

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1937



ENROLLED

HOUSE BILL No. 384

(By Mr. La Fon)



PASSED March 13, 1937

In Effect 90 days from Passage

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House Bill No. 384

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[Passed March 13, 1937; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, four and eight, article two, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, section two, subdivision (b) of section three, subdivision (e) of section six, sections eight, nine, and nine-a, (said section nine-a having been added to chapter seventy-eight, acts of the Legislature, regular session, one thousand nine hundred thirty-five), sections fourteen and seventeen, article four of said chapter of said code, and to add two new sections to article four of said chapter, to be known, respectively, as sections nine-b and fifteen-a, and to amend and reenact sections one, two, three, four and five, article five of said chapter of said code, (the last four sections having been added to said article by chapter seventy-eight, acts of the

Legislature, regular session, one thousand nine hundred thirty-five), all relating to workmen's compensation and the administration of the workmen's compensation law.

Be it enacted by the Legislature of West Virginia:

That sections one, four and eight, article two, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, be amended and reenacted; that section two, subdivision (b) of section three, subdivision (e) of section six, sections eight, nine, and nine-a, (said section nine-a having been added by chapter seventy-eight, acts of the Legislature, regular session, one thousand nine hundred thirty-five), sections fourteen and seventeen, article four of said chapter of said code, be amended and reenacted, and that two new sections be added to article four of said chapter of said code, to be known, respectively, as sections nine-b and fifteen-a, and that sections one, two, three, four and five, article five of said chapter of said code (the last four sections having been added to said article by chapter seventy-eight, acts of the Legislature, regular session, one thousand nine hundred thirty-five), be amended and reenacted to read as follows:

Article 2.

Section 1. State and Political Subdivisions to Subscribe

2 *to Workmen's Compensation Fund; Employers and Em-*
3 *ployees Subject to Chapter.* The state of West Virginia and
4 all governmental agencies or departments created by it are
5 hereby required to subscribe to, and pay premiums into the
6 workmen's compensation fund for the protection of their
7 employees, and shall be subject to all requirements of this act,
8 and all rules and regulations prescribed by the commissioner
9 with reference to rates, classifications and premium pay-
10 ments.

11 All persons, firms, associations and corporations regularly
12 employing other persons for the purpose of carrying on any
13 form of industry or business in this state, are employers
14 within the meaning of this chapter and subject to its pro-
15 visions. All persons in the service of employers as herein
16 defined, and employed by them for the purpose of carrying on
17 the industry, business or work in which they are engaged, and
18 checkweighmen employed according to law, and all members
19 of rescue teams assisting in mine accidents with the consent
20 of the owner who, in such case, shall be deemed the employer,
21 or at the direction of the chief of the department of mines,
22 are employees within the meaning of this chapter and sub-

23 ject to its provisions: *Provided*, That the chapter shall not
24 apply to employers of employees in domestic or agricultural
25 service, persons prohibited by law from being employed, nor
26 to employees of any employer while employed without the
27 state; nor shall a member of a firm of employers, or any of-
28 ficer of an association or of a corporation employer, includ-
29 ing managers, or any elective or appointive official of the
30 state, whose term of office is definitely fixed by law, be
31 deemed an employee within the meaning of this chapter.

32 The premium and actual expenses in connection with gov-
33 ernmental agencies and departments of the state of West
34 Virginia, shall be paid out of the state treasury from ap-
35 propriations made for such agencies and departments, in the
36 same manner as other disbursements are made by such
37 agencies and departments, and such premiums of state agen-
38 cies and departments shall be paid into the fund in the same
39 manner as herein provided for other employers subject to
40 this chapter.

41 Any employer whose employment in this state is to be for a
42 definite or limited period, which could not be considered
43 "regularly employing" within the meaning of this section,
44 may elect to pay into the workmen's compensation fund the

45 premiums herein provided for, and at the time of making
46 application to the commissioner such employer shall furnish
47 a statement under oath showing the probable length of time
48 the employment will continue in this state, the character of
49 the work, an estimate of the monthly payroll, and any other
50 information which may be required by the commissioner.
51 At the time of making application such employer shall de-
52 posit with the state compensation commissioner to the credit
53 of the workmen's compensation fund the amount required
54 by section five of this article, which amount shall be returned
55 to such employer, if his application be rejected by the com-
56 missioner. Upon notice to such employer of the acceptance
57 of his application by the commissioner, he shall be an em-
58 ployer within the meaning of this chapter and subject to all
59 of its provisions.

60 Any foreign corporation employer electing to comply with
61 the provisions of this chapter and to receive the benefits here-
62 under, shall, at the time of making application to the com-
63 missioner, in addition to other requirements of this chapter,
64 furnish such commissioner with a certificate from the secre-
65 tary of state showing that it has complied with all the re-

66 quirements necessary to enable it legally to do business in
67 this state, and no application of such foreign corporation
68 employer shall be accepted by the commissioner until such
69 certificate is filed.

70 For the purpose of this chapter, a mine shall be adjudged
71 within this state when the main opening, drift, shaft or slope
72 is located wholly within this state.

72 Any employee within the meaning of this chapter whose
74 employment necessitates his temporary absence from this
75 state in connection with such employment, and such absence
76 is directly incidental to carrying on an industry in this state,
77 who shall have received injury during such absence in the
78 course of and resulting from his employment, shall not be
79 denied the right to participate in the workmen's compensa-
80 tion fund.

Article 2.

Sec. 4. *Classification of Industries; Accounts By Commis-*
2 *sioner; Rate of Premiums.* The commissioner shall distribute
3 into groups or classes the industries subject to this chapter,
4 in accordance with the nature of the business and the degree
5 of hazard incident thereto. And the commissioner shall have

6 power, in like manner, to reclassify such industries into
7 groups or classes at any time, and to create additional groups
8 or classes. The commissioner may make necessary expendi-
9 tures to obtain statistical and other information to establish
10 the classes provided for in this section.

11 The commissioner shall keep an accurate account of all
12 money or moneys paid or credited to the compensation fund,
13 and of the liability incurred and disbursements made against
14 same; and an accurate account of all money or moneys re-
15 ceived from each individual subscriber, and of the liability in-
16 curred and disbursements made on account of injuries and
17 death of the employees of each subscriber, and of the receipts
18 and incurred liability of each group or class.

19 In fatal cases and permanent disability cases exceeding
20 eighty-five per cent disability, the amount charged against
21 the employer's account shall be such sum as is estimated to be
22 the average cost of such cases to the fund; provided the
23 commissioner decides that the injury or injuries causing
24 death or permanent disability were received in the course of
25 and resulting from the employee's employment.

26 It shall be the duty of the commissioner to fix and maintain

27 the lowest possible rates of premiums consistent with the
28 maintenance of a solvent workmen's compensation fund and
29 the creation and maintenance of a reasonable surplus in each
30 group after providing for the payment to maturity of all
31 liability incurred by reason of injury or death to employees
32 entitled to benefits under the provisions of this chapter. A
33 readjustment of rates shall be made yearly on the first day
34 of July, or at any time the same may become necessary. The
35 determination of the lowest possible rates of premiums with-
36 in the meaning hereof and of the existence of any surplus or
37 deficit in the fund, shall be predicated solely upon the ex-
38 perience and statistical data compiled from the records and
39 files in the commissioner's office under this and prior work-
40 men's compensation laws of this state for the period from
41 the first day of June, one thousand nine hundred thirteen, to
42 the nearest practicable data prior to such adjustment: *Pro-*
43 *vided, however,* That any expected future return, in the na-
44 ture of interest or income from invested funds, shall be predi-
45 cated upon the average realization from investments to the
46 credit of the compensation fund for the two years next pre-
47 ceding. Any reserves set up for future liabilities and any

48 commutation of benefits shall likewise be predicated solely up-
49 on prior experience under this and preceding workmen's
50 compensation laws and upon expected realization from in-
51 vestments determined by the respective past periods, as
52 aforesaid.

53 The commissioner may fix a rate of premiums applicable
54 alike to all subscribers forming a group or class, and such
55 rates shall be determined from the record of such group or
56 class shown upon the books of the commissioner: *Provided,*
57 That if any group has a sufficient number of employers
58 with considerable difference in their degrees of hazard, the
59 commissioner may fix a rate for each subscriber of such
60 group, such rate to be based upon the subscriber's record
61 on the books of the commissioner for the twelve months last
62 ending June thirtieth of the year in which the rate is to be-
63 come effective; and the liability part of such record shall in-
64 clude such cases as have been acted upon by the commissioner
65 during such twelve months' period, irrespective of the date
66 the injury was received; and any subscriber in a group so
67 rated, whose record for such twelve months' period cannot be
68 obtained, shall be given a rate based upon his record for any

69 part of such period or such rate as may be deemed just and
70 equitable by the commissioner; and the commissioner shall
71 have authority to fix a reasonable minimum and maximum
72 for any group to which this individual method of rating is
73 applied, and to add to the rate determined from the subscrib-
74 er's record such amount as necessary to liquidate any deficit
75 in the schedule or to create a reasonable surplus.

76 It shall be the duty of the commissioner, whenever he
77 changes any rate, to notify every employer affected thereby
78 of that fact and of the new rate and when the same takes
79 effect. It shall also be his duty to furnish to each employer
80 yearly, or oftener if requested by the employer, a statement
81 giving the name of each of his employees who were paid for
82 injury and the amount so paid during the period covered by
83 the statement.

Article 2.

Sec. 8. *Election Not to Pay a Default in Payment of*
2 *Premiums; Defenses Prohibited.* All employers subject to
3 this chapter (except the state of West Virginia and political
4 subdivisions thereof) who shall not have elected to pay into
5 the workmen's compensation fund the premiums provided by

6 this chapter and have not elected to pay individually and di-
7 rectly or from benefit funds, compensation and expenses to
8 injured employees or fatally injured employees' dependents
9 under the provisions of section nine, article two of this chap-
10 ter, or, having so elected, shall be in default in the payment of
11 the same or not having otherwise fully complied with the pro-
12 visions of section five or section nine of this article, shall be
13 liable to their employees (within the meaning of this article)
14 for all damages suffered by reason of accidental personal in-
15 juries or accidental death sustained in the course of and re-
16 sulting from their employment, and in any action by any
17 such employee or personal representative thereof, such de-
18 fendant shall not avail himself of the following common law
19 defenses: The defense of the fellow-servant rule; the de-
20 fense of the assumption of risk; or the defense of contribu-
21 tory negligence; and further, shall not avail himself of any
22 defense that the negligence in question was that of someone
23 whose duties are prescribed by statute, provided no action
24 shall lie, and no recovery shall be had, against casual em-
25 ployers as hereinafter defined, without allegation and proof
26 that such accidental personal injuries or accidental death

27 were caused by the wrongful act, neglect or default of the
28 employer, or any of the employer's officers, agents or em-
29 ployees. Casual employers within the meaning hereof shall
30 be those employing at the time of such accidental personal in-
31 juries or accidental death, in and about the operation or work
32 in which such accidental injuries or death occurred, less
33 than ten employees, and those employers employing more than
34 ten employees, who have not conducted the operation or busi-
35 ness in which accidental injuries or death occurred, for more
36 than sixty days prior to such accidental injuries or death.

Article 4.

Section 2. *Disbursement Where Injury is Self-inflicted or*
2 *Intentionally Caused by Employer; Rules and Safety Appli-*
3 *ances.* Notwithstanding anything hereinbefore or hereinafter
4 contained, no employee or dependent of any employee shall
5 be entitled to receive any sum from the workmen's compen-
6 sation fund, or to direct compensation from any employer
7 making the election and receiving the permission mentioned
8 in section nine, article two of this chapter, or otherwise under
9 the provisions of this chapter, on account of any personal
10 injury to or death of any employee caused by a self-inflicted

11 injury, wilful misconduct, wilful disobedience to such rules
12 and regulations as may be adopted by the employer and ap-
13 proved by the commissioner, and which rules and regulations
14 have been and are kept posted in conspicuous places in and
15 about the work, or the intoxication of such employee, or the
16 failure of such employee to use or make use of any protective
17 or safety appliance or appliances prescribed by the commis-
18 sioner and furnished by the employer for the use of or ap-
19 plicable to such employee. For the purpose of this chapter
20 and to prevent accidents to employees, the commissioner may
21 require all employers to adopt rules, which have been ap-
22 proved by him, for the protection and safety of their em-
23 ployees and keep the same posted in conspicuous places in
24 and about the work; and the commissioner may require em-
25 ployers to install, use or adopt such protective or safety ap-
26 pliance or appliances as in the commissioner's opinion are
27 necessary for the protection of the employees. If injury or
28 death result to any employee from the deliberate intention
29 of his employer to produce such injury or death, the em-
30 ployee, the widow, widower, child or dependent of the em-
31 ployee shall have the privilege to take under this chapter, and

32 shall also have cause of action against the employer as if this
33 chapter had not been enacted for any excess of damages over
34 the amount received or receivable under this chapter.

Article 4.

Section 3. (b) Payment for such medicine, medical, surg-
2 ical, dental, hospital treatment, crutches, artificial limbs and
3 such other and additional approved mechanical appliances
4 authorized under subdivision (a) hereof may be made to the
5 injured employee, or to the person or persons who have fur-
6 nished such service, or who have advanced payment for same,
7 as the commissioner may deem proper, but no such payments
8 or disbursements shall be made or awarded by the commis-
9 sioner unless duly verified statements on forms prescribed by
10 the commissioner, shall be filed with the commissioner within
11 three months from the time such services or appliances were
12 authorized by the commissioner.

Article 4.

Section 6. (e) The total loss of one eye, or the total and
2 irrecoverable loss of the sight thereof, shall be considered a
3 thirty-three per cent disability, and the injured employee
4 shall be entitled to compensation for a period of one hundred

5 and thirty-two weeks;

6 For the partial loss of vision in one, or both eyes, the per-
7 centage of disability shall be determined by the commissioner,
8 using as a basis the total loss of one eye;

9 Should a claimant to whom has been made a permanent
10 partial award of less than eighty-five per cent for one of the
11 specific disabilities as set forth in subdivision (d) and sub-
12 division (e) hereof die from sickness or non-compensable in-
13 jury, the unpaid balance of such award shall be paid to claim-
14 ant's dependents as defined in this chapter, if any; such pay-
15 ment to be in the same installments that would have been paid
16 to claimant if living: *Provided, however,* That no payment
17 shall be made to any widow of such claimant after her re-
18 marriage, but this liability shall not accrue to the estate of
19 such claimant and shall not be subject to any debts of, or
20 charges against, said estate.

Article 4.

Section 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 exam-
4 ination before a medical examiner selected by the commis-

5 sioner; and the claimant and employer, respectively, shall
6 each have the right to select a physician of his or its own
7 choosing and at his or its own expense to participate in such
8 examination. The claimant and employer shall, respectively,
9 be furnished with a copy of the report of examination made
10 by the medical examiner selected by the commissioner. The
11 claimant shall also be entitled to reasonable traveling and
12 other expenses necessarily incurred by him in obeying said
13 order, which shall be paid out of the amount allowed under
14 this chapter for medical, surgical, dental and hospital treat-
15 ment. The respective physicians selected by the claimant and
16 employer shall have the right to concur in any report made
17 by the medical examiner selected by the commissioner, or each
18 may file with the commissioner a separate report. Any report
19 filed by the physician of the claimant or the physician of the
20 employer shall be considered by the commissioner in passing
21 upon the claim.

Article 4.

Section 9. In cases where an employee has sustained a per-
2 manent disability, or has sustained injuries likely to result in
3 permanent disability, and such fact has been determined by

4 the commissioner, and the employee can be physically and
5 vocationally rehabilitated and returned to remunerative em-
6 ployment by vocational training, by the use of crutches, arti-
7 ficial limbs, and/or other approved mechanical appliances, or
8 by medicines, medical, surgical, dental or hospital treatment,
9 the commissioner shall forthwith, after due notice to the
10 employer, expend such an amount as may be necessary for
11 the aforesaid purposes, not, however, in any case, to exceed
12 the sum of eight hundred dollars. No payment, however, shall
13 be made for such purposes as provided by this section unless
14 authorized by the commissioner prior to the rendering of such
15 treatment.

Article 4.

Section 9 (a). Where an employee in the course of and re-
2 sulting from his employment has suffered the loss, or loss of
3 use of a hand, arm, foot, leg or eye, and receives, in the course
4 of and resulting from his employment while employed by the
5 same employer, injury resulting in total permanent disability,
6 the commissioner in estimating the total cost of such perma-
7 nent total disability shall allow the subscriber credit on his
8 account for the partial permanent disability already received.

9 Where an employee, in the course of and resulting from his
10 employment, has suffered the loss, or loss of use of a hand,
11 arm, foot, leg or eye, and in the event of subsequent accidental
12 injury received in the course of and resulting from his em-
13 ployment while employed by another employer, resulting in
14 total permanent disability, the cost of such total permanent
15 disability shall be paid by the commissioner out of any funds
16 in his hands and at his disposal, after charging to said last
17 employer an amount equal to the partial permanent disability
18 attributable to the last injury, independently of the pre-
19 existing impairment.

Article 4.

Section 9 (b). Where an employee has a definitely ascertain-
2 able physical impairment originating otherwise than from an
3 injury received in the course of and resulting from employ-
4 ment, such impairment, and the effect thereof, in case of
5 injury as hereinafter set forth and any aggravation thereof
6 on account of such injury, may be waived by said employee,
7 notwithstanding any other provisions of this chapter, but such
8 waiver shall be in the manner hereinafter provided. If said
9 physical impairment shall be so waived, then in the event that

10 such employee shall thereafter receive an injury in the course
11 of and resulting from his employment, such physical impair-
12 ment, and the effects thereof, and any aggravation thereof,
13 shall not be taken into consideration in fixing the amount of
14 compensation allowed by reason of such injury, and such com-
15 pensation shall be awarded only in the amount that would
16 have been allowable had such employee not had such pre-
17 existing physical impairment. A waiver, in order to be valid
18 under this section, shall meet the following requirements:
19 (1) It shall be in writing, signed prior to injury by the em-
20 ployee, and either acknowledged before an officer duly quali-
21 fied to administer oaths in this state, or be witnessed by two
22 persons, neither of whom shall be the employer, or any officer
23 or director of employer; (2) it shall be accompanied by a
24 certificate of a duly licensed physician of this state or of
25 another state, not connected with the employer, which certifi-
26 cate shall contain a statement that such physician has exam-
27 ined the said employee, has found such impairment to exist,
28 that such impairment is definitely ascertainable, and a state-
29 ment of the character and nature of such impairment.

Article 4.

Section 14. The average weekly wage earnings, wherever
2 earned, of the injured person at the time of the injury, shall
3 be taken as the basis upon which to compute the benefits.
4 The time of injury within the meaning of this section shall
5 be sixty days, six months, or twelve months, immediately pre-
6 ceding the date of the injury, whichever is most favorable
7 to the injured employee.

Article 4.

Section 15 (a). Notwithstanding any other provisions of
2 this chapter, benefits payable under any of the provisions of
3 this chapter and commutation of periodical benefits payable
4 under the provisions of section seventeen of this article to
5 non-resident alien beneficiaries, shall be at the rate of one-half
6 of like benefits or commutation of periodical benefits payable
7 to resident beneficiaries. Non-resident alien beneficiaries
8 within the meaning hereof shall mean persons not citizens
9 of the United States residing outside of the territorial limits
10 of the United States at the time of the injury with respect
11 of which such benefits are paid. In case of such non-resident
12 alien beneficiaries, the commissioner in his discretion may
13 make, and such beneficiaries shall be required to accept,

14 commutation of such benefits into a lump sum settlement and
15 payment at the rate of one-half of like benefits to resident
16 beneficiaries.

Article 4.

Section 17. The commissioner, under special circumstances
2 and when the same is deemed advisable, may commute peri-
3 odical benefits to one or more lump sum payments. Upon the
4 application of any claimant who has received an award of
5 partial or total disability, who is not a citizen of the United
6 States and desires to reside permanently beyond the territorial
7 limits of the United States, or upon the application of an alien
8 dependent of a deceased employee with respect of whose death
9 award of compensation has been made, such dependent resid-
10 ing in the territorial limits of the United States at the time
11 of decedent's death, and desiring to reside permanently be-
12 yond such territorial limits of the United States, the com-
13 missioner may commute into one lump sum payment the
14 periodical payments to which such claimant or dependent
15 would be entitled, but at the rate of one-half the amount that
16 would be payable to a citizen of the United States under like
17 circumstances, and such lump sum payment at the rate afore-

18 said shall discharge all liability with respect of said award,
19 but in no event shall such award be paid until such claimant
20 or dependent shall have actually arrived and domiciled him-
21 self or herself outside the territorial limits of the United
22 States, except a sufficient portion of said award to pay trans-
23 portation and other necessary expenses.

Article 5.

Section 1. The commissioner shall have full power and
2 authority to hear and determine all questions within his
3 jurisdiction, but upon the making or refusing to make any
4 award, or upon the making or refusing to make any modi-
5 fication or change with respect to former findings or orders,
6 as provided by section sixteen, article four of this chapter,
7 the commissioner shall give notice, in writing, to the employ-
8 er, employee, claimant, or dependent, as the case may be, of
9 his action, which notice shall state the time allowed for filing
10 an objection to such finding, and such action of the commis-
11 sioner shall be final unless the employer, employee, claimant
12 or dependent shall, within thirty days after the receipt of
13 such notice, object, in writing, to such finding. Upon re-
14 ceipt of such objection the commissioner shall, within thirty

15 days from the receipt thereof, set a time and place for the
16 hearing of evidence. Any such hearing may be conducted
17 by the commissioner or his duly authorized representative at
18 the county seat of the county wherein the injury occurred,
19 or at any other place which may be agreed upon by the
20 interested parties, and in the event the interested parties
21 cannot agree, and it appears in the opinion of the commis-
22 sioner that the ends of justice require the taking of evidence
23 elsewhere, then at such place as the commissioner may di-
24 rect, having due regard for the convenience of witnesses.
25 Both the employer and claimant shall be notified of such
26 hearing at least ten days in advance, and the hearing shall be
27 held within sixty days after the filing of objection to the
28 commissioner's finding as hereinabove provided, unless such
29 hearing be postponed by agreement of the parties or by the
30 commissioner for good cause. The evidence taken at such
31 hearing shall be transcribed and become part of the record
32 of the proceedings, together with the other records thereof in
33 the commissioner's office. At any time within sixty days
34 after hearing, if the commissioner is of opinion that the
35 facts have not been adequately developed at such hearing, he

36 may order supplemental hearing upon due notice to the
37 parties. After final hearing the commissioner shall, within
38 sixty days, render his decision affirming, reversing or modi-
39 fying his former action, which shall be final: *Provided, how-*
40 *ever,* That the claimant or the employer may apply to the
41 appeal board herein created for a review of such decision;
42 but no appeal or review shall lie unless application therefor
43 be made within thirty days of receipt of notice of the com-
44 missioner's final action, or in any event within sixty days of
45 the date of such final action, regardless of notice.

Article 5.

Section 2. There is hereby created a board to be known as
2 the "Workmen's Compensation Appeal Board," which shall
3 be referred to in this article as the "board," to be composed
4 of three members, none of whom shall be a contributor to the
5 compensation fund or in any way connected with a contributor
6 thereto and none of whom shall be a beneficiary of the com-
7 pensation fund or in any way connected with a beneficiary
8 thereof. Two members of such board shall be of opposite
9 politics to the third, and all three shall be citizens of this
10 state who have resided therein for a period of at least five

11 years. All members of said board shall be appointed by the
12 Governor for a term of six years, except that the persons
13 first appointed under this act shall be appointed to serve, one
14 for two, one for four and one for six years. The Governor is
15 hereby vested with power to remove any member of the
16 board according to section four, article four, chapter six, of
17 this code. The members of such board shall be paid for their
18 services a compensation of twenty dollars per day for each
19 day they are in session, which shall be the total compensation,
20 including any and all expenses, of such member or members.
21 The Governor shall designate one of the members of said
22 board as chairman thereof, and said board shall meet at the
23 capitol or at such other places throughout the state as it may
24 determine in regular sessions to be fixed by the board. No
25 more than six sessions shall be held during any one year and
26 no session shall continue more than twenty consecutive calen-
27 dar days. All clerical services required by the board shall
28 be paid for by the compensation commissioner from any funds
29 at his disposal. The board shall, from time to time, compile
30 and promulgate such rules of practice and procedure as to it
31 shall appear proper for the prompt and efficient discharge of

32 its business, and such rules shall be submitted to the supreme
33 court of appeals for approval, and if approved by said court
34 shall have the same force and effect as the approved rules
35 of procedure of circuit courts.

Article 5.

Section 3. Any employer, employee, claimant, or depend-
2 ent, who shall feel aggrieved at any final action of the com-
3 missioner taken after a hearing held in accordance with the
4 provisions of section one of this article, shall have the right
5 to appeal to the board created in section two of this article
6 for a review of such action. The aggrieved party shall file
7 a written notice of appeal with the compensation commis-
8 sioner, directed to said board, within thirty days after receipt
9 of notice of the action complained of, or in any event, regard-
10 less of notice, within sixty days after the date of the action
11 complained of, and the commissioner shall notify the other
12 party immediately upon the filing of said notice of appeal.
13 The commissioner shall forthwith make up a transcript of
14 the proceedings before him and certify and transmit the
15 same to the board. In such certificate, he shall incorporate
16 a brief recital of the proceedings therein had and recite each

17 order entered and the date thereof. The board shall review
18 the action of the commissioner complained of at its next meet-
19 ing after the filing of notice of appeal, provided said notice
20 of appeal shall have been filed thirty days before said meet-
21 ing of the board, unless such review be postponed by agree-
22 ment of parties or by the board for good cause. The board
23 shall set a time and place for the hearing of arguments on
24 each claim and shall notify the interested parties thereof, and
25 briefs may be filed by the interested parties in accordance
26 with the rules of procedure prescribed by the board. And
27 thereupon, after a review of the case, the board shall sustain
28 the finding of the commissioner or enter such order or make
29 such award as the commissioner should have made and shall
30 thereupon certify the same to the commissioner, who shall
31 proceed in accordance therewith. Or, instead of affirming
32 or reversing the commissioner as aforesaid, the board may,
33 upon motion of either party or upon its own motion, remand
34 said cause to the commissioner for the taking of such new,
35 additional or further evidence as in the opinion of the board
36 may be necessary for a full and complete development of
37 the facts of the case. In the event the board shall remand

38 the cause to the commissioner for the taking of further evi-
39 dence therein, the commissioner shall proceed to take such
40 new, additional or further evidence in accordance with any
41 instructions given by the board, and shall take the same
42 within thirty days after receipt of the order remanding the
43 case, giving to the interested parties at least ten days' notice
44 of such supplemental hearing, unless the taking of evidence
45 shall be postponed by agreement of parties, or by the com-
46 missioner for good cause. After the completion of such sup-
47 plemental hearing the commissioner shall, within sixty days,
48 render his decision affirming, reversing or modifying his
49 former action, which decision shall be appealable to, and
50 proceeded with by the appeal board in like manner as in the
51 first instance. The board may remand any cause as often as
52 in its opinion is necessary for a full development and just
53 decision of the case. The board may take evidence or consider
54 ex parte statements furnished in support of any motion to
55 remand the cause to the commissioner. All evidence taken by
56 or filed with the board shall become a part of the record. All
57 appeals from the action of the commissioner shall be de-
58 cided by said board at the same session at which they are

59 heard, unless good cause for delay thereof be shown and en-
60 tered of record. In all proceedings before the board, either
61 party may be represented by counsel.

Article 5.

Section 4. From any final decision of the board, an appli-
2 cation for review may be prosecuted by either party, or by
3 the commissioner, to the supreme court of appeals within
4 thirty days from the date thereof by the filing of a petition
5 therefor to said court against the board and the adverse
6 party (claimant or employer, as the case may be) as respond-
7 ents, and the clerk of said court shall notify each of said
8 respondents and the commissioner of the filing of such peti-
9 tion. The board shall, within ten days after receipt of
10 such notice, file with the clerk of said court the record of
11 the proceedings had before it, including all the evidence. The
12 court or any judge thereof in vacation may thereupon de-
13 termine whether or not a review shall be granted. And if
14 granted to a non-resident of this state, he shall be required to
15 execute and file with the clerk before such order of review
16 shall become effective, a bond, with security to be approved
17 by the clerk, conditioned to perform any judgment which may

18 be awarded against him thereon. The board may certify to
19 said court and request its decision of any question of law
20 arising upon the record, and withhold its further proceeding
21 in the case, pending the decision of the court on the certified
22 question, or until notice that the court has declined to docket
23 the same. If a review be granted or the certified question be
24 docketed for hearing, the clerk shall notify the board and the
25 parties litigant or their attorneys and the commissioner, of
26 that fact by mail. If a review be granted or the certified
27 question docketed, the case shall be heard by said court in the
28 same manner as in other cases, except that neither the record
29 nor briefs need be printed. Every such review granted or
30 certified question docketed prior to thirty days before the be-
31 ginning of the term, shall be placed upon the docket for such
32 term. The attorney general shall, without extra compensa-
33 tion, represent the board in such cases. The court shall de-
34 termine the matter so brought before it and certify its deci-
35 sion to the board and to the commissioner. The cost of such
36 proceedings on petition, including a reasonable attorney's
37 fee, not exceeding thirty dollars to the claimant's attorney,
38 shall be fixed by the court and taxed against the employer if

39 the latter be unsuccessful, and if the claimant, or the com-
40 missioner (in case the latter be the applicant for review) be
41 unsuccessful, such costs, not including attorney's fees, shall
42 be taxed against the commissioner, payable out of any funds
43 available in his hands, or shall be taxed against the claimant,
44 in the discretion of the court. But there shall be no cost taxed
45 upon a certified question.

Article 5.

Section 5. If any claimant shall employ an attorney to
2 represent him in his claim for compensation while such claim
3 is pending before the commissioner, the appeal board, or the
4 supreme court of appeals, and such attorney shall file with the
5 commissioner an attested copy of his contract of employ-
6 ment with such claimant, it shall be the duty of the com-
7 missioner to protect such attorney in the collection of his
8 fees to the extent hereinafter provided; and if said contract of
9 employment shall not violate the following schedule of fees,
10 the commissioner shall make payment of such fee directly to
11 such attorney out of any award or awards made to the claim-
12 ant. If the claim is finally determined while pending before
13 the commissioner and no appeal is filed therein with the appeal

14 board the attorney fee shall not exceed two hundred dollars; if
15 the claim is finally determined while pending before the appeal
16 board, the attorney fee shall not exceed three hundred fifty
17 dollars; and if the claim is finally determined by the supreme
18 court of appeals, or if an appeal is allowed by said court, then
19 the attorney fee shall not exceed six hundred dollars. In no
20 event shall the commissioner pay aggregate attorney fees of
21 more than six hundred dollars in any one claim, nor shall the
22 commissioner pay aggregate attorney fees of more than
23 twenty-five per cent of the total award of any claim.

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

Carl B. Yarbrough
.....
Chairman Senate Committee

Leopold B. Backer
.....
Chairman House Committee

Originated in the.....

Takes effect.....passage.

Shirley
.....
Clerk of the Senate

W. L. Hance
.....
Clerk of the House of Delegates

Chas. E. Hodge
.....
President of the Senate

J. K. Thomas
.....
Speaker House of Delegates

The within *Approved* this the *18th*

day of *March*, 1937.

Samuel A. Tolson
.....
Governor.

Filed in the office of the Secretary of State
of West Virginia. **MAR 19 1937**

Wm. S. O'BRIEN,
Secretary of State