seq.
206. See Rev. Code, Delaware, Ch. 99, §§1933y et seq.; Georgia Code, 1926,
Sec. 2154, 165; Burns's Indiana Stat., Ch. 72, §§6, 71; 1931 Suppl. to Rev.
State of Kansas, §§2; Carroll's Kentucky Stat., 1930, Ch. 137, §4046 et seq.;
Missouri Stat. Anno., Ch. 28, §§82 et seq.; Comp. Laws of South Dakota,
§§9432, 9452; Virginia Code, 1930, Ch. 76A, §6 et seq.
Ch. 23A, §§289; Comp. Stat. Nebraska, 1929, Ch. 48, Art. 1, §§48-146; Laws of
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The acts of Louisiana and New Mexico provided the employer with a choice of (1) taking out insurance, (2) filing security for the payment of compensation, or (3) being a self-insurer.208

In New Hampshire the employer may either be a self-insurer or file a bond with the commissioner covering his liability.209

In Vermont, the employer may either (1) take out insurance, (2) take out guarantee insurance, (3) deposit security with the State Treasurer, (4) be a self-insurer, or (5) deposit a sum of money in a bank or trust company to be held as security for the payment of compensation.210

In Massachusetts, an employer comes under the act by taking out insurance. If he does not insure his risks, it amounts to an election not to be bound by the act. Apparently, this is the only insurance requirement under the act.211

In some states the employer is allowed, not only to select a method of covering his risks, but he may combine two methods, covering part of his risk by one method, and the balance of his risk by another. Illinois, New York, Missouri, and California, for example, have such acts. In Illinois, he may self-insure his risk up to a certain figure, or file security for a certain portion of his risk, and take out insurance covering his liability in excess of those amounts. However, if he is covered by the one method only—that of taking out insurance—the policy must cover all employees and his entire liability. In New York the employer may split his risks as to groups of employees, risks, places of employments, etc. California's act allows the employer the same choices.

Other states limit the employer to only one method of covering his risks.

The airlines of the country expend large sums annually in Workmen's Compensation insurance premiums. It is generally conceded that this money is expended not only for the protection which insurance affords, but also for the service which insurance companies offer in taking compensation risks. But it is a rather expensive service. By carefully analyzing the compensation acts of the states through which they operate, air transport operators should be able to effect methods which would save them appreciable amounts of money annually.

New Jersey, 1917, Ch. 178, §§3, 4, 14; North Carolina Code, 1931, Ch. 132A, §801WWW; Code of Tennessee, 1932, W. S. & H., Ch. 43, §6895; Wisconsin Stat., 1931, Ch. 10228 et seq.; U. S. C. A., Ch. 15, Title 22, §932(a).

208. See Louisiana Gen. Stat., 1932, Title 34, Ch. 11, §§4411 et seq.; New Mexico Stat. Anno., 1929, Ch. 156, Art. 1, §5.


211. Anno. Laws of Massachusetts, Ch. 162, §§31, 22.
III. AIRLINE METHODS OF COVERING RISKS.\textsuperscript{212}

There are about twenty domestic airlines operating in or through every state in the country. Their main offices are in no less than sixteen states. Contracts of employment are made at the main offices and also at division headquarters, and at "bases" of operation. The larger airlines, which operate routes over many states, do their hiring at comparatively few places. Employees are hired at one place to work mainly or exclusively in other states. Very few of the contracts of employment are written. Only a few of the contracts stipulate as to what law should govern in case of injury. Some operators are self-insurers, others split their risks, but the majority of them carry their insurance with stock companies. The policy is usually the "standard workmen's compensation and employers' liability" form, with endorsements for the states wherein the employer is covered attached.

IV. CONCLUSIONS AND RECOMMENDATIONS.

The existing Workmen's Compensation laws are not entirely adequate to provide compensation to injured air transportation employees. As has been seen, there is not sufficient uniformity among the acts to assure the air transport operators that their liability is limited, nor to assure their employees that they are fully protected in case of injury or death occurring in the course of their employment. This lack of uniformity would seem to suggest the immediate advisability of a federal compensation act.

Federal Compensation Act:

The Wagner Bill,\textsuperscript{218} introduced into Congress in 1932, is a step in the right direction. It proposes to provide compensation for disability or death resulting to employees of "any person who operates any vehicle or airplane in commerce between fixed termini or on a regular schedule or route," in interstate commerce. The bill follows very closely the provisions of the Longshoremen's and Harbor Workers' Compensation Act, which is a thorough and comprehensive measure in its field. However, the bill would not

\textsuperscript{212} To get an idea of what the airlines of the country are doing in the matter of contracts of employment and workmen's compensation coverage, a questionnaire was mailed out. Unfortunately, the airlines received the questionnaire at a time when their attention was being diverted from their usual business operations, to the extraordinary matter of rescinded mail contracts, so that only a few of the questionnaires were returned answered. However, we believe that sufficient material has been gathered to show a representative cross-section of the usual methods pursued.

\textsuperscript{213} Senate Bill 4927, introduced June 15, 1932, 72nd Congress, 1st session.
make certain the position of all air transport operators and their employees as regards compensation for injuries suffered. In the first place, the bill applies only to injuries sustained in work of an interstate character. Secondly, the schedule of compensation provided in the bill is much higher than the rates of compensation provided for in the state acts. These two facts would provide constant friction in the otherwise hoped-for smooth operation of the proposed act. Under the bill, if an employee were injured while engaged in work directly connected with interstate commerce, he would come under the jurisdiction of the federal act and would be entitled to the compensation as therein provided, whereas, if his injury were the result of work which was purely intrastate in character he would be under the jurisdiction of the state compensation act and would get the comparatively lower compensation provided by the state act. Since air transport activities fall into both classifications, an injured employee would naturally endeavor to place himself under the federal act, which would lead to the same confusion of litigation on questions of interstate versus intrastate commerce as the courts have been burdened with in connection with the Federal Employers' Liability Act.\textsuperscript{214} After all, there is no reason why an employee should be awarded higher compensation if injured while engaged in an interstate act than if injured while doing work of a purely intrastate character. The hazards are the same. If such legislation as the Wagner Bill proposes could be made to apply to intrastate as well as to interstate commerce the situation would be well in hand. But its constitutionality would be doubtful.\textsuperscript{215}

\textit{Federal Employers' Liability Act:}

A Federal Employers' Liability Act for air transportation would not be feasible. Although the machinery is already set up, in that the federal and state courts could take jurisdiction, the machinery is slow and uncertain. Such an act would of necessity make proof of negligence on the part of the employer a prerequisite to recovery, which would place the employee or his dependents at a disadvantage. Very few, if any, accidents in the air or on the ground could be attributed to the employer's negligence.

Apart from constitutional difficulties the chief objection to a liability act is that it does not give quick and certain compensation.

\textsuperscript{214} See text, p. 4, and footnote 12.
\textsuperscript{215} See \textit{Employer's Liability Cases}, 207 U. S. 463 (1908), where it was held that it would be an unwarranted extension of the power of Congress to pass an act applicable to both interstate and intrastate commerce.
If injured employees are to be taken care of, such care should be given quickly and with certainty. The Federal Employers' Liability Act for railroad workers has not proven itself the panacea which it was intended to be.218

More Uniformity in State Compensation Laws:

If the state Workmen's Compensation laws were more uniform, the whole matter would be settled. The machinery is already established and working. All the acts should provide for injuries occurring outside the state when the contract of employment was made within the state, should be exclusive and should apply to interstate as well as intrastate transportation, so that no matter where an employee was injured, he would be required to file his claim for compensation with the commission of the state wherein he was hired and could receive compensation only under that act. This would eliminate the uncertainties which now exist. In the meantime, airlines could further this phase of the matter by employing personnel under written contracts of hire and by specifying therein that any liability for injury or death should be determined under the laws of the state of contract, the *lex loci contractus*.

Appendix

SUMMARY OF WORKMEN'S COMPENSATION ACTS AFFECTING AVIATION

**Key:** 1. Compulsory or elective provisions.
   2. Effect of an act on common law rights and liabilities.
   3. Extraterritoriality features.
   5. Applicability to interstate air commerce.1
   7. Insurance requirements.2

**ALABAMA (Alabama Code, 1928, Annotated. Chapter 287)**

1. Optional. Applies to all employers of sixteen or more. Others may elect to come under act: §§7543, 7548. Acceptance presumed unless notice to contrary is given: §7547.
2. Common law defenses not available to employer who elects not to be bound by act.3 Such defenses are available to employer under act when sued by employee not under the act; and such employee must

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216. See footnote 214.
2. For full meaning of abbreviations used, see text, under Insurance Requirements.
3. The common law defenses referred to herein are those of contributory negligence, assumption of risk, and fellow-servant doctrine, unless otherwise specified.
proceed at common law only: §7536. When both employer and employee are under the act, rights and liabilities under the act are exclusive: §§7545, 7546.

3. Extraterritorial application if contract of hire was made within state, unless otherwise expressly provided by said contract: §7540.4

4. If hired in Alabama and injured in foreign state, employee may recover only under Alabama law: §7540.5

5. Does not apply to common carrier doing an interstate business, while engaged in interstate commerce: §7543.6

6. None.

7. No compulsory insurance required.

ARIZONA (Revised Code of Arizona, Struckmeyer, 1928. Chapter 24, Art. 5)

1. Compulsory on employers of three or more: §1418. Elective as to employees [in hazardous employments]. Acceptance by employee is presumed unless notice to contrary is given: §1430.

2. Employee who elects not to be under act retains right to sue his employer as provided by law: §1430. If employer fails to insure his liability or fails to post notice as required, employee may sue at law, in which case defenses of contributory negligence and assumption of risk are not available to employer, or he may file claim for compensation: §§1430, 1433. Rights under act are exclusive: §1432.

3. Extraterritorial application if hired or regularly employed within the state: §1429.7

4. If workman hired in another state is injured he may claim compensation in the state, if he is entitled to compensation under laws of state where hired, if his rights are such that they can reasonably be determined and dealt with by the commission and courts of Arizona: §1429.8

5. Applies to interstate and intrastate commerce, for which a rule of liability or method of compensation has been established by the United States, only to the extent that the mutual work may be clearly separable: §1445.

6. None.

7. Employer under act must insure his liability by: (1) state fund, (2) policy, or (3) self-insurance: §1422. Policy must cover entire responsibility: §1423.

ARKANSAS (No Act)

CALIFORNIA (General Laws of California, 1931, Deering. Act 4749)

1. Compulsory on all employments: §§6, 7.

2. Rights under the act are exclusive: §6(a). If employer fails to insure his liability, employee may either file claim for compensation or may file suit at law, in which case common law defenses are not available to employer: §29(b).

3. Extraterritorial application if contract of hire was made within the state: §58.10


6. A letter from the Clerk of the Workmen's Compensation Division of the Bureau of Insurance of Alabama, states in part, as follows: "I am of the opinion that commercial airlines doing an interstate business would not be subject to the Alabama laws. The portion of Section 7643 which you quoted is very specific, and does not make any exception."


4. No mention.
5. Does not apply to those so engaged in interstate commerce as not to be subject to the legislative power of the state except insofar as act may be permitted to apply by laws of United States: §69(c).
6. None.
7. Employer must insure his liability in (1) state fund, (2) policy, or (3) self-insurance: §§29, 36. Policy may insure whole or any part of the liability, and may make other restrictions as to risk, place, employees, operations, etc.: §31.

COLORADO (Compiled Laws of Colorado, 1921. Chapter 80)

1. Optional. Applies to employers of four or more: §8. Employee may elect only after employer has elected to be bound by the act: §18, as amended 1923. Election is presumed on part of employer and employee: §§16, 18, as amended 1923. Employers of less than four may elect to come under act: §§88, 17, as amended 1923.
2. Rights under act are exclusive: §15. If employer is not under the act he loses common law defenses: §12. If employer under the act is sued by employee not under the act, such defenses are available, and employee must sue as at common law: §14.
3. No provision. Cases say act applies to injuries outside of state, if contract of hire was made in the state and work outside state is not exclusive.
4. No provision for injuries where employee is hired in a foreign state. One decision says no.
5. Does not apply to common carriers engaged in interstate commerce nor to their employees: §10.
6. No mention.
7. Employer must insure compensation by (1) state fund, (2) policy, or (3) self-insurance: §21. Policy may include and cover any liability of the employer.

CONNECTICUT (General Statutes of Connecticut, Revision of 1930. Volume II, Chapter 280)

1. Optional. Applies to all employers of five or more. Employers and employees are presumed to have accepted the act unless either one gives notice to the contrary. Employers of less than five may "elect in," in which event their employees are presumed to have elected to come under act unless notice to the contrary is given; §5227.
2. Rights and liabilities under the act are exclusive: §5226. Employer not accepting act may not interpose common law defenses; employee not accepting act must sue at law, and such defenses are available: §§5224, 5225, 5229.
3. Extraterritorial application if contract of hire was made in the state: §5223.
4. No provision.
5. Does not apply to interstate or foreign commerce in case laws of United States provide for compensation or liability therein: §5262.
6. None.

13. A letter from the Referee of the Industrial Commission of Colorado states in part: "To date we have not had a claim for compensation on the part of a pilot or other air transportation official or their dependents, but if said company was engaged in interstate commerce, this Commission would rule that it had no jurisdiction because of Section 10, to which you refer:"
15. See text, page 29, and note 147.
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7. Employer under the act must either (1) self insure, (2) file security covering liability, (3) take out policy, (4) by combination of (2) and (3), or (5) make agreement with employees for substitute system. Policy, except as provided in (4), shall cover entire liability: §§5254-5256.

DELAWARE (Revised Code of Delaware. Chapter 90, Article 5)

1. Optional. Applies to employers of five or more. Acceptance presumed unless notice to contrary is given by either employer or employee: §97.
2. Rights and liabilities under the act are exclusive: §99(b). If employer is not under the act and employee is, or, if both employer and employee are not under the act, common law defenses are not available to employer. If employee is not under act and employer is, then defenses are available in case of suit: §95.
3. Does not apply to injuries occurring outside of the state: §94.
4. Applies to all accidents occurring within the state, irrespective of place of hiring: §94.
5. Does not apply to injuries in interstate or foreign commerce in case laws of United States provide for compensation or liability therefor: §142.
6. None.
7. Employer must insure compensation by (1) policy, (2) self-insurance, or (3) agreement with employees for substitute system: §§118, 119, 123. Policies may limit risks: §126.

FLORIDA (No Act)

GEORGIA (Georgia Code, 1926, Annotated. Section 3154)

1. Optional. Applies to employers of ten or more. Acceptance presumed unless notice to the contrary is given. Employers of less than ten, and such employees, may “elect in”: §§4, 6, 15.
2. Rights and liabilities under the act are exclusive: §§11, 12. If employer, or both employer and employee not under act, common law defenses not available to employer if sued. If employee not under act sues employer who is under act, defenses are available: §§16-18.
3. Extraterritorial application if contract of employment was made in state and if employer’s place of business is in the state, or if the residence of the employee is in the state, provided the contract of employment was not expressly for services exclusively outside state: §37.16
4. No provision. If employee is injured in foreign state and files claim for compensation in foreign state and also in Georgia, act is not construed so as to allow a total compensation for the same injury greater than is provided for in the Georgia Act: §37.
5. Does not apply to common carriers by railroad or steam while so engaged: §§9, 15.
6. None.
7. Employer under act must fully insure his liability by (1) policy, (2) self-insurance, or (3) agreement with employees for substitute system: §§11, 66, 69.


1. Compulsory on all employments, but elective, on part of employer, as to airmen while under way: §§43-901, 43-904.
2. Rights under the act are exclusive, and all common law rights are abolished: §§43-902, 43-1003.

3. Extraterritorial application if contract of hire made in state: §43-1415. If contract of hire was made in state for work outside state, act applies extraterritorially unless otherwise provided in contract: §43-1003.

4. If a workman who has been hired in a foreign state is injured and is entitled to compensation under the laws of the state where hired, he is entitled to enforce his rights in Idaho if his rights are such that they can reasonably be determined and dealt with by the board and courts in the state of Idaho: §43-1415.

5. Applies to interstate and foreign commerce only so far as permissible under laws of United States: §43-1804.

6. Aviation is mentioned, in that airmen under way are not under the act unless the employer of such airmen elects that the act shall apply: §43-904.

7. Compensation must be secured by (1) state fund, (2) deposit of security, or (3) agreement with employees for substitute system: §43-1601. Policy must cover entire liability: §43-1605.

ILLINOIS (Smith-Hurd Revised Statutes, 1933. Chapter 48)

1. Compulsory on all extra-hazardous employments. Others may elect in: §§138, 139, 141.

2. Provisions of this act measure responsibility, and common law right of action is abolished, §§143, 148.

3. Extraterritorial application where contract of employment is made within the state: §142, and Title.


5. Does not apply to employees when excluded by laws of United States relating to liability where such laws are held to be exclusive: §142.

6. Carriage by . . . aerial service, and loading or unloading in connection therewith, is included as an extra-hazardous employment, subject to the act: §139.

7. Employer must secure compensation by (1) self-insurance, (2) furnish security guaranteeing payment of compensation, (3) policy, or (4) agreement with employees. Policy must cover all employees and entire liability. However, policies covering excess liability over (1) or (2) above, are excepted from this provision: §§162-164.

INDIANA (Burns' Annotated Indiana Statutes, 1926. Chapter 72. Also Burns' 1929 Supplement)

1. Optional. Applies to all employments. Acceptance is presumed unless notice to the contrary is given: §9447.

2. Rights under the act are exclusive: §9451. If employer, or if both employer and employee reject the act, common law defenses are not available to employer if sued by employee. If employee not under the act and employer is, he must proceed at common law, and defenses are available to employer: §§9455-9457 (1929 Supplement).

3. Extraterritorial application if outside work is being done for an Indiana employer, apparently regardless of where contract of employment was made: §9465 (1929 Supplement).

4. It appears that regardless of where contract of hire was made, if it contemplates performance or part performance in Indiana, and if employer is doing business in Indiana, the employee, if injured in Indiana, may be compensated under the Indiana act.

5. Does not apply to interstate commerce in case laws of United States provide for compensation or for liability therein: §§9464 (1929 Supplement).20

6. None.

7. Employer under act must insure compensation by (1) self-insurance, (2) policy, or (3) agreement with employees for substitute system. Policies must cover all employees and entire liability: §§5, 68, 71, 72.

IOWA (Code of Iowa, 1931. Chapters 70, 71, 72)

1. Optional. Applies to all employers and employees. Acceptance is presumed unless notice to contrary is given: §§1363, 1364, 1377, 1380. If employer, or if both employer and employee reject the act, common law defenses are not available to employer, and in such suit it is presumed that the employer was negligent, that such negligence was the proximate cause of the injury; and the burden of proof is on the employer to rebut the presumption of negligence: §§1374, 1375, 1379. If employee rejects the act, the common law defenses are available to employer: §1367.

However, if such employee is injured through failure of employer to furnish and maintain any safety device or equipment required by law, or through the violation of any other statutory requirement, then the doctrine of assumed risk is not available as a defense: §1368.

If employer has more than five persons engaged in hazardous employment and rejects the act, or when such employer is under the act but has failed to insure his liability, then an employee who has not rejected the act, may elect to collect compensation or collect damages at common law as modified by the act: §1479.

3. Extraterritorial application: §§1421(6), 1440. It seems, however, that for the act to apply to injuries outside the state, the contract of employment must have been made within the state.21

4. No provision.

5. Applies to interstate commerce work within the state: §1417.22

6. None.

7. Employer under the act must insure his liability by (1) policy; §1467, (2) agreement with employees for substitute system: §1471, (3) self-insurance: §1477, or (4) deposit security as guaranty: §1477.

KANSAS (1933 Supplement to Revised Statutes of Kansas, 1923, Corrick. Chapter 44, Article 5)

1. Optional. Applies to enumerated classes of hazardous employments, wherein five or more persons are employed: §§44-505, 44-507. Such employers and their employees are presumed to have elected to come under the act unless notice to the contrary is given: §§44-542, 44-543. Other employers may "elect in," in which event their employees are presumed to have "elected in" unless notice to the contrary is given: §§44-505, 44-507.

2. Rights and liabilities under the act are exclusive: §§44-501. If employer elects not to come under the act, or if both employer and employee so elect, the employer loses right to interpose common law defenses: §§44-544. If employee elects not to come under act, the employer, if he is under the act, may avail himself of the common law defenses: §§44-545. If injury results from employee's willful failure to use a safety guard, compensation is disallowed: §§44-501.

3. Extraterritorial application, where contract of employment is made in the state, unless otherwise specifically provided in contract: §§44-506.23

22. See text, page 39.
4. No provision.
5. Does not apply to those so engaged in interstate commerce as to be not subject to legislative power of state: §44-506.
6. None.
7. Employer under the act must secure compensation by: (1) policy, (2) self-insurance: §32, or (3) substitute scheme of compensation, if in existence at time act becomes law: §45.

KENTUCKY (Carroll's Kentucky Statutes, 1930, and Supplement to 1933. Chapter 137)

1. Optional. Applies to employers of three or more. Acceptance of the act is not presumed, both employer and employee being required to elect in writing: §§4880, 4956, 5957. Employers and employees excepted from the act, including employers having less than three employees, may "elect in" by joint voluntary application (election): §4880.
2. Rights and liabilities under the act are exclusive: §4882. If employer, or both employer and employee elect not to be bound, employer loses common law defenses. If employee not under act sues employer who is under act, such defenses are available: §§4960, 4961. If employer fails to insure his liability, or otherwise fails to comply with the act, injured employee may either file claim or file suit, in which case defenses are not available: §4946. Where accident is caused by intentional failure of employer to comply with any specific safety statute or regulation, compensation is increased 15%; and if caused by intentional failure of employee to use any safety device or regulation, compensation is reduced 15%: §4910.
3. Extraterritorial application, if contract of employment is made within the state, in absence of contrary stipulation in contract: §4988.
4. The remedies provided by the act are exclusive as regards injuries received outside the state, in the absence of an agreement between employer and employee that the act shall not have extraterritorial effect: §4888.
5. Does not apply to steam railways, or such common carriers other than steam railways for which a rule of liability is provided by the laws of the United States: §4880.
6. None.
7. Employer under the act must insure his liability by: (1) policy, (2) self-insurance, or (3) agreement with employees for substitute system: §§4946, 4949. Policies must cover all employees and entire liability, except that a self-insurer may insure the whole or any part of his risk: §§4947, 4953.

LOUISIANA (Louisiana General Statutes, 1932. Volume 2, Title 34, Chapter 11)

1. Optional. Applies to enumerated hazardous employments: §4391. Acceptance presumed unless notice to contrary is given by either party: §4393. Others may "elect in" by agreement in writing: §4391.
2. Rights and liabilities under the act are exclusive: §§4946, 4949. If employer not under act is sued by employee who is under the act, he may not use common law defenses, and in such suit it is presumed that the injury was the direct result and arose out of negligence of employer and that such negligence was the proximate cause of injury, the burden of proof to rebut the presumption of negligence being on the employer: §4394. If employer under act is sued by employee not under act, common law defenses are available: §4395. An employer under act who fails to secure compensation liability is subject to double compensation liability: §4411.
3. No extraterritorial provision. Cases say yes, however, if contract of employment made in state, with a resident employer.24

4. No provision.
5. Does not apply to common carrier while engaged in interstate or foreign commerce by railroad: §4419.
6. None.
7. Employer under act shall insure his liability by (1) policy, (2) furnish bond for the faithful payment of all liability, or (3) self-insurance: §4411. Policies must cover entire liability: §4412.

MAINE (Revised Statutes of Maine, 1930. Chapter 55)

1. Optional. Applies to all private employers (but see 2, infra). Acceptance not presumed on part of employer, but if employer “elects in,” his employee is presumed to have “elected in” unless he gives notice to the contrary: §§2, 6, 7. Employee not entitled to compensation unless employer is under the act: §8.
2. If employer employs more than five workmen or operatives and does not come under the act, he loses common law defenses, and is subject to the Employers’ Liability Act (Sections 48-56 of the Act), or other laws: §§3, 4, 5. If employee of an employer who is under the act elects not to be under the act, he retains his common law right of action or his rights under the Employers’ Liability Act: §7.
3. Extraterritorial application if contract of employment was made in state, unless otherwise specified in contract: §2.11.25
4. If employer is under the act, an injured employee is entitled to compensation, apparently without regard to place of contract of hire: §8.
5. Does not include employees engaged in maritime employment or in interstate or foreign commerce who are within the exclusive jurisdiction of admiralty law or the laws of the United States: §2.11.
6. None.
7. Employer under the act must insure his liability by (1) policy, or (2) self-insurance: §6. Policy must cover liability as provided in the act: §2.1V.

MARYLAND (Annotated Code of Maryland, Bagby. Volume II, Article 101. Also, Laws of Maryland, 1931, 1933)

2. Rights and liabilities under act are exclusive, but if employer fails to insure his liability, his injured employee may either file claim for compensation or file suit at law, in which suit, common law defenses are denied employer: §§14, 36 (1931 amendment).
3. Extraterritorial application if regularly employed by Maryland employer within the state and work outside state is occasional, casual, or incidental: §§5(3) (1933 amendment). Extraterritorial as to salesmen if residents of state, and employed by employer having place of business within the state: §32(43).26
4. No provision. If employee is injured and receives compensation in a foreign state, and also files claim for compensation in Maryland for same injury, act is not construed so as to permit a total compensation greater than is provided for in Maryland act: §63(3) (1933 amendment).
5. Applies to, where method of compensation or rule of liability is established by the United States, only to the extent that the intrastate and interstate work may be clearly separable: §33.
6. None.
7. Employer must secure compensation by (1) state fund, (2) policy, or (3) self-insurance: §15.

MASSACHUSETTS (Annotated Laws of Massachusetts. Volume 4, Chapter 152)

1. Optional. Applies to all employers. Acceptance not presumed.
   Employer comes under compensation features of act by taking out insurance covering compensation risks. If employer is under the act the employee is presumed to have accepted the act unless he gives written notice to the contrary: §§19, 21, 22, 24.

2. If employer is not insured, he loses common law defenses, in suit by injured employee: §§66, 67. If he is insured, his liability is determined by the act: §68.

3. Extraterritorial application, if contract of employment was made in state, unless otherwise stipulated at time of contract: §§24, 26.27

4. Employee of insured employer waives any right of action for injuries under the law of any other jurisdiction unless he gives notice of retention of such right at time of contract of employment: §§24, 26. If employee is injured and receives compensation in a foreign state, and also files claim for compensation in Massachusetts for same injury, he is entitled to compensation under Massachusetts Act, less amount received under foreign act.28

5. Does not apply to masters of and seamen on vessels engaged in interstate or foreign commerce: §1(4).

6. None.

7. Employer comes under the act by taking out insurance: §§1(6), 21, 22.

MICHIGAN (Compiled Laws of Michigan, 1929. Chapter 150)

1. Optional. Applies to all employments. Acceptance by employer not presumed, the employer being required to file written acceptance: §§8411, 8412. If employer is under the act, the employee is presumed to have accepted it unless he gives notice to the contrary at time of contract of hire: §8414.

2. Rights under the act and liabilities are exclusive. If employer rejects the act, he loses common law defenses in suit by injured employee: §§8407, 8409, 8410.

3. Extraterritorial application where injured employee is resident of the state, and contract of employment was made within the state: §8458.29

4. No provision.

5. Applies to interstate commerce where a federal act has effect only to the extent that the interstate and intrastate work is and may be clearly separable: §8481.

6. None.

7. Employer under the act must specify whether he desires to (1) be a self-insurer, (2) take out insurance, or (3) contribute to state fund. Policy must cover all businesses, employees, enterprises and activities of the employer: §8463.

MINNESOTA (Mason’s Minnesota Statutes, 1927. Volume 1, Chapter 23A)

1. Optional. Applies to all employments. Acceptance presumed unless notice to contrary is given by either employer or employee: §§4271, 4326.

2. Rights and liabilities under the act are exclusive: §§4269, 4270.


28. Miguens’ Case, cited in footnote 27; McLaughlin’s Case, cited also in footnote 27.

If employer, or both employer and employee are not under act, employer loses common law defenses: §§4261-4263. If employer is under act but employee is not, such defenses are available: §4264.

3. No provision. Cases give act extraterritorial application if business is localized in the state.80

4. No provision. It appears, however, that regardless of where contract of employment was made, if business of employer is localized in Minnesota, the act applies, whether injury occurs within or without the state.81

5. Does not apply to any common carrier by steam railroad: §4268. No mention of interstate commerce.

6. None.

7. Employer under the act must either (1) take out insurance, or (2) be a self-insurer. If employer conducts distinct operations or establishments at different locations, he may split his risks: §4288.

MISSISSIPPI. (No Act)

MISSOURI (Missouri Statutes Annotated. Volume 12, Chapter 28)

1. Optional. Applies to all employers of more than ten, and to employers of ten or less who are engaged in hazardous occupations. Such employers and their employees are presumed to have accepted the act, unless either one gives notice to the contrary. Other employers may "elect in" in which event their employees are presumed to have "elected in" unless notice to the contrary is given: §§3300, 3302, 3303. Employer under act may exempt himself from its provisions as to any individual employee whose employment is not hazardous by written consent of such employee: §3302(e).

2. Rights and liabilities under act are exclusive: §3301. If employer rejects the act, he loses common law defenses in a suit by injured employee, whether or not employee has accepted the act. If employer is under act and employee is not, common law defenses are available: §3302(d). If injury is due to employer's failure to comply with order of the commission or statute of the state, compensation is increased 15%. If injury is due to employee's failure to use a safety device or failure to obey rule, compensation is decreased 15%: §3301.

3. Extraterritorial application if contract of employment is made in the state, in absence of stipulation to the contrary in contract: §3310(b).

4. Applies to all injuries received in the state, regardless of where contract of employment was made: §3310(b).83

5. Applies to all cases within provisions of act except those exclusively covered by any federal law: §3310(a).

6. None. However, it is doubtful whether pilots or other employees earning more than $3600 per year would be considered employees under the act: §3305(a).84

7. Employer under act must insure his entire liability by (1) policy, (2) self-insurance, in which case he may carry the whole or any part of such liability, or (3) agreement with employees for substitute system: §§3323, 3331.

30. Bradtmiller v. Liquid Carbonic Co., 173 Minn. 481, 217 N. W. 660 (1928); Krekelberg v. Ma Floyd Co., 166 Minn. 149, 207 N. W. 193 (1926); State ex rel. v. District Court, 140 Minn. 427, 168 N. W. 177 (1918); Brameld v. Dickinson Co., 136 Minn. 89, 242 N. W. 465 (1932).


33. But, see Moseley v. Empire Gas & Fuel Co., 313 Mo. 225, 281 S. W. 762 (1925), and Weiderhoff v. Neal, 6 F. Supp. 798 (1934).

34. The section provides: "The word "employee" as used in this chapter shall not include persons whose average annual earnings exceed three thousand dollars...." See note 5, page 3 or text, and page 4 of text, for interpretation of a similar exemption provision.
MONTANA (Revised Codes of Montana, 1921. Supplement of 1923-1927. Chapter 213. 1933 Laws)

1. Elective. Applies to hazardous occupations (enumerated). Acceptance on part of employer not presumed; he must elect in writing. If employer is under act, employee is presumed to have accepted the act unless he gives notice to the contrary. Those not engaged in hazardous work may elect to come under act by joint election: §§2841, 2842, 2843 as amended 1933; 2844-2852, 2990(27), 2990-A.

2. Rights and liabilities under act are exclusive: §2839. If employer is not under act, employee is presumed to have accepted the act unless he gives notice to the contrary. If employer elects to pay premiums into state fund and defaults in payments, he is considered as having elected not to be bound by act, and injured employee may either file claim for compensation or file suit at law: §§3003, 3004.

3. No provision. Supreme Court holds act to have extraterritorial application.

4. No provision.

5. Railroad companies engaged in interstate or foreign commerce are declared subject to powers of Congress, and not within provisions of act: §2837.

6. None.

7. Employer must elect one of three plans of insuring his liability: (1) self-insurance: §2970, (2) policy: §2979, or (3) state fund: §2990.

NEBRASKA (Compiled Statutes of Nebraska, 1929. Chapter 48)

1. Optional. Applies to all employments. Acceptance presumed unless notice to contrary is given by either party: §§48-106, 48-112 to -114.

2. Rights and liabilities under act are exclusive: §§48-109, 48-111. If employer elects not to come under act, he loses common law defenses: §48-103. If employer is under act and employee is not, defenses are available: §48-104.

3. Extraterritorial application if work outside state was incidental to an industry within state: §§48-137.

4. No provision. It appears that if the services to be rendered are incidental to an industry within the state, the act applies, even though contract of employment was made in another state.

5. Railroad companies engaged in interstate or foreign commerce are declared subject to powers of Congress, and not within provisions of act: §48-106.

6. None.

7. Employer under act must (1) be a self-insurer, or (2) take out policy. Policy must cover entire liability. If employer fails to comply, he is deemed to have elected not to come under act, with corresponding liabilities: §§48-146, 48-147.

NEVADA (Nevada Compiled Laws, 1929, Hillyer. Volume 2, Section 2680)

1. Optional. Applies to all employments. Acceptance on part of employer not presumed. If employer is under act his employee is presumed to have accepted act in absence of notice to contrary. Failure to pay premiums into state fund operates as rejection of act: §§1, 3.

2. Rights and liabilities under act are exclusive. If employer or if both employer and employee are not under act, employer loses common law defenses, and in such case it is presumed that employer was negligent and that such negligence was the proximate cause of injury, the burden of proof to rebut being on employer: §§1, 3, 5. If employer is

under act and employee is not, defenses are available, except that if injury was result of employer's failure to furnish any safety device required by statute, or in violation of any statutory rule relating to safety of employees, the doctrine of assumed risk is not available as defense: §3(b).

3. Extraterritorial application if contract of hire made in state and usual and ordinary duties are confined in the state. If duties are wholly or partially outside state, the act applies if employer and employee elect jointly to come under act: §41.

4. Applies to injuries within or without state, and whether hired within or without state by any employer of labor in state, if both employer and employee elect in writing to come under act: §41.

5. No mention.

6. No mention.

7. Employer under act must pay premiums into state insurance fund. This is only method of insuring risks. Failure to pay premiums operates as rejection of act: §21.

NEW HAMPSHIRE (Public Laws of New Hampshire, 1926. Chapter 178)

1. Optional. Applies to certain types of hazardous employments, to wit: Railroads, machinery where five or more persons are engaged in manual or mechanical labor, electricity, explosives, quarries and foundries: §1. Acceptance on part of employer not presumed: §4. Employee elects after injury, by filing suit at law, by accepting compensation, giving notice of injury or by beginning proceedings for compensation: §§11, 12.

2. Act provides for liability for injuries or death where caused by negligence of employer. In any action brought under the above, defense of assumption of risk not available, but defense of contributory negligence is available: §§2, 3. The above does not apply if employer has elected to come under act: §4.

3. No mention.

4. No mention.

5. No mention.

6. No mention.

7. Employer under act must either (1) be self-insurer, or (2) file bond conditioned on the discharge of all liability under act: §4.

NEW JERSEY (Compiled Statutes of New Jersey; Session Laws)

1. Optional. Applies to all employments. Both employer and employee must accept act by agreement express or implied. Acceptance presumed unless either party gives notice in contract or prior to any accident that compensation features of act are not intended to apply: §§11, 7, 8, 9, 10.

2. If both employer and employee are under act, rights and remedies are exclusive, and common law defenses are abolished. If not, section I, which provides for employers' liability, abolishes common law defenses (except wilful contributory negligence) applies: §§I 1, I 2; II 7, 8; III 24.

3. No provision. Cases declare extraterritorial application if contract of employment is made in state.

4. No mention.

5. No mention.

6. None.

7. Employer shall make sufficient provision for the complete payment of any obligation by (1) being a self-insurer, in which case he may

38. See note 170, page 37 of text.
39. Ibid.
cover the whole or any part of the liability, or (2) by policy: Ch. 178, Laws 1917, §§3, 4, 14.

NEW MEXICO (New Mexico Statutes Annotated, 1929. Chapter 156, Article 1. 1933 Laws)

1. Optional. Applies to extra-hazardous employments (enumerated) wherein four or more workmen are employed. Acceptance presumed unless notice to contrary is given by either party. Others may "elect in" by agreement: §§156-102, as amended p. 495, Laws of 1933; 156-104.

2. Rights and liabilities under the act are exclusive: §§156-105. If employer is not under act, he loses common law defenses in suit by injured employee. If employer is under act and employee is not, then defenses are available: §§156-105, 156-106. If injury or death is due to workman's failure to observe a "safety regulation" or use a safety device compensation is reduced 50%; if injury or death is due to employer's failure to provide safety device required by law compensation is increased 50%: §§156-107.

3. No direct provision. See §156-112(1). \(^{41}\)

4. No provision. \(^{42}\)

5. Does not apply to business so engaged in interstate commerce as to be not subject to the legislative power of state: §156-111.

6. None.

7. Employer under act must file (1) an insurance or guaranty policy, (2) security for payment of compensation, or (3) be a self-insurer: §§156-103.

NEW YORK (Cahill's Consolidated Laws of New York, 1930. Chapter 66. Also, 1932 Supplement)

1. Compulsory as to certain employments classified as hazardous and to other employments wherein four or more workmen are regularly employed. Others may "elect in" by securing their risks, in which event employees of such employers are deemed to have accepted the act unless they give notice to the contrary: §§2P, 4; §3; §3 Group 18 of 1932, Suppl.; Group 19.

2. Rights and liabilities under act are exclusive, except that if employer fails to insure, the injured employee may either file claim for compensation or file suit at law, in which case common law defenses are available: §§156-105, 156-106. If injury or death is due to employer's failure to provide safety device required by law compensation is increased 50%: §§156-107.

3. No direct provision. See §156-112(1). \(^{41}\)

4. No provision. \(^{42}\)

5. Applies to interstate or foreign and intrastate commerce where

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\(^{41}\) See text, page 22.

\(^{42}\) Ibid.
a rule of liability or method of compensation has been established by United States, only to extent that interstate or foreign and intrastate work may be clearly separable: §113. 6. Mentioned as hazardous employment in enumerated classes of employments under act. Sec. 3, Group 6: "Manufacture of . . . aeroplanes, . . . aircraft, . . ." Sec. 3, Group 7: "Operation of aeroplanes, aircraft . . ." 7. Employer shall secure compensation by (1) state fund, (2) policy, or (3) self-insurance: §50. Policy may be split up as to employees or groups of employees, risks, place, etc.: §54.

NORTH CAROLINA (North Carolina Code of 1931, Annotated. Chapter 133A)

1. Optional. Applies to employers of five or more. Acceptance presumed unless notice to contrary is given. Other employers and their employees may "elect in": §§8081 (i) (a); (u) (b) as amended 1933; (k); (l); (m).

2. Rights and liabilities under act exclusive: §§8081 (q); (r) as amended 1933. If employer or both employer and employee not under act, common law defenses not available to employer. If employee not under act, he must prove at common law, and defenses are available: §§8081 (v); (x); (w). If injury or death is due to employee's failure to use safety device or breach of safety regulation, compensation is reduced 10%; if injury or death is due to employer's failure to comply with statutory requirement, compensation is increased 10%: §§8081 (t). If employer fails to insure, injured employee may either file claim for compensation or file suit at law, in which case common law defenses not available: §§8081 (xxx) (b).

3. Extraterritorial application if contract of employment made in state, if employer's place of business is in state, if residence of employee is in state, and if work outside is not exclusive: §§8081 (rr). 4.

4. No provision. If employee is injured and receives compensation in another state, and also files claim in North Carolina, act is not construed so as to permit a total compensation for the same injury greater than is provided for in the North Carolina act: §§8081 (rr).

5. No mention.

6. No mention.

7. Employer under act must secure compensation by (1) policy, or (2) self-insurance: §§8081 (q), (www).

NORTH DAKOTA (Supplement to the 1913 Compiled Laws of North Dakota, Annotated, 1913-1925. Chapter 5, Article 11-A. Also, 1931 Laws)


2. Rights and liabilities under act are exclusive: §§396a1, 396a6, 396a9. If employer fails to pay into the state fund, injured employee or personal representative in case of death may sue at law, in which case employer loses common law defenses: §396a11.

3. Extraterritorial application if employer and Compensation Bureau had previously contracted for insurance to cover such injuries, if principal plant and main office of employer are within state, and at least 3/4 of employer's entire payroll is expended for work performed within state: §396a10 as amended 1931. 46

5. No mention.


6. None.


7. Paying premiums into state fund is one and only method of insuring risks: §§396a6, 396a7.

**OHIO** *(Page's Annotated Ohio General Code. Title III, Division II, Chapter 286. Also, Page's Supplement)*

1. Compulsory on employers of three or more and on such employees: §§1465-60, 1465-68. Employer of less than three may become subject to act by paying premiums into state fund, in which event his employee, provided he continue in service with notice that employer has paid into state fund, is deemed to have waived common law or statutory right of action: §1465-71.

2. Rights and liabilities under act are exclusive: §§1465-70, 1465-72. Employer who fails to comply with act is liable to injured employee or dependents of those killed either under act or by suit at law, in which case employer loses common law defenses: §§1465-73; 1465-74 as amended 1931, p. 31.

4. Extraterritorial application, unless entire duties of employee were without the state: §§1465-50, 1465-68, 1465-72, 1465-90.47

6. None.

7. Employer must (1) pay into state fund, or (2) be self-insurer: §1465-69.

**OKLAHOMA** *(Oklahoma Statutes, 1931. Volume II, Chapter 72)*

1. Compulsory on employers of two or more workmen in a hazardous employment (enumerated): §§13349-13351.

2. Rights and liabilities under act where injury does not result in death are exclusive: §§13352, 13404. Act does not apply in cases of accidents resulting in death: §13403. If death results from injury to an employee who has been awarded compensation for such injury, his dependents or other legal representatives may sue at law for damages: §§13402. If employer fails to secure payment for compensation, injured employee may sue at law, in which case employer may not avail himself of common law defenses: §13352.

3. No provision, but decisions deny extraterritoriality of act.50

4. No provision. Act applies when injury occurs within the state.51

6. None.

7. Employer must secure compensation by (1) policy, (2) keep guaranty, insurance, (3) agreement with employees for substitute system of compensation and insurance, (4) self-insurance: §13374, or (5) state fund: §13406.


1. Optional. Applies to employers in hazardous employments (class-
WORKMEN'S COMPENSATION

1. Optional. Applies to all employments. Both employer and employee must accept the act by agreement express or implied. Acceptance presumed unless either party gives notice in contract or prior to any accident that the act shall not apply: §§461, 482.

2. When both employer and employee are under act, rights and liabilities are exclusive: §431, 481. In any action brought to recover damages for injury or death, common law defenses are not available: §41.

3. Extraterritorial application if employee is a Pennsylvania employee, whose employer's place of business is in the state and if employee's duties require him to go out of the state for periods not over 90 days: §1.62

4. Applies to all accidents occurring within state irrespective of place where contract of hiring was made, renewed or extended: §1.

5. No provision.

6. None.

7. Employer under act must insure the payment of compensation in (1) state fund, (2) policy, or (3) self-insurance: §501 of title 77. Policy must cover entire liability: §§811, 813 of title 40.

RHODE ISLAND (Rhode Island General Laws, 1923. Chapter 92)

1. Optional. Applies to employers of five or more. Others may "elect in": §1207 as amended 1926. Acceptance on part of employer not presumed, must file written acceptance: §1209. Employee of employer under act is presumed to have "elected in" unless he gives notice to employer at time of contract and files copy with commissioner, of his non-election: §1210.

2. Rights and liabilities under act are exclusive: §§1211, 1293. If employer is not under act, common law defenses are not available in suit by injured employee: §§1205, 1208 as amended 1926.

3. No provision. Decisions give act extraterritorial effect if contract of employment made in state.69

4. No mention.

5. No mention.

6. None.


7. Employer under act must secure compensation by (1) policy, (2) self-insurance, (3) furnishing security guaranteeing payment of compensation, (4) combination of (2) and (3): §1262, or (5) agreement with employees for substitute scheme of compensation or insurance: §1259.

SOUTH CAROLINA (No Act)

SOUTH DAKOTA (Compiled Laws, South Dakota, 1929. Volume II, Title 6, Part 19, Chapter 5, Article 4)

1. Optional. Applies to all employers and employees. Acceptance presumed unless notice to contrary is given by either party: §§9437, 9438.
2. Rights and liabilities under act are exclusive: §§9440, 9462. If employer is not under act and is sued by employee who is under act, common law defenses are not available: §9444. If employer is under act and employee is not, defenses are available: §9445.
3. Extraterritorial application. No mention as to place of contract: §9453.
4. No mention.
5. Does not apply to, in case laws of United States provide for compensation or for liability therein: §9452.
6. None.

TENNESSEE (Code of Tennessee, W. S. & Harsh. Chapter 43)

1. Optional. Applies to employer of five or more. Such employers and their employees are presumed to have accepted the act unless notice to the contrary is given. Others may "elect in": §§6852(a), 6853, 6856(d).
2. Rights and liabilities under act are exclusive: §6859. If employer is not under act and employee is, common law defenses are not available to employer: §6862. If employee is not under act and employer is, defenses are available: §6853. If both employer and employee are not under act, the liability is the same as at common law, and defenses are available: §6864.
3. Extraterritorial application if contract of employment is made within state, unless otherwise provided in contract: §6870.
4. No mention.
5. Does not apply to any common carrier doing an interstate business while engaged in interstate commerce: §6856(a).
6. None.


56. The courts of the state take the stand that the lex loci contractus governs liability. See Smith v. Van Noy Interstate Co., and Vantrease v. Smith, cit. note 55 supra; and that if an employee injured in another state files claim for and receives compensation in the foreign state, he is precluded from recovering compensation under the Tennessee Act. Tidwell v. Boiler & Tank Co., 163 Tenn. 420, 43 S. W. (2d) 221 (1931).
7. Employer under the act must insure his liability by (1) policy, or (2) self-insurance: §6895.

TEXAS (Complete Statutes of Texas, 1928. Title 130. Also, 1931 General Laws)

1. Optional. Applies to employers of three or more: Part I, §2. Acceptance by employer not presumed; must notify board and employees: Part I, §30; Part III, §§19, 20. Employee may elect only after employer has "elected in," in which event employee is presumed to have accepted act unless he gives notice to the contrary: Part I, §3a.

2. Rights and liabilities under act are exclusive: Part I, §§3, 3b. If employer is not under the act, injured employee or his representative must sue at law, in which case common law defenses are not available to him: Part I, §§1, 4. If employer is under the act and employee is not, defenses are available: Part I, §3a.

3. Extraterritorial application if hired in state and injury occurs within one year after leaving state: Part I, §19 as amended 1931. If employee is injured in a foreign state, and pursues his remedy and recovers in the foreign state, no recovery can be had under the Texas act: ibid.

4. Only mention is as to railroads and vessels: Part I, §2; Part IV, §1.

5. None.

7. Employer under the act must either (1) subscribe to state insurance association, or (2) take out a policy: Part III, §18a; Part IV, §2.

UTAH (Revised Statutes of Utah, 1933. Title 42)


2. Rights under act are exclusive: §42-1-57. If employer fails to insure his risks, injured employee or his dependents may either file claim for compensation or file suit at law, in which case common law defenses are not available: §§42-1-54, -55. Where injury is caused by failure of employer to comply with any "safety statute" or order, compensation is increased 15%, except in case of injury resulting in death: §3072. Where injury is caused by employee’s failure to use safety device or failure to obey any reasonable safety rule, compensation is reduced 15%, except in case of injury resulting in death: §3073.

3. Extraterritorial application if hired in state: §42-1-52. If employee hired in another state is injured he may claim compensation in the state if he is entitled to compensation under the laws of state where hired, if his rights are such that they can reasonably be determined and dealt with by the commission and the court of Utah: ibid.

5. Applies, where rule of liability or method of compensation has been established by United States, only to extent that interstate and intrastate work may be clearly separable and distinguished: §42-1-89.

6. None.

7. Employer shall secure compensation by (1) state fund, (2) policy, (3) self-insurance: §42-1-44, or (4) agreement with employees for substitute system of compensation: §42-1-50. Policy must cover entire liability: §42-1-46.

VERMONT (General Laws of Vermont, 1917. Title 33, Chapter 241)

1. Optional. Applies to all employers of eleven or more. Employer and employee are presumed to have accepted act unless either

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one gives notice to the contrary. Employers of less than eleven may "elect in": §§5763, 5768 as amended 1923, 5765. Employee whose annual remuneration exceeds $2,000 is not deemed "employee" unless agreed to between such employee and employer: §5768 as amended 1929.

2. Rights and liabilities under act are exclusive: §§5774, 5763. If employer is not under act and employee is, common law defenses not available. If employer is under act and employee is not, defenses are available: §§5766, 5767.

3. Extraterritorial application if hired in state: §5770.69

4. If hired in state to work outside of state, remedies under act are exclusive as regards injuries received outside state unless otherwise provided in contract of employment: §5774. If workman hired in another state is injured he may claim compensation in the state if he is entitled to compensation under the laws of state where hired, and if his rights are such that they can reasonably be determined and dealt with by the commissioner and the court of Vermont: §5771.

5. Applies to, only so far as permissible under the laws of the United States: §5772.

6. None.

7. Employer under the act must secure compensation by (1) policy, (2) guaranty insurance, (3) deposit security with State Treasurer, (4) self-insurance, or (5) deposit sum of money in bank or trust company to be held as security for compensation; §5816. Policy must cover entire liability: §5820.

VIRGINIA (Virginia Code of 1930, Annotated, Chapter 70A, Section 1887)

1. Optional. Applies to employers of eleven or more in one business within the state. Employer and employee are presumed to have accepted act unless either one gives notice to the contrary. Employer of less than eleven may "elect in" by agreement with his employees: §§4, 6, 15 as amended 1932.

2. Rights and liabilities under act are exclusive: §12 as amended 1932. If employer, or both employer and employee are not under act, common law defenses not available to employer. If employer is under and employee is not, then defenses are available: §§16, 17, 18. If employer under act fails to insure, injured employee may either file claim for compensation or file suit at law, in which case common law defenses are not available to employer: §69(b).

3. Extraterritorial application if contract of employment made in state, if employer's place of business is in state, if residence of employee is in state, and if contract of employment was not for service exclusively outside state: §37(a).60

4. If employee is injured and receives compensation or damages in a foreign state, and files claim for compensation under the Virginia act, he is not entitled to receive a total compensation for the same injury greater than is provided for in the Virginia act: §37(b).

5. Does not apply to common carrier by railroad or steam engaged in interstate or foreign commerce: §§9, 15 as amended 1932.

6. None.

7. Employer under the act must insure payment of compensation by (1) policy, (2) state fund, when established, (3) self-insurance, or (4) agreement with employees for substitute system of compensation or insurance. Policy must cover all benefits of the act: §§11, 68, 71, 73.

WASHINGTON (Remington's Revised Statutes of Washington, Annotated, Volume 8, Title 50, Chapter 7)

1. Compulsory. Applies to all hazardous employments (enumerated): §§7674, 7676 of 1933 supplement, 7690. Other employers may

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elect to be bound in which event their employees may elect not to be bound: §7696.
2. Rights and liabilities under the act are exclusive: §§7679, 7673. All civil actions and civil causes of action for personal injuries in employments affected, and jurisdictions of the courts are abolished, except that if employer fails to comply with the provisions of the act, injured employee or dependents may take compensation or file suit, in which case, common law defenses are not available to employer: §§7673, 7676 of 1933 supplement.
3. No provision. Decisions give act extraterritorial effect if contract of employment made in state.61
4. No provision.
5. Applies to, where rule of liability or method of compensation has been established by the United States, only to the extent that the intrastate and interstate work may be clearly separable: §7695.
6. "Aeroplane pilots and instructors," mentioned in list of hazardous employments premium list: §7676(a) of 1933 supplement, Class 34-5.
7. Paying premiums into State Fund is only method of insuring risks, and is compulsory on all employers under act: §7676 of 1933 supplement.

WEST VIRGINIA (West Virginia Official Code, 1931. Chapter 23)
1. Optional. Applies to all employers. When employer has elected to pay premiums into state fund, or otherwise provide for compensation, the employee, by continuing in the service of the employer with such notice, is deemed to have waived any other right of action he may have. Acceptance by employer not presumed: Art. II, §§1, 3, 5, 6, 9.62
2. If employer pays premiums into state fund, or maintains other approved method of compensation, he is not liable at common law or by statute for injuries to employees: Art. II, §§6, 9. If employer fails to provide for compensation, or otherwise fails to comply with provisions of the act, he is liable for damages, in which case common law defenses are not available: Art. II, §§5, 8.
3. Extraterritorial application if temporarily absent from state on work which is connected with and incidental to employment in the industry within the state: Art. II, §1.63
4. No mention.
5. Applies to, where rule of liability or method of compensation is established by United States, only to extent that intrastate and interstate or foreign work may be clearly separable: Art. II, §10.
6. None.
7. Employer shall either (1) pay into state fund, or (2) carry his own risk, by proving financial responsibility, or maintaining his own system of compensation, or file bond securing compensation: Art. II, §§5, 9.

WISCONSIN (Wisconsin Statute, 1931. Chapter 102)
1. Compulsory. Applies to employers of three or more. Employers of less than three may "elect in": §§102.04, 102.05. Knowledge of the fact that an employer is subject to the act is conclusively imputed to all employees: §102.34.
2. Rights and liabilities under the act are exclusive: §102.03. If employer is not under the act, he loses common law defenses in suit by injured employee: Ch. 331, §331.37. If injury is caused by wilful failure of employee to use a safety device where provided by employer,

62. The West Virginia Act is peculiar in that it appears to be compulsory on all employers. However, there are no penalties imposed for failure to comply with the act except the loss of common law defenses in case of an action for damages.
or by failure to obey any reasonable safety rule, compensation or death benefit is reduced 15%: §102.58. Where injury is caused by failure of employer to comply with any statute or order of the commission, compensation or death benefit is increased 15%: §102.57.

3. No provision. Extraterritorial application if contract of employment was made in Wisconsin and outside work was not exclusive.64

4. No provision. Act applies to injuries received within the state regardless of where contract of employment was made.66

5. No mention.

6. None.

7. Employer under the act must insure payment of compensation by (1) policy, or (2) self-insurance: §102.28. Policy must cover entire liability: §102.31.

WYOMING (Wyoming Revised Statutes, 1931. Chapter 124)


2. Rights and liabilities under the act are exclusive: §§124-102, -103, -120 as amended 1933. If employer does not contribute to state fund, employee retains his common law and statutory rights of action: §124-137.

3. No provision.

4. No provision.

5. Does not apply to, where so engaged in interstate commerce as to be not subject to the legislative power of the state: §124-105.

6. None.

7. Only method of securing compensation is by paying premiums into state fund: §124-117.

DISTRICT OF COLUMBIA (Code of District of Columbia, 1929. Title 19, Chapter 2. Code of Laws of the U. S. A. Chapter 18, Title 33)


2. Rights and liabilities under act are exclusive, except that if employer fails to insure compensation, injured employee or legal representative may either file claim for compensation or file suit, in which case common law defenses are not available: U. S. Code, §905.


4. Act apparently applies to injury to employee of an employer carrying on any employment in the district: ibid.

5. Does not apply to employee of a common carrier by railroad when engaged in interstate or foreign commerce or commerce solely within the district: D. C. Code, §12.

6. None.

7. Employer must secure compensation by (1) policy, or (2) self-insurance: U. S. Code, §§932, 938.

ALASKA (Session Laws of Alaska, 1929. Chapter 25)

1. Optional. Applies to employers of five or more. Acceptance by employer and employee presumed unless either one gives notice to the contrary: §§31, 33, 35, 36, 37, 38, 39, 41.

2. Rights and liabilities under act are exclusive: §10. If employer, or if employer and employee, are not under act, the employer loses right to interpose common law defenses in suit by injured employee, 64. Anderson v. Miller Scrap Iron Co., 169 Wis. 106, 170 N. W. 275 (1919); Zurich G. A. & L. Ins. Co. v. Ind. Comm., 193 Wis. 32 (1927); Wandersee v. Ind. Comm., 198 Wis. 345 (1929); Thresherman's Nat. Ins. Co. v. Ind. Comm., 201 Wis. 474 (1930); Val Blatz etc. v. Ind. Comm., 301 Wis. 474 (1930). 65. Interstate Power Co. v. Ind. Comm., 203 Wis. 466 (1931); and see text, page 32.
and it is presumed that injury was first result growing out of negligence of employer, and that such negligence was proximate cause of the injury; the burden of proof being on the employer to rebut the presumption of negligence: §§32, 39. If employee is not under the act, defenses are available. If injury is due to employer's failure to furnish any safety device required by statute, or by violation of any "safety" statute or rule, then doctrine of assumed risk shall not apply: §36(a).

3. No provision. Act does provide, however, that "no action for the recovery of compensation hereunder shall in any case be brought in any court outside of the Territory of Alaska, except in cases where it is impossible to obtain service of summons upon the defendant in said Territory . . . ."66

4. No mention.

5. Does not apply to the operation of railroads as common carriers: §1.

6. None.

7. No insurance provisions.67


2. Rights and liabilities under act are exclusive: §33, except that if employer fails to secure payment of compensation, injured employee or his dependents may file claim for compensation and in addition file suit at law, in which case common law defenses are not available to employer; and it is presumed that injury was direct result of negligence of employer, the burden of proof being on employer to rebut presumption of negligence: §§31, 43. If judgment is in excess of compensation awarded, the compensation, if paid or secured, is credited on judgment: §31.

3. No direct provision. Seems to cover all accidents.68

4. No mention.


6. None.

7. Employer must secure compensation by (1) state fund, (2) policy, or (3) self-insurance: §§26, 32.


67. See text, page 41.

68. Section 2 provides: "The provisions of this Act shall be applicable to all laborers and employees, . . . who suffer injury, are disabled, or lose their lives by reason of accidents caused by any act or function inherent in their work or employment, when such accidents happen in the course of said work or employment, and as a consequence thereof, or who suffer disease or death caused by the occupations specified in the following section . . . ."; and section 9 of 1931 amendment provides: "Upon written request . . . commissions to take depositions of witnesses in . . . or in foreign countries, or letters rogatory to a court of another state or of a foreign country, shall . . . issue . . . ."