

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1935

—●—  
**ENROLLED**

HOUSE BILL No. 160

(By Mr. Committee on Judiciary)

—●—  
PASSED March 9<sup>th</sup> 1935

In Effect from Passage

**ENROLLED**  
COMMITTEE SUBSTITUTE FOR  
**House Bill No. 160**

(Originating in the Committee on the Judiciary).

---

[Passed March 9, 1935; in effect ninety days from passage.]

---

AN ACT to amend and reenact sections three, four, five, six, eight, nine, ten, thirteen, fourteen, fifteen, sixteen and eighteen, article four, and to add to said article a new section designated nine-(a); and to amend and reenact section one, article five, and to add to said article new sections to be known as sections two, three, four, five and six, all of chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, relating to workmen's compensation law and the administration thereof.

*Be it enacted by the Legislature of West Virginia:*

That sections three, four, five, six, eight, nine, ten, thirteen, fourteen, fifteen, sixteen and eighteen, article four, be amended and

reenacted, and that a new section designated section nine-(a) be added thereto; that section one, article five, be amended and reenacted, and new sections to be known as sections two, three, four, five and six, be added thereto, all of chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, to read as follows:

#### **ARTICLE IV.**

Sec. 3. The commissioner shall disburse and pay from the 2 fund for such personal injuries to such employees as may be 3 entitled thereto hereunder as follows:

4 (a) Such sums for medicine, medical, surgical, dental, hos-  
5 pital treatment, crutches, artificial limbs and such other and ad-  
6 ditional approved mechanical appliances as may be reasonably  
7 required, not however, in any case to exceed the sum of eight  
7-a hundred dollars.

8 (b) Payment for such medicine, medical, surgical, dental,  
9 hospital treatment, crutches, artificial limbs and such other  
10 and additional approved mechanical appliances authorized  
11 under subdivision (a) hereof may be made to the injured em-  
12 ployee, or to the person or persons who have furnished such

13 service, or who have advanced payment for same, as the com-  
14 missioner may deem proper.

15 (c) When an employee is entitled, under contract connected  
16 with his employment or by reason of a hospital subscription  
17 list, to medical, surgical, dental, or hospital treatment, for in-  
18 juries sustained in the course of, resulting from, or arising out  
19 of his employment compensable under the provisions of this  
20 chapter, shall be paid for from the compensation fund, as  
21 therein provided.

Sec. 4. In case the personal injury causes death, and dis-  
2 ability is total and continuous from the date of such injury  
3 to date of death, reasonable funeral expenses, not to exceed  
4 one hundred and fifty dollars, shall be paid from the fund, pay-  
5 ment to be made to the persons who have furnished the service  
6 and supplies, or to the persons who have advanced payment for  
7 same, as the commissioner may deem proper, in addition to such  
8 award as may be made to the employee's dependents.

Sec. 5. If the period of disability does not last longer than  
2 one week from the day the employee leaves work as the result  
3 of the injury, no award shall be allowed, except the disburse-  
4 ments provided for in the two next preceding sections, but if

5 the period of disability last longer than twenty-one days from  
6 the day the employee leaves work as a result of the injury, an  
7 award shall be allowed for the first week of such disability.

Sec. 6. Where compensation is due an employee under the  
2 provisions of this chapter, such compensation shall be provided  
3 in the following schedule:

4 (a) If the injury causes temporary total disability, the  
5 employee shall receive during the continuance thereof sixty-  
6 six and two-thirds per cent of his average weekly earnings, not  
7 to exceed a maximum of sixteen dollars per week nor to be  
8 less than a minimum of eight dollars per week;

9 (b) Subdivision (a) shall be limited as follows: Aggre-  
10 gate award for a single injury causing temporary disability  
11 shall be for a period not exceeding fifty-two weeks: *Provided,*  
12 That in case an injured employee, by reason of having an  
13 ununited fracture or having undergone a surgical operation  
14 to correct a vicious union following a fracture, or for the  
15 repair of an ununited fracture, or having suffered an injury  
16 to the spine or pelvic bones which is of a temporary nature,  
17 or for any ankylose joint, is disabled for a longer period than  
18 fifty-two weeks, the period during which compensation shall

19 be paid may be, but shall not exceed, seventy-eight weeks;

20 (c) If the injury causes permanent disability, the percent-  
21 age of disability to total disability shall be determined and  
22 the award computed and allowed as follows:

23 For a two per cent disability, sixty-six and two-thirds per  
24 cent of the average weekly earnings for a period of eight  
25 weeks,

26 For a five per cent disability, sixty-six and two-thirds per  
27 cent of the average weekly earnings for a period of twenty  
28 weeks,

29 For a ten per cent disability, sixty-six and two-thirds per  
30 cent of the average weekly earnings for a period of forty weeks.

31 For a fifteen per cent disability, sixty-six and two-thirds  
32 per cent of the average weekly earnings for a period of sixty  
33 weeks,

34 For a twenty per cent disability, sixty-six and two-thirds  
35 per cent of the average weekly earnings for a period of eighty  
36 weeks,

37 For a thirty per cent disability, sixty-six and two-thirds

38 per cent of the average weekly earnings for a period of one  
39 hundred and twenty weeks,

40 For a forty per cent disability, sixty-six and two-thirds per  
41 cent of the average weekly earnings for a period of one  
42 hundred and sixty weeks,

43 For a fifty per cent disability, sixty-six and two-thirds per  
44 cent of the average weekly earnings for a period of two  
45 hundred weeks,

46 For a sixty per cent disability, sixty-six and two-thirds per  
47 cent of the average weekly earnings for a period of two  
48 hundred and forty weeks,

49 For a seventy per cent disability, sixty-six and two-thirds  
50 per cent of the average weekly earnings for a period of two  
51 hundred and eighty weeks,

52 For an eighty per cent disability, sixty-six and two-thirds  
53 per cent of the average weekly earnings for a period of three  
54 hundred and twenty weeks,

55 For an eighty-five per cent disability, sixty-six and two-  
56 thirds per cent of the average weekly earnings for a period of  
57 three hundred and forty weeks,

58 For a disability from eighty-five to one hundred per cent,

59 sixty-six and two-thirds per cent of the average weekly earn-  
60 ings during the remainder of life,

61 Awards for permanent disability of from two per cent to  
62 eighty-five per cent shall be computed on the basis of four  
63 weeks' compensation for each per cent of disability deter-  
64 mined;

65 (d) If the injury results in the total loss by severance of  
66 any of the members named in this subdivision, the percentage  
67 of disability shall be determined in accordance with the fol-  
68 lowing table, and award made as provided in subdivision (c)  
69 of this section:

70 The loss of a great toe shall be considered a ten per cent  
71 disability,

72 The loss of a great toe (one phalange) shall be considered a  
73 five per cent disability,

74 The loss of other toes shall be considered a four per cent  
75 disability,

76 The loss of other toes (one phalange) shall be considered a  
77 two per cent disability,

78 The loss of all toes shall be considered a twenty-five per cent  
79 disability,



80 The loss of forepart of foot shall be considered a thirty per  
81 cent disability,

82 The loss of foot shall be considered a thirty-five per cent  
83 disability,

84 The loss of leg shall be considered a forty-five per cent  
85 disability,

86 The loss of thigh shall be considered a fifty per cent dis-  
87 ability,

88 The loss of thigh at hip joint shall be considered a sixty  
89 per cent disability,

90 The loss of little or fourth finger (one phalange) shall be  
91 considered a three per cent disability,

92 The loss of little or fourth finger shall be considered a five  
93 per cent disability,

94 The loss of ring or third finger (one phalange) shall be con-  
95 sidered a three per cent disability,

96 The loss of ring or third finger shall be considered a five  
97 per cent disability,

98 The loss of middle or second finger (one phalange) shall be  
99 considered a three per cent disability,

100 The loss of middle or second finger shall be considered a  
101 seven per cent disability,

102 The loss of index or first finger (one phalange) shall be con-  
103 sidered a six per cent disability,

104 The loss of index or first finger shall be considered a ten per  
105 cent disability,

106 The loss of thumb (one phalange) shall be considered a  
107 twelve per cent disability,

108 The loss of thumb shall be considered a twenty per cent  
109 disability,

110 The loss of thumb and index finger shall be considered a  
111 thirty-two per cent disability,

112 The loss of index and middle finger shall be considered a  
113 twenty per cent disability,

114 The loss of middle and ring finger shall be considered a  
115 fifteen per cent disability,

116 The loss of ring and little finger shall be considered a ten  
117 per cent disability,

118 The loss of thumb, index and middle finger shall be con-  
119 sidered a forty per cent disability,

120 The loss of index, middle and ring finger shall be considered

121 a thirty per cent disability,

121-a The loss of middle, ring and little finger shall be considered

122 a twenty per cent disability,

123 The loss of four fingers shall be considered a thirty-two per

124 cent disability,

125 The loss of hand shall be considered a fifty per cent dis-

126 ability,

127 The loss of forearm shall be considered a fifty-five per cent

128 disability,

129 The loss of an arm shall be considered a sixty per cent

130 disability;

131 (e) The total loss of one eye, or the total and irrecoverable

132 loss of the sight thereof shall be considered a thirty-three per

133 cent disability, and the injured employee shall be entitled to

134 compensation for a period of one hundred and thirty-two

135 weeks,

136 For the partial loss of vision in one, or both eyes, the per-

137 centage of disability shall be determined by the commissioner,

138 using as a basis the total loss of one eye;

139-149 (f) The award for permanent disabilities intermediate to

150 those fixed by the foregoing schedule and permanent dis-  
151 ability of from two per cent to eighty-five per cent shall be in  
152 the same proportion and shall be computed and allowed by  
153 the commissioner;

154 (g) The percentage of all permanent disabilities other than  
155 those enumerated in subdivisions (c), (d), (e), and (f) of  
156 this section shall be determined by the commissioner, using as  
157 a basis the loss of an arm at or above the elbow, and award  
158 made in accordance with the schedule in subdivision (c);

159 (h) Compensation payable under any subdivision of this  
160 section shall be limited as follows: Not to exceed a maximum  
161 of sixteen dollars per week, nor to be less than a minimum of  
162 eight dollars per week;

163 (i) Where an injury results in temporary total disability  
164 for which compensation is awarded under subdivision (a) of  
165 this section, and such injury is later determined permanent  
166 partial disability under subdivision (c), the amount of com-  
167 pensation so paid shall be considered as payment of the com-  
168 pensation payable for such injury in accordance with the  
169 schedule in subdivision (c). Compensation under this section  
170 shall be payable only to the injured employee, and the right

171 thereto shall not vest in his or her estate; except that such  
172 compensation as may have accrued to the date of his or her  
173 death shall be paid to the dependents of such injured employee,  
174 if there be such dependents at the time of death;

175 (j) The following permanent disabilities shall be conclu-  
176 sively presumed to be total in character:

177 Loss of both eyes or the sight thereof,

178 Loss of both hands or the use thereof,

179 Loss of both feet or the use thereof,

180 Loss of one hand and one foot,

181 Any injury resulting in total disability.

182 In all other cases permanent disability shall be determined  
183 by the commissioner in accordance with the facts in the case,  
184 and award made in accordance with the schedule in subdivi-  
185 sion (c): *Provided*, that the claimant shall have the right of  
186 appeal from the decision of the commissioner as provided by  
187 article five of this chapter.

Sec. 8. The commissioner shall have authority, after due  
2 notice to the employer and claimant whenever in his opinion  
3 it shall be necessary, to order a claimant to appear for exami-  
4 nation before a medical examiner selected by the commissioner.

Sec. 9. In cases where an employee has sustained a permanent disability and such fact has been determined by the commissioner, and the employee can be physically and vocationally rehabilitated and returned to remunerative employment by vocational training, by the use of crutches, artificial limbs, and/or other approved mechanical appliances, or by medicines, medical, surgical, dental or hospital treatment, the commissioner shall forthwith, after due notice to the employer, expend such an amount as may be necessary for the aforesaid purposes, not, however, in any case, to exceed the sum of eight hundred dollars. No payment, however, shall be made for such purposes as provided by this section unless authorized by the commissioner prior to the rendering of such treatment.

Sec. 9-(a). Where an employee in the course of his employment has suffered the loss, or loss of use of a hand, arm, foot, leg or eye, and in the event of subsequent accidental injury received in the course of his employment while employed by the same employer, resulting in total permanent disability, the commissioner in estimating the total costs of such permanent total disability shall allow the subscriber credit on his account for the partial permanent disability already received, and where an

9 employee in the course of his employment has suffered the loss,  
10 or loss of use of a hand, arm, foot, leg or eye, and in the event  
11 of subsequent accidental injury received in the course of his  
12 employment while employed by another employer, resulting in  
13 total permanent disability, the costs of such total permanent  
14 disability shall be paid by the commissioner out of any funds  
15 in his hands and at his disposal, after charging to such sub-  
16 scriber an amount equal to the partial permanent disability  
17 theretofore received.

Sec. 10. In case the personal injury causes death within the  
2 period of six years and the disability is continuous from date  
3 of such injury until date of death, the benefits shall be in the  
4 amounts, and to the persons, as follows:

5 (a) If there be no dependents, the disbursements shall be  
6 limited to the expense provided for in sections three and four  
7 of this article;

8 (b) If the deceased employee be under the age of twenty-one  
9 years and unmarried and leave a wholly dependent father or  
10 mother, the father, or if there be no father, the mother shall  
11 be entitled to a payment of sixty-six and two-thirds per cent of  
12 the average weekly wages of the deceased employee, not to ex-

13 ceed a maximum of seven dollars per week, to continue for such  
14 period of six years after the date of death as the commissioner  
15 in the case may determine: *Provided, however,* That in case the  
16 deceased employee be under the age of sixteen years at such  
17 time of death, payment shall continue until such employee would  
18 have been twenty-one years of age: *Provided, however,* That  
19 payment of compensation awarded under this subdivision to a  
20 dependent father shall be continued and paid to his surviving  
21 widow, mother of the deceased employee, to continue as per orig-  
22 inal award to father. Compensation in either case shall cease  
23 upon the death of the dependent;

24 (c) If the deceased employee be under the age of twenty-  
25 one and unmarried and leave a partially dependent father or  
26 mother, the father, or if there be no father, the mother shall  
27 be entitled to a payment of sixty-six and two-thirds per cent  
28 of the average weekly wages, not to exceed a maximum of seven  
29 dollars per week, to continue until such employee would have  
30 been twenty-one years of age;

30-a (d) If the deceased employee leaves a dependent widow or  
30-b invalid widower, the payment shall be thirty dollars per month  
30-c until death or remarriage of such widow or widower, and in ad-



30-d dition five dollars per month for each child under sixteen years  
30-e of age, to be paid until such child reaches such age, or, if an in-  
31 valid child, to continue as long as such child remains an invalid :  
32 *Provided*, That if such widow or invalid widower shall remarry  
33 within two years from the date of the death of such employee,  
34 such widow or widower shall be paid at the time of remarriage  
35 twenty per cent of the amount that would be due for the period  
36 remaining between the date of such remarriage and the end of  
37 ten years from the date of death of said employee, and such  
38 widow or widower shall be advised in writing by the commis-  
39 sioner of his or her rights under this proviso at the time of  
40 making the original award: *Provided, further*, That if upon  
41 investigation and hearing, as provided in article five of this  
42 chapter, it shall be ascertained that said widow or widower is  
43 living with a man or woman, as the case may be, as man and  
44 wife and not married, or the widow living a life of prostitution,  
45 the commissioner may stop the payment of the benefits herein  
46 provided to said widow or widower.

47 If the deceased employee be a widow or widower and leave a  
48 child or children under the age of sixteen years, the payment

49 shall be ten dollars per month to each child until he or she  
50 reaches the age of sixteen years.

51 In all awards of compensation to children, the award shall  
52 be until they reach the age of sixteen years or their death prior  
53 thereto ;

54 (e) If the deceased employee be an adult and there be no  
55 dependent widow, or widower, or child under sixteen years of  
56 age, but there are wholly dependent persons at the time of death,  
57 the payment shall be fifty per cent of the average monthly sup-  
58 port actually received from the employee during the preced-  
59 ing twelve months, to continue for the remainder of the period  
60 between the date of death and six years after the date of in-  
61 jury, and shall not amount to more than a maximum of twenty  
62 dollars per month ;

63 (f) If the deceased employee be an adult and there be no  
64 dependent widow, widower or child under sixteen years of age,  
65 or wholly dependent person, but there are partly dependent  
66 persons at the time of death, the payment shall be fifty per  
67 cent of the average monthly support actually received from  
68 the employee during the preceding twelve months, and to con-  
69 tinue for such portion of the period of six years after the date

70 of death as the commissioner in the case may determine, and  
71 not to amount to more than a maximum of twenty dollars per  
72 month.

73 Compensation under subdivisions (e) and (f) hereof shall  
74 cease upon the death of the dependent, and the rights thereto  
75 shall not vest in his or her estate;

76 (g) Dependent, as used in this chapter, shall mean a widow,  
77 invalid widower, child under sixteen years of age, invalid child,  
78 or a posthumous child, who, at the time of the injury causing  
79 death, is dependent in whole or part for his or her support upon  
80 the earnings of the employee; also, the following persons who  
81 are and continue to be residents of the United States or its  
82 territorial possessions: step child under sixteen years of age;  
83 child under sixteen years of age legally adopted prior to the in-  
84 jury causing death; father, mother, grandfather or grand-  
85 mother, who, at the time of the injury causing death, is depend-  
86 ent in whole or in part for his or her support upon the earn-  
87 ings of the employee; an invalid brother or sister wholly de-  
88 pendent for his or her support upon the earnings of the em-  
89 ployee at the time of the injury causing death.

Sec. 13. Notwithstanding anything herein contained, no sum

2 shall be paid to a widow or widower who shall have abandoned  
3 the employee before the injury causing death, but nothing here-  
4 in contained shall be construed to preclude a widow or widower  
5 from receiving compensation in accordance with section ten of  
6 this article, if such widow or widower has been abandoned  
7 within a period of two years by said employee for any reason  
8 except such reason as would have entitled the deceased employee  
9 to an annulment, a divorce from the bonds of matrimony or a  
10 divorce from bed and board as provided in article two, chapter  
11 forty-eight of this code.

Sec. 14. The average weekly wage earnings of the injured  
2 person at the time of the injury shall be taken as the basis  
3 upon which to compute the benefits. The time of injury with-  
4 in the meaning of this section shall be sixty days, six months,  
5 or twelve months immediately preceding the date of the in-  
6 jury, whichever is most favorable to the injured employee.

Sec. 15. To entitle any employee or dependent of a de-  
2 ceased employee to compensation under this chapter, the appli-  
3 cation therefor must be made on a form or forms prescribed  
4 by the commissioner and filed in the office of the commissioner  
5 within six months from and after the date of injury or death,

6 as the case may be, and all proofs of dependency in fatal cases  
7 must be filed with the commissioner within nine months from  
8 and after the date of death: *Provided*, That in case an em-  
9 ployer fails to report an injury within six months from and  
10 after the date such injury is received, the commissioner shall  
11 accept the application for compensation filed by the employee  
12 after the expiration of six months but within twelve months  
13 from the date of such injury: *Provided, further*, That if such  
14 employee shows by competent evidence that the employer had  
15 knowledge of such injury and failed to file a report thereof,  
16 then such employee shall have an additional year within which  
17 to file his application for compensation, and the commissioner  
18 shall receive such application so filed by such employee, and  
19 award compensation to an employee who would have been so  
20 entitled had the injury been reported and application filed  
21 within the prescribed period of six months. Nonresident aliens  
22 may be officially represented by the consular officers of the  
23 country of which such aliens may be citizens or subjects, but no  
24 compensation shall be paid to any nonresident aliens in fatal  
25 cases through the consular officers of the country of which such  
26 aliens may be citizens or subjects until such consular officer or

27 a representative of such consular officer is appointed personal  
28 representative of the deceased party by proper authority in the  
29 county in which the deceased resided, or in which, the seat of  
30 government is located. Nothing herein contained shall be con-  
31 strued as giving such consular officer the right to make appli-  
32 cation for compensation in behalf of nonresident aliens.

Sec. 16. The power and jurisdiction of the commissioner  
2 over each case shall be continuing, and he may from time to  
3 time, after due notice to the employer, make such modifications  
4 or changes with respect to former findings or orders as may be  
5 justified: *Provided*, That no further award may be made in  
6 fatal cases except within two years after the death of the em-  
7 ployee, or, in cases of non-fatal injuries, except within three  
8 years after payments for temporary disability shall have ceased  
9 and within one year after the commisioner shall have made  
10 the last payment in any permanent disability case.

11 In any case where an injured employee under this section  
12 shall make application in writing for a further adjustment of  
13 his claim, the commissioner shall finally pass upon and de-  
14 termine the merits of such claim within ninety days after the  
15 filing thereof, and after such final determination the claimant

16 shall have the right of an appeal as provided by article five of  
17 this chapter.

Sec. 18. Except by this section provided compensation shall  
2 be paid only to such employees or their dependents, and shall  
3 be exempt from all claims of creditors and from any attachment,  
4 execution, or assignment other than compensation to counsel  
5 for legal services under a bona fide contract between such coun-  
6 sel and the claimant not exceeding twenty-five percent of the  
7 total amount of the award in favor of the claimant. Payments  
8 may be made in such periodical installments as may seem  
9 best to the commissioner in each case, not exceeding one month  
10 apart. In all cases where compensation is awarded or increased,  
11 the amount thereof shall be calculated and paid from the date  
12 of disability. The counsel representing the claimant under  
13 lawful contract may file with the commissioner a copy thereof  
14 and it shall be the duty of the commissioner to protect such  
15 attorney in the collection of the amount provided for therein  
16 from any award made by the commissioner in favor of the  
17 claimant, if the amount agreed be not in conflict with the pro-  
18 visions of this chapter.

**ARTICLE V.**

Section 1. The commissioner shall have full power and  
2 authority to hear and determine all questions within his juris-  
3 diction, but upon the making or refusing to make any award, or  
4 upon the making or refusing to make any modification or change  
5 with respect to former findings or orders, as provided by section  
6 sixteen, article four, of this chapter, the commissioner shall  
7 give notice in writing to the employer, employee, claimant, or  
8 dependent, as the case may be, of his action, which action shall  
9 state the time allowed for an appeal to the board and such  
10 action shall be final unless the employer, employee, claimant, or  
11 dependent shall, within thirty days after receipt of such notice,  
12 object in writing to such finding. Upon receipt of such objection  
13 of the employer, employee, claimant, or dependent, the commis-  
14 sioner shall, within thirty days from the receipt of any objec-  
15 tion to his action or finding as aforesaid, set a time and place  
16 for the hearing of evidence. Any such hearing may be by the  
17 commissioner or by his duly authorized representative at the  
18 county seat of the county wherein the employer resides, or at  
19 any other place which may be agreed upon by the interested par-  
20 ties, having due regard for the convenience of witnesses. Both  
21 the employer and claimant shall be notified of such hearing at



22 least ten days in advance. The evidence taken at such hearing  
23 shall be transcribed and become a part of the record of the pro-  
24 ceedings, together with other records thereof in the commis-  
25 sioner's office. After such hearing the commissioner, within sixty  
26 days, shall render his decision affirming, reversing or modifying  
27 his former action, which shall be final: *Provided, however,*  
28 That the claimant or the employer may, within ninety days after  
29 notice of the final action of the commissioner, apply to the board  
30 herein created for a review of such decision.

Sec. 2. There is hereby created a board to be known as the  
2 "Workmen's Compensation Appeal Board", which shall be re-  
3 ferred to in this article as the "board", to be composed of three  
4 members, none of whom shall be a contributor of the compen-  
5 sation fund or in any way connected with a contributor thereto  
6 and none of whom shall be a beneficiary of the compensation  
7 fund or in any way connected with a beneficiary thereof. Two  
8 members of such board shall be of opposite politics to the  
9 third, and all three shall be citizens of this state who have re-  
10 sided therein for a period of at least five years. All members  
11 of said board shall be appointed by the governor for a term of  
12 six years, except that the persons first appointed under this act

13 shall be appointed to serve, one for two, one for four and one  
14 for six years. The governor is hereby vested with power to re-  
15 move any member of the board according to section four, article  
16 four, chapter six, of this code. The members of such board  
17 shall be paid for their services a compensation of twenty dol-  
18 lars per day for each day they are in session, which shall be the  
19 total compensation, including any and all expenses, of such  
20 member or members. The governor shall designate one of the  
21 members of said board as chairman thereof, and said board  
22 shall meet at the capital or at such other places throughout the  
23 state as it may determine in regular sessions to be fixed by the  
24 board. No more than six sessions shall be held during any one  
25 year and no session shall continue more than twenty consecu-  
26 tive calendar days. All clerical services required by the board  
27 shall be paid by the compensation commissioner from any funds  
28 at his disposal.

Sec. 3. Any employer, employee, claimant, or dependent who  
2 shall feel aggrieved at any action of the commissioner under  
3 this chapter shall have the right to appeal to the board cre-  
4 ated in section two of this article for a review of such action.  
5 The aggrieved party shall file a written notice of appeal with

6 the compensation commissioner, directed to said board, within  
7 a period of ninety days from the date of the action complained  
8 of, and the commissioner shall notify the other party immedi-  
9 ately upon the filing of said notice of appeal. The commis-  
10 sioner shall also notify the members of said board and shall  
11 make up a transcript of the record of the proceedings before  
12 him, and the board shall review the action of the commissioner  
13 complained of within thirty days after the filing of such pe-  
14 tition or at the next meeting of said board after the expiration  
15 of thirty days therefrom. At any such hearing the board shall  
16 consider the record before it as furnished by the commissioner  
17 and upon motion of either party or upon its own motion said  
18 board may remand said cause to the commissioner for the  
19 taking of such new, additional or further evidence as in the  
20 opinion of the board may be necessary to arrive at a fair and  
21 just decision; and thereupon the board shall sustain the finding  
22 of the commissioner or enter such order or make such award  
23 as the commissioner should have made and shall thereupon  
24 certify the same to the commissioner, who shall proceed in ac-  
25 cordance therewith. All evidence taken before the board shall  
26 be transcribed and become a part of the record in the case, and

27 either party before the board may be represented by counsel.  
28 All appeals from the action of the commissioner shall be de-  
29 cided by said board within sixty days after the date of the  
30 filing thereof.

Sec. 4. From any decision of the board an appeal may be  
2 prosecuted by either party to the supreme court of appeals.  
3 After any hearing before the board the applicant desiring to ap-  
4 peal to the supreme court of appeals shall file a petition before  
5 said court against the board and other party (claimant or em-  
6 ployer, as the case may be), within a period of ninety days,  
7 and the board and other party shall be notified of the foregoing  
8 by the clerk of said court of the filing of such petition and re-  
9 view. And the board shall, within ten days after receipt of  
10 such notice, file with the clerk of said court the record of the  
11 proceedings had before it, including a transcript of the evi-  
12 dence. The court, or any judge thereof, may thereupon decide  
13 whether a review shall be granted or not, and if such review  
14 be granted to a nonresident of this state he shall execute and  
15 file before the clerk of said court, before such proceedings for  
16 review becomes effective, a bond with security to be approved  
17 by said clerk conditioned to pay all costs which may be

18 awarded against him on such review. If a review be granted,  
19 the board and the opposing party (claimant or employer), or  
20 their attorneys, shall be notified of the fact by mail, by the  
21 clerk of said court. If a review be granted as aforesaid, the  
22 case shall be heard by said court in the same manner as other  
23 cases before it, save and except that neither the record nor  
24 briefs need be printed and that every such review granted prior  
25 to thirty days before the beginning of any term shall be placed  
26 upon the docket for such term. The attorney general, without  
27 extra compensation, shall represent the board on such review.  
28 The supreme court on such review shall determine the matter  
29 and certify its decision to the board and the commissioner. The  
30 cost of such proceedings, including a reasonable attorney's fee,  
31 not exceeding one hundred dollars, to the claimant's attorney,  
32 shall be fixed by the court and taxed against the employer if the  
33 latter be unsuccessful, and if the claimant be unsuccessful, such  
34 costs, not including attorney's fees, shall be taxed against the  
35 commissioner, payable out of any funds available in his hands,  
36 or shall be taxed against the claimant, in the discretion of the  
37 court.

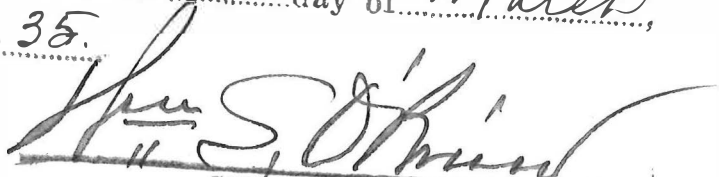
Sec. 5. In the event that an attorney shall appear for any

2 claimant in any proceedings had before the commissioner, the  
3 board, or the supreme court of appeals, such attorney may file  
4 with the commissioner a copy of his contract of employment  
5 with such claimant, and it shall be the duty of the commis-  
6 sioner to protect such attorney in the collection of his fees  
7 from any award made by the commissioner, the board or the  
8 supreme court of appeals under rules and regulations to be fixed  
9 by said commissioner, having due regard to the rights of both  
10 claimant and attorney.

Sec. 6. The provisions of this article shall also apply to all  
2 cases arising under section nine, article two, of this chapter.

I certify that the foregoing act,  
having been presented to the Governor for  
his approval, and not having been returned  
by him to the House of the Legislature in  
which it originated within the time pre-  
scribed by the constitution of the state, has  
become a law without his approval.

This the 15th day of March,  
19 35.

  
SECRETARY OF STATE

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Clinton L. Howard*

*Chairman Senate Committee*

*Arnold M. Dickens*

*Chairman House Committee*

Originated in the

*House*

Takes effect

*from*

passage.

*Charles M. ...*

*Clerk of the Senate*

*W. S. Hall*

*Clerk of the House of Delegates*

*Chas. E. Hoyle*

*President of the Senate*

*Wm. S. O'Brien*

*Speaker House of Delegates.*

The within.....this the.....

day of....., 1935.

*Governor.*

Filed in the office of the Secretary of State  
of West Virginia.

Wm. S. O'BRIEN,  
Secretary of State