

WORKERS' COMPENSATION AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Workers' Compensation Act 1956.

Clause 2: The effect of this clause is that a share fisherman will be a worker for the purposes of the principal Act.

Clause 3 gives effect to a recommendation of the Royal Commission on Parliamentary Salaries and Allowances that members of Parliament be entitled to the benefits of the principal Act in the event of injury or death when carrying out their duties.

Clause 4 provides that a registered waterside worker will be covered by the provisions of the principal Act in respect of any accident occurring to him after he has reported for work at a wharf engagement bureau and is awaiting engagement at any place of engagement or is in any premises to which he has been directed by the Waterfront Industry Commission or is travelling by the most practicable direct route between any of those places. To qualify for a guaranteed daily minimum payment a registered waterside worker must be on call for a period of two hours after reporting for work at the bureau, which time he passes in a special waiting room provided or in a place to which he has been directed by the Commission, for example, a place where he attends lectures on safety or instruction courses in rigging. The clause provides that in respect of that period the Waterfront Industry Commission, which pays the guaranteed minimum payment, is deemed to be his employer.

Clause 5 is intended to remove anomalies caused by the interpretation by the Courts of the phrase "arising out of and in the course of employment" in section 3 of the principal Act in relation to risks that are known as "general risks" or "common risks", such as risks from the forces of nature (e.g., lightning), assaults, skylarking, and attacks of animals. An accident to a worker from one of these risks does not arise out of his employment unless the worker is specially exposed to these risks to a degree greater than an ordinary member of the public.

The clause now provides that an accident to a worker happening from one of these risks is deemed to arise out of his employment provided the worker did not directly or indirectly induce or contribute to the happening of the accident by any act not incidental to his employment.

Clause 6 re-enacts in an amended form section 9 of the principal Act, which provides for the reciprocal application of the Act to relatives of a deceased worker who are resident in some other Commonwealth country. The effect of the new section is to provide for reciprocity where, by the law of the country in which the relatives of a deceased worker live (whether or not it is a Commonwealth country), the dependants of a deceased worker who are resident in New Zealand would be entitled to compensation if the death of a worker resulted from an injury in that other country.

Clause 7 provides that where compensation is payable in the form of a weekly payment, then, unless the worker otherwise expressly or impliedly consents, the payment for the first week must be made within 10 days, and thereafter the payments must be made at weekly intervals unless the employer pays wages at longer intervals. In such cases he may pay compensation on the same basis.

Clause 8: Section 17 (5) of the principal Act provides that in making the final assessment of compensation for a permanent injury any period of temporary total incapacity shall be deducted from the six-year period on which the assessment is based. There is no comparable deduction of any period of temporary partial incapacity, that is, where the worker undertakes light work at less than his pre-accident wage and until his injury is stabilised receives partial-incapacity payments based on his loss of earnings. In such a case the amount of such payments, and not the period for which they were paid, is taken into account when the final assessment of compensation is made (see *Sly v. G. E. Hunter Ltd.*, not yet reported). This works inequitably in some cases in that it can result in the deduction of payments at a higher rate in the final assessment than if the period during which partial-incapacity payments are made were deducted from the six-year period, as is the case in respect of temporary total incapacity. To equalise the position, the effect of this clause is that in such a case the period during which the worker receives any compensation (whether a total-incapacity payment or a partial-incapacity payment) is to be deducted from the six-year period on the basis of which his entitlement to compensation for permanent injury is calculated. Where the compensation is paid in respect of partial incapacity for any part of that six-year period, he may elect either to have that part deducted from the six-year period or to have the amount received by him deducted from the total compensation payable.

Clause 9: Under section 19 of the principal Act compensation is payable in respect of incapacity or death resulting from disease arising out of employment, if the disease was due to the nature of the employment in which the worker was employed within the prescribed period before the commencement of the incapacity or the date of death if there has been no previous period of incapacity. The term "prescribed period" is defined for the purposes of the section as a period of five years in the case of radiation diseases and two years in other cases. This clause increases to 20 years the prescribed period in the case of radiation diseases.

Clause 10: The effect of this clause is that a woman employed as a housekeeper under a contract of service by a worker is to be treated as dependent on him for the purposes of section 20 (4) (b) of the principal Act, which provides for the payment of a dependant's allowance where the worker has any dependant or dependants under 16 years of age and a woman who is dependent on the worker is in the position of a parent to that dependant or those dependants. At present, the worker is entitled to the allowance only if the woman is unpaid. This amendment applies where compensation is payable after the passing of the Bill, whether the accident happened before or after the passing of the Bill.

Clause 11 amends section 22 of the principal Act, which provides for payment of medical and funeral expenses in addition to compensation, the amount not to exceed a maximum prescribed by regulations in respect of

any occasion or in respect of the total sum. The effect of this clause is to remove the provision that the maximum total sum is to be prescribed by regulations. This is required in order to give effect to provisions of an International Labour Convention that has been ratified by New Zealand.

Clause 12 is a similar amendment to section 23 of the principal Act relating to the provision of artificial limbs or aids. The clause omits the provisions that the liability of the employer for the cost of keeping an artificial limb or aid in repair is to be limited to a period of three years only and the provision that the maximum cost of repair for which the employer is to be liable is to be fixed by regulations. In addition to the cost of keeping an artificial limb or aid in repair, the employer is to be liable for the reasonable cost of its normal replacement.

Clause 13 is a similar amendment to section 24 of the principal Act relating to the liability of an employer for damage to teeth or artificial limbs or aids or clothing caused by the accident. The clause repeals the existing provision that the maximum liability of the employer under the section is to be fixed by regulations.

Clause 14: Section 30 (1) of the principal Act includes a provision in paragraph (a) that payments to a worker may be ended or diminished by agreement with the worker. The purpose of *paragraph (a)* of this clause is to make it clear that this provision applies only to agreements which are made in accordance with the provisions of section 37 of the principal Act, namely, agreements in respect of which the worker has had independent legal and medical advice.

By section 30 (4) of the principal Act the Compensation Court has power to end weekly payments of compensation by fixing a lump sum under section 13 of that Act, which relates to the fixing of lump sums on a loss of earnings basis. The effect of *paragraph (b)* of this clause will be to empower the Court to fix the lump sum in such a case either on that basis or under section 17 on a percentage basis depending on the degree of disability.

Clause 15: It was recently decided by the Supreme Court (*Hamilton v. Straits Air Freight Express Ltd.* (1960) N.Z.L.R. 1147) that a compensation agreement between an employer and the dependants of a worker which merely provided for the payment of full compensation in accordance with the principal Act did not prevent a dependant from subsequently commencing an action for damages in respect of the accident that caused the death of the worker. The effect of this clause is to make such an agreement that is completed in accordance with the requirements of section 37 of the principal Act binding on the parties and a bar to a subsequent claim for damages.

Clause 16: Section 46 (1) of the principal Act provides that, subject to the provisions of sections 49 and 50 of that Act, all proceedings under that Act are to be taken in the Compensation Court. Those sections allow proceedings to be taken in a Magistrate's Court in certain cases, but there are other provisions in the principal Act relating to proceedings in a Magistrate's Court. This clause makes an appropriate amendment in section 46 (1) to meet the position.

Clause 17: Section 84 (4) of the principal Act provides that certificates of exemption from Part III (Employers' Liability Insurance) are to come into force on 1 April in the next year after the date of application for exemption, unless application is made during the month of April, in which case the

Secretary of Labour may direct that the certificate is to come into force on the first day of that month. The effect of this clause is that certificates of exemption are to come into force on the date specified in the certificate, which may be before or after the date of the certificate.

Clause 18: At present, an insurance company that is prepared to undertake employers' liability insurance must wait until 1 April following the date of delivery of the necessary notice to the Secretary of Labour before it may commence such business. This clause enables a company to commence such business immediately after it has given the notice to the Secretary of Labour.

Clause 19 provides that a member of the Workers' Compensation Board (other than the General Manager) who vacates his office by effluxion of time is to continue in office until his successor comes into office.

Clause 20 authorises the Workers' Compensation Board to appoint committees (whether members of the Board or not) and, with the consent of the Minister, to delegate any of its functions or powers to any such committee or to any officers or servants of the Board.

Clause 21 re-enacts in an amended form section 120 of the principal Act relating to the penalties for evading payment of the proper premium payable. At present a person guilty of such an evasion is liable to a fine not exceeding £100 and is liable to be assessed by the insurer for a penal charge of an amount not exceeding three times the deficient premium. The existing section has been difficult to administer, and it is uncertain whether or not liability for the penal charge is dependent on a conviction being entered.

The new section provides that a person guilty of such an evasion commits an offence against Part III, the liability for which is a fine not exceeding £100 as at present, and in addition the Court may impose a penal charge not exceeding the amount of the deficient penalty.

Clause 22 provides an alternative procedure to that provided by *clause 21*. It enables the Workers' Compensation Board to impose a penalty for deficient payments of premium without the necessity of taking Court proceedings for an offence. The penalty is to be 10 per cent of the amount of the deficient premium, but in special cases the Board may increase this penalty to an amount not exceeding 50 per cent of the deficiency. The person liable may appeal to a Magistrate's Court against a decision of the Board fixing a penalty in excess of 10 per cent. The Board will be entitled to waive the penalty in whole or in part. Any penalty under this provision will be payable to the Board and not to the insurer.

Clause 23: This clause provides that where compensation has been paid in respect of the death of a worker and has been allotted or disposed of by an apportionment order of the Compensation Court, no dependant of the worker may subsequently recover damages in respect of the death of the worker.

Clause 24 provides that where a worker, while in receipt of weekly payments of compensation, obtains employment with another employer, he must immediately notify the employer who is liable to pay the compensation, giving him particulars of the wages payable for that employment. Where such a worker obtains other employment, his original employer is liable, at most, for payments in respect of partial incapacity only, and this clause requires the particulars of the other employment to be given to him immediately so as to avoid the likelihood of overpayments of compensation being made.

Hon. Mr Shand

WORKERS' COMPENSATION AMENDMENT

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A BILL INTITULED

An Act to amend the Workers' Compensation Act 1956

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—(1) This Act may be cited as the Workers' Compensation Amendment Act 1962, and shall be read together with and deemed part of the Workers' Compensation Act 1956* (hereinafter referred to as the principal Act).

*1957 Reprint, Vol. 16, p. 799
Amendment: 1960, No. 111

(2) Except as hereinafter expressly provided, nothing in this Act or in any provision of this Act shall apply with respect to claims for compensation or other rights or liabilities in respect of accidents happening before the commencement of this Act or of that provision, as the case may be. 5

2. Share fishermen—(1) Section 2 of the principal Act is hereby amended by inserting in subsection (1), after the definition of the term “share farmer”, the following definition:

“Share fisherman’ means a member of the crew of a fishing boat registered under the Fisheries Amendment Act 1945 who is remunerated wholly or partly by a share in the profits or gross earnings of the fishing venture and who is not the owner or one of the owners of the fishing boat:”.

(2) Section 2 of the principal Act is hereby further amended—

(a) By adding to the definition of the term “employer” in subsection (1) the words “and also, in relation to a share fisherman, means the owner of the vessel to which the share fisherman belongs”:

(b) By inserting in the definition of the term “worker” in subsection (1), after the words “share farmer”, the words “and a share fisherman”.

3. Application of principal Act to members of Parliament— 25

(1) Section 2 of the principal Act is hereby further amended by adding the following subsection:

“(8) It is hereby declared that for the purposes of this Act a member of the House of Representatives is, as such, a worker employed by the Crown.”

(2) Section 2 of the principal Act is hereby further amended by omitting from the definition of the term “worker” in subsection (1) the words “subsections four and six”, and substituting the words “subsections four, six, and eight”.

4. Accidents to waterside workers awaiting engagement— 35

The principal Act is hereby further amended by inserting, after section 6A (as inserted by section 2 of the Workers’ Compensation Amendment Act 1960), the following section:

“6B. (1) Without limiting the provisions of section 3 of this Act, it is hereby declared that where an accident happens to a person whose name is entered on a bureau register kept under section 28 of the Waterfront Industry Act 1953—

5 “(a) While, having presented himself for engagement on waterside work, he is at any place of engagement or is in any premises to which he has been directed by the Waterfront Industry Commission or is travelling by the most direct practicable route between any of those places; and

10 “(b) During the hours of engagement of labour prescribed under any principal order of the Waterfront Industry Tribunal under the Waterfront Industry Act 1953; and

15 “(c) While he has not been engaged for work within the meaning of and in the manner prescribed by any such principal order,—

the accident shall be deemed to arise out of and in the course of employment if the accident would have been deemed so to have arisen had it happened at any place of employment.

20 “(2) For the purposes of this section, the expression ‘any place of employment’ means any place at which a person to whom this section applies would be performing waterside work after having been engaged for such work.

25 “(3) For the purposes of this Act, any person to whom this section applies shall be deemed to be a worker employed by the Waterfront Industry Commission constituted under the Waterfront Industry Act 1953.”

30 **5. Certain accidents to workers deemed to arise out of employment**—The principal Act is hereby further amended by inserting after section 6B (as inserted by section 4 of this Act) the following section:

35 “6c. Without limiting the provisions of section 3 of this Act, it is hereby declared that where an accident happening to a worker arises in the course of his employment, the accident shall be deemed to arise out of his employment if—

40 “(a) The accident is caused by another person’s misconduct, skylarking, or negligence, or by steps taken in consequence of any such misconduct, skylarking, or negligence, or by the behaviour or presence of an animal (including a bird, a fish, an insect, or a reptile), or is caused by or consists in the worker being struck by any object or by lightning, or is caused by any force of nature; and

“(b) The worker did not directly or indirectly induce or contribute to the happening of the accident by any act not incidental to his employment.”

6. Reciprocal application of Act outside New Zealand—

(1) The principal Act is hereby further amended by repealing section 9, and substituting the following section: 5

“9. (1) Dependants of a deceased worker who are not resident in New Zealand shall not be entitled to compensation under this Act, unless by the law of the country or territory or place in which they reside the dependants of a deceased worker who are resident in New Zealand would be entitled to compensation where the death of the worker resulted from an injury in that country or territory or place. 10

“(2) For the purposes of this section, a certificate by the Secretary of Labour as to the effect of the law of the country or territory or place in which dependants of a deceased worker who are not resident in New Zealand reside shall, in any Court or before any person acting judicially, be received as evidence of the effect of that law.” 15

(2) The principal Act is hereby further amended— 20

(a) By omitting from the definition of the expression “partial dependants” in subsection (1) of section 2, and also from the definition of the expression “total dependants” in the same subsection, the words “were domiciled or resident in New Zealand at the time of his death and”: 25

(b) By omitting from subsection (1) of section 20, and also from subsection (2) of that section, the words “and ordinarily resident in New Zealand”:

(c) By omitting from section 74 the words “part of the Commonwealth”, and substituting the words “country or territory or place”: 30

(d) By omitting from section 75 the words “part of the Commonwealth other than New Zealand” wherever they occur, and substituting in each case the words “country or territory or place outside New Zealand”: 35

(e) By omitting from paragraph (d) of subsection (2) of section 136, and also from paragraph (f) of the same subsection, the words “territory within the Commonwealth”, and substituting in each case the words “country or territory or place outside New Zealand”. 40

7. Weekly payments—Section 14 of the principal Act is hereby amended by inserting, after subsection (4), the following subsection:

5 “(4A) Where compensation is payable in the form of a weekly payment, then, unless the worker expressly or impliedly otherwise consents, the first such payment shall be paid on or before the tenth day of the period of incapacity in respect of the first seven days, and subsequent payments shall be paid thereafter at weekly intervals:

10 “Provided that where an employer normally pays his workers their wages at intervals of more than a week (hereinafter referred to as pay intervals) it shall be sufficient compliance with the provisions of this subsection if the first payment of compensation is paid on or before the third day after the
15 expiration of the first period of incapacity of the same duration as a pay interval and if subsequent payments are paid thereafter at pay intervals.”

8. Compensation for injuries specified in First Schedule, and other permanent physical injuries—Section 17 of the
20 principal Act is hereby amended by repealing subsection (5), and substituting the following subsection:

“ (5) Nothing in subsections (1) to (4) or in subsection (6) of this section shall limit the amount of compensation payable during any period of temporary incapacity resulting from any
25 injury, but any such period for which compensation is paid shall be deducted from the period of six years referred to in subsection (1) of this section in assessing the compensation payable in respect of the same injury under subsections (1) to (4) and subsection (6) of this section:

30 “Provided that, where the compensation is paid in respect of any period of partial incapacity, the injured worker may elect, instead of having that period deducted, to have the amount of that compensation deducted from the compensation payable under this section.”

35 **9. Time for claiming compensation in respect of radiation disease**—Section 19 of the principal Act is hereby amended by omitting from paragraph (a) of subsection (2) the words “five years”, and substituting the words “twenty years”.

40 **10. Dependants' allowances**—(1) Section 20 of the principal Act is hereby amended by inserting in paragraph (b) of subsection (4), after the words “those dependants”, the words “or a woman who is employed by him as a house-keeper under a contract of service”.

(2) Subsection (1) of this section shall apply with respect to compensation payable after the passing of this Act for any period after the passing of this Act in respect of accidents happening before or after the passing of this Act.

11. Medical and funeral expenses—(1) Section 22 of the principal Act (as substituted by section 2 of the Workers' Compensation Amendment Act 1958) is hereby amended— 5

(a) By inserting in paragraph (a), after the word "funeral", the words "but not exceeding the prescribed maximum amount": 10

(b) By omitting from paragraph (a) and also from paragraph (b) the words "or in respect of the total sum".

(2) This section shall come into force on the first day of February, nineteen hundred and sixty-three. 15

12. Provision of artificial limbs or aids—The principal Act is hereby further amended by repealing section 23, and substituting the following section:

"23. Where, as the result of the injury, the provision of any artificial limb or aid for the worker becomes necessary or desirable, the employer shall be liable to pay, in addition to the compensation otherwise payable under this Act, the reasonable cost of the artificial limb or aid and of its normal repair or renewal." 20

13. Damage to teeth or artificial limbs or aids or clothing— 25
Section 24 of the principal Act is hereby amended by repealing the second proviso thereto.

14. Restriction on ending of weekly payments of compensation—Section 30 of the principal Act is hereby amended—

(a) By inserting in paragraph (b) of subsection (1), after the words "the worker", the words "in accordance with the provisions of section thirty-seven of this Act": 30

(b) By inserting in subsection (4), after the words "section thirteen", the words "or section seventeen, as the case may require". 35

15. Agreements as to compensation—Section 37 of the principal Act is hereby amended by adding the following subsection:

“(6) For the purposes of this Act and of any rule of law, an agreement for payment of the appropriate amount of compensation due under the foregoing provisions of this Act shall be deemed to be an agreement for valuable consideration
5 given by all parties to the agreement.”

16. Proceedings to be in Compensation Court—Section 46 of the principal Act is hereby amended by omitting from subsection (1) the words “Subject to the provisions of sections forty-nine and fifty of this Act”, and substituting the words
10 “Except where otherwise expressly provided in this Act”.

17. Power to exempt employers—(1) Section 84 of the principal Act is hereby amended by repealing subsection (4), and substituting the following subsection:

“(4) Every certificate granted under this section shall come
15 into force or be deemed to have come into force on such date as may be specified in the certificate, whether before or after the date of the application or the date of the certificate.”

(2) Section 84 of the principal Act is hereby further amended by omitting from subsection (5) the words “but
20 not earlier than the first day of April then last past”.

18. Insurance companies that are authorised insurers—Section 101 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) Every such notice shall take effect on the date of its
25 delivery to the Secretary of Labour.”

19. Workers' Compensation Board—Section 104 of the principal Act is hereby amended by inserting, after subsection (3), the following subsection:

“(3A) Unless he sooner vacates his office as provided in
30 subsection (3) of this section, every member of the Board (other than the General Manager) shall continue in office until his successor comes into office, notwithstanding that the term for which he was appointed may have expired.”

**20. Workers' Compensation Board may delegate its
35 functions and powers**—The principal Act is hereby further amended by inserting, after section 108, the following section:

“108A. (1) The Board may from time to time appoint committees consisting of two or more person (whether members of the Board or not), and may from time to time, with the
40 consent of the Minister, delegate to any such committee or

to any officer or servant of the Board (whether by name or as the holder for the time being of any office or position) any of the functions or powers of the Board.

“(2) Where any committee appointed by the Board or any officer or servant of the Board purports to act pursuant to any delegation under this section, it or he shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation. 5

“(3) Every delegation under this section may be revoked by the Board at any time, and no such delegation shall prevent the exercise of any function or power by the Board.” 10

21. Penalties for evasion—The principal Act is hereby further amended by repealing section 120, and substituting the following section:

“120. (1) If any person evades, or attempts to evade, or does any act with intent to evade, or makes default in the performance of any duty imposed on him by this Part of this Act or any regulations made for the purposes of this Part with intent to evade, the liability for any sum properly payable by him as premium or otherwise to his insurer (which sum is in this section referred to as the deficient premium), he commits an offence against this Part of this Act. 15 20

“(2) In any proceedings under this section, the Court may, in addition to or instead of imposing a fine, impose a penal charge, not exceeding the amount of the deficient premium. 25

“(3) Every penal charge imposed under this section shall be recoverable in the same manner as a fine, and, subject to the provisions of section 109 of the Public Revenues Act 1953, shall when recovered be paid to the Board.”

22. Wages understated by employer—The principal Act is hereby further amended by inserting, after section 120 (as substituted by section 21 of this Act) the following section: 30

“120A. (1) Where any person, in a statement delivered by him or on his behalf to an authorised insurer as required by section 85 or section 89 of this Act, understates the amount of wages paid by him during any period, he shall be liable, without conviction, in addition to any other penalty to which he may be liable, to a penalty of an amount equal to ten per cent of the amount of the premium payable in respect of the amount by which the wages were understated (the amount of that premium being in this section referred to as the deficient premium): 35 40

“Provided that, if the Board considers that having regard to all the circumstances of the case, a penalty of an amount equal to ten per cent of the deficient premium would be inadequate, it may fix a penalty of a greater amount, not exceeding fifty per cent of the amount of the deficient premium.

5 “(2) Notice of a decision of the Board fixing any penalty to which subsection (1) of this section applies may be given by delivering it to the person liable, or by leaving it at his usual or last known place of residence or business, or by
10 posting it by registered letter to that address, and in the last-mentioned case the production of a receipt given to an officer of the Post Office and purporting to be signed by the person to whom it is addressed shall be sufficient proof of the service.

15 “(3) If in any case in which the Board has fixed a penalty of an amount greater than ten per cent of the deficient premium the person liable to the penalty considers the amount to be unreasonable, he may within twenty-one days after written notice of the decision of the Board fixing the penalty has been given by the Board in accordance with
20 subsection (2) of this section apply to the Magistrate's Court nearest to his place of residence or business for an order reducing the amount of the penalty. A copy of the application shall be served on the Board within the same time.

25 “(4) On the hearing of the application the Court may by order confirm the amount of the penalty or, if it thinks fit, reduce it to any amount being not less than ten per cent of the deficient premium, and every such order shall be final and binding on the Board and on the applicant.

30 “(5) The Board, after consideration of all the circumstances of the case, may remit the whole or any part of any penalty payable under this section.

“(6) Any penalty payable under this section shall be recoverable by the Board as a debt from the person by whom or on whose behalf the statement was delivered.

35 “(7) No person shall be liable under this section to any penalty in respect of any understatement of the amount of wages paid by him during any period after the expiration of five years from the end of that period.”

23. Dependants not entitled to recover damages after apportionment order made—Section 124 of the principal Act is hereby amended by inserting, after subsection (4), the following subsection:

“(4A) When any compensation in respect of the death of a worker is recovered, and that compensation, or the balance thereof after deducting costs and expenses as provided in section 57 of this Act, has been allotted or disposed of by order of the Compensation Court as provided in sections 58 5 to 65 of this Act, no dependant of the worker shall be entitled thereafter to recover damages from any person in respect of the same accident.”

24. Worker on compensation to advise of other employment—The principal Act is hereby further amended by 10 inserting, after section 134, the following section:

“134A. (1) Any worker who, while he is in receipt of weekly payments of compensation, obtains employment with any employer other than the employer who is liable to pay compensation shall immediately advise the last-mentioned 15 employer of that employment and of the wages payable therefor.

“(2) A worker who fails to comply with the requirements of subsection (1) of this section commits an offence, and is liable on summary conviction to a fine not exceeding twenty-five 20 pounds.”