WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1937

ENROLLED

HOUSE BILL No. 384

(By Mr. )

PASSED March 13, 1937
In Effect 90 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-
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-
Provided. That the chapter shall not apply to employers of employees in domestic or agricultural service, persons prohibited by law from being employed, nor to employees of any employer while employed without the state; nor shall a member of a firm of employers, or any officer of an association or of a corporation employer, including managers, or any elective or appointive official of the state, whose term of office is definitely fixed by law, be deemed an employee within the meaning of this chapter.

The premium and actual expenses in connection with governmental agencies and departments of the state of West Virginia, shall be paid out of the state treasury from appropriations made for such agencies and departments, in the same manner as other disbursements are made by such agencies and departments, and such premiums of state agencies and departments shall be paid into the fund in the same manner as herein provided for other employers subject to this chapter.

Any employer whose employment in this state is to be for a definite or limited period, which could not be considered "regularly employing" within the meaning of this section, may elect to pay into the workmen’s compensation fund the
premises herein provided for, and at the time of making
application to the commissioner such employer shall furnish
a statement under oath showing the probable length of time
the employment will continue in this state, the character of
the work, an estimate of the monthly payroll, and any other
information which may be required by the commissioner.
At the time of making application such employer shall de-
posit with the state compensation commissioner to the credit
of the workmen’s compensation fund the amount required
by section five of this article, which amount shall be returned
to such employer, if his application be rejected by the com-
missioner. Upon notice to such employer of the acceptance
of his application by the commissioner, he shall be an em-
ployer within the meaning of this chapter and subject to all
of its provisions.
Any foreign corporation employer electing to comply with
the provisions of this chapter and to receive the benefits here-
under, shall, at the time of making application to the com-
missioner, in addition to other requirements of this chapter,
furnish such commissioner with a certificate from the secre-
tary of state showing that it has complied with all the re-
quirements necessary to enable it legally to do business in this state, and no application of such foreign corporation employer shall be accepted by the commissioner until such certificate is filed.

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

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

Article 2.

Sec. 4. Classification of Industries; Accounts By Commissioner; Rate of Premiums. The commissioner shall distribute into groups or classes the industries subject to this chapter, in accordance with the nature of the business and the degree of hazard incident thereto. And the commissioner shall have
power, in like manner, to reclassify such industries into
groups or classes at any time, and to create additional groups
or classes. The commissioner may make necessary expendi-
tures to obtain statistical and other information to establish
the classes provided for in this section.

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

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

It shall be the duty of the commissioner to fix and maintain
the lowest possible rates of premiums consistent with the
maintenance of a solvent workmen's compensation fund and
the creation and maintenance of a reasonable surplus in each
group after providing for the payment to maturity of all
liability incurred by reason of injury or death to employees
entitled to benefits under the provisions of this chapter. A
readjustment of rates shall be made yearly on the first day
of July, or at any time the same may become necessary. The
determination of the lowest possible rates of premiums with-
in the meaning hereof and of the existence of any surplus or
deficit in the fund, shall be predicated solely upon the ex-
perience and statistical data compiled from the records and
files in the commissioner's office under this and prior work-
men's compensation laws of this state for the period from
the first day of June, one thousand nine hundred thirteen, to
the nearest practicable data prior to such adjustment: Pro-
vided, however, That any expected future return, in the na-
ture of interest or income from invested funds, shall be predi-
cated upon the average realization from investments to the
credit of the compensation fund for the two years next pre-
ceding. Any reserves set up for future liabilities and any
commutation of benefits shall likewise be predicated solely up-
on prior experience under this and preceding workmen's
compensation laws and upon expected realization from in-
vestments determined by the respective past periods, as
aforesaid.

The commissioner may fix a rate of premiums applicable
alike to all subscribers forming a group or class, and such
rates shall be determined from the record of such group or
class shown upon the books of the commissioner: Provided,
That if any group has a sufficient number of employers
with considerable difference in their degrees of hazard, the
commissioner may fix a rate for each subscriber of such
group, such rate to be based upon the subscriber's record
on the books of the commissioner for the twelve months last
ending June thirtieth of the year in which the rate is to be-
come effective; and the liability part of such record shall in-
clude such cases as have been acted upon by the commissioner
during such twelve months' period, irrespective of the date
the injury was received; and any subscriber in a group so
rated, whose record for such twelve months' period cannot be
obtained, shall be given a rate based upon his record for any
part of such period or such rate as may be deemed just and equitable by the commissioner; and the commissioner shall have authority to fix a reasonable minimum and maximum for any group to which this individual method of rating is applied, and to add to the rate determined from the subscriber's record such amount as necessary to liquidate any deficit in the schedule or to create a reasonable surplus.

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

**Article 2.**

Sec. 8. *Election Not to Pay a Default in Payment of Premiums; Defenses Prohibited.* All employers subject to this chapter (except the state of West Virginia and political subdivisions thereof) who shall not have elected to pay into the workmen's compensation fund the premiums provided by
this chapter and have not elected to pay individually and di-
rectly or from benefit funds, compensation and expenses to
injured employees or fatally injured employees' dependents
under the provisions of section nine, article two of this chap-
ter, or, having so elected, shall be in default in the payment of
the same or not having otherwise fully complied with the pro-
visions of section five or section nine of this article, shall be
liable to their employees (within the meaning of this article)
for all damages suffered by reason of accidental personal in-
juries or accidental death sustained in the course of and re-
sulting from their employment, and in any action by any
such employee or personal representative thereof, such de-
fendant shall not avail himself of the following common law
defenses: The defense of the fellow-servant rule; the de-
fense of the assumption of risk; or the defense of contribu-
tory negligence; and further, shall not avail himself of any
defense that the negligence in question was that of someone
whose duties are prescribed by statute, provided no action
shall lie, and no recovery shall be had, against casual em-
ployers as hereinafter defined, without allegation and proof
that such accidental personal injuries or accidental death
were caused by the wrongful act, neglect or default of the employer, or any of the employer's officers, agents or employees. Casual employers within the meaning hereof shall be those employing at the time of such accidental personal injuries or accidental death, in and about the operation or work in which such accidental injuries or death occurred, less than ten employees, and those employers employing more than ten employees, who have not conducted the operation or business in which accidental injuries or death occurred, for more than sixty days prior to such accidental injuries or death.

Article 4.

Section 2. Disbursement Where Injury is Self-inflicted or Intentionally Caused by Employer; Rules and Safety Appliances. Notwithstanding anything hereinbefore or hereinafter contained, no employee or dependent of any employee shall be entitled to receive any sum from the workmen's compensation fund, or to direct compensation from any employer making the election and receiving the permission mentioned in section nine, article two of this chapter, or otherwise under the provisions of this chapter, on account of any personal injury to or death of any employee caused by a self-inflicted
injury, wilful misconduct, wilful disobedience to such rules
and regulations as may be adopted by the employer and ap-
proved by the commissioner, and which rules and regulations
have been and are kept posted in conspicuous places in and
about the work, or the intoxication of such employee, or the
failure of such employee to use or make use of any protective
or safety appliance or appliances prescribed by the commis-
sioner and furnished by the employer for the use of or ap-
plicable to such employee. For the purpose of this chapter
and to prevent accidents to employees, the commissioner may
require all employers to adopt rules, which have been ap-
proved by him, for the protection and safety of their em-
ployees and keep the same posted in conspicuous places in
and about the work; and the commissioner may require em-
ployers to install, use or adopt such protective or safety ap-
pliance or appliances as in the commissioner's opinion are
necessary for the protection of the employees. If injury or
death result to any employee from the deliberate intention
of his employer to produce such injury or death, the em-
ployee, the widow, widower, child or dependent of the em-
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, surgi-
2 cal, 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
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-
and the claimant and employer, respectively, shall each have the right to select a physician of his or its own choosing and at his or its own expense to participate in such examination. The claimant and employer shall, respectively, be furnished with a copy of the report of examination made by the medical examiner selected by the commissioner. The claimant shall also be entitled to reasonable traveling and other expenses necessarily incurred by him in obeying said order, which shall be paid out of the amount allowed under this chapter for medical, surgical, dental and hospital treatment. The respective physicians selected by the claimant and employer shall have the right to concur in any report made by the medical examiner selected by the commissioner, or each may file with the commissioner a separate report. Any report filed by the physician of the claimant or the physician of the employer shall be considered by the commissioner in passing upon the claim.

Article 4.

Section 9. In cases where an employee has sustained a permanent disability, or has sustained injuries likely to result in permanent disability, and such fact has been determined by
the commissioner, and the employee can be physically and
vocationally rehabilitated and returned to remunerative em-
ployment by vocational training, by the use of crutches, arti-
ficial 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.

Article 4.

Section 9 (a). Where an employee in the course of and re-
sulting from his employment has suffered the loss, or loss of
use of a hand, arm, foot, leg or eye, and receives, in the course
of and resulting from his employment while employed by the
same employer, injury resulting in total permanent disability,
the commissioner in estimating the total cost of such perma-
ent total disability shall allow the subscriber credit on his
account for the partial permanent disability already received.
9 Where an employee, in the course of and resulting from 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 and resulting from his employment while employed by another employer, resulting in total permanent disability, the cost of such total permanent disability shall be paid by the commissioner out of any funds in his hands and at his disposal, after charging to said last employer an amount equal to the partial permanent disability attributable to the last injury, independently of the pre-existing impairment.

Article 4.

Section 9 (b). Where an employee has a definitely ascertainable physical impairment originating otherwise than from an injury received in the course of and resulting from employment, such impairment, and the effect thereof, in case of injury as hereinafter set forth and any aggravation thereof on account of such injury, may be waived by said employee, notwithstanding any other provisions of this chapter, but such waiver shall be in the manner hereinafter provided. If said physical impairment shall be so waived, then in the event that
such employee shall thereafter receive an injury in the course
of and resulting from his employment, such physical impair-
ment, and the effects thereof, and any aggravation thereof,
shall not be taken into consideration in fixing the amount of
compensation allowed by reason of such injury, and such com-
pensation shall be awarded only in the amount that would
have been allowable had such employee not had such pre-
eexisting physical impairment. A waiver, in order to be valid
under this section, shall meet the following requirements:
(1) It shall be in writing, signed prior to injury by the em-
ployee, and either acknowledged before an officer duly quali-
ified to administer oaths in this state, or be witnessed by two
persons, neither of whom shall be the employer, or any officer
or director of employer; (2) it shall be accompanied by a
certificate of a duly licensed physician of this state or of
another state, not connected with the employer, which certifi-
cate shall contain a statement that such physician has exam-
ined the said employee, has found such impairment to exist,
that such impairment is definitely ascertainable, and a state-
ment of the character and nature of such impairment.

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

Article 4.

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

Article 4.

Section 17. The commissioner, under special circumstances and when the same is deemed advisable, may commute periodical benefits to one or more lump sum payments. Upon the application of any claimant who has received an award of partial or total disability, who is not a citizen of the United States and desires to reside permanently beyond the territorial limits of the United States, or upon the application of an alien dependent of a deceased employee with respect of whose death award of compensation has been made, such dependent residing in the territorial limits of the United States at the time of decedent's death, and desiring to reside permanently beyond such territorial limits of the United States, the commissioner may commute into one lump sum payment the periodical payments to which such claimant or dependent would be entitled, but at the rate of one-half the amount that would be payable to a citizen of the United States under like circumstances, and such lump sum payment at the rate afore-
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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
days from the receipt thereof, set a time and place for the hearing of evidence. Any such hearing may be conducted by the commissioner or his duly authorized representative at the county seat of the county wherein the injury occurred, or at any other place which may be agreed upon by the interested parties, and in the event the interested parties cannot agree, and it appears in the opinion of the commissioner that the ends of justice require the taking of evidence elsewhere, then at such place as the commissioner may direct, having due regard for the convenience of witnesses. Both the employer and claimant shall be notified of such hearing at least ten days in advance, and the hearing shall be held within sixty days after the filing of objection to the commissioner’s finding as hereinabove provided, unless such hearing be postponed by agreement of the parties or by the commissioner for good cause. The evidence taken at such hearing shall be transcribed and become part of the record of the proceedings, together with the other records thereof in the commissioner’s office. At any time within sixty days after hearing, if the commissioner is of opinion that the 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
years. All members of said board shall be appointed by the Governor for a term of six years, except that the persons first appointed under this act shall be appointed to serve, one for two, one for four and one for six years. The Governor is hereby vested with power to remove any member of the board according to section four, article four, chapter six, of this code. The members of such board shall be paid for their services a compensation of twenty dollars per day for each day they are in session, which shall be the total compensation, including any and all expenses, of such member or members. The Governor shall designate one of the members of said board as chairman thereof, and said board shall meet at the capitol or at such other places throughout the state as it may determine in regular sessions to be fixed by the board. No more than six sessions shall be held during any one year and no session shall continue more than twenty consecutive calendar days. All clerical services required by the board shall be paid for by the compensation commissioner from any funds at his disposal. The board shall, from time to time, compile and promulgate such rules of practice and procedure as to it shall appear proper for the prompt and efficient discharge of
its business, and such rules shall be submitted to the supreme
court of appeals for approval, and if approved by said court
shall have the same force and effect as the approved rules
of procedure of circuit courts.

Article 5.

Section 3. Any employer, employee, claimant, or depend-
ent, who shall feel aggrieved at any final action of the com-
misiner taken after a hearing held in accordance with the
provisions of section one of this article, shall have the right
to appeal to the board created in section two of this article
for a review of such action. The aggrieved party shall file
a written notice of appeal with the compensation commis-
sioner, directed to said board, within thirty days after receipt
of notice of the action complained of, or in any event, regard-
less of notice, within sixty days after the date of the action
complained of, and the commissioner shall notify the other
party immediately upon the filing of said notice of appeal.
The commissioner shall forthwith make up a transcript of
the proceedings before him and certify and transmit the
same to the board. In such certificate, he shall incorporate
a brief recital of the proceedings therein had and recite each
order entered and the date thereof. The board shall review
the action of the commissioner complained of at its next meet-
ing after the filing of notice of appeal, provided said notice
of appeal shall have been filed thirty days before said meet-
ing of the board, unless such review be postponed by agree-
ment of parties or by the board for good cause. The board
shall set a time and place for the hearing of arguments on
each claim and shall notify the interested parties thereof, and
briefs may be filed by the interested parties in accordance
with the rules of procedure prescribed by the board. And
thereupon, after a review of the case, the board shall sustain
the finding of the commissioner or enter such order or make
such award as the commissioner should have made and shall
thereupon certify the same to the commissioner, who shall
proceed in accordance therewith. Or, instead of affirming
or reversing the commissioner as aforesaid, the board may,
upon motion of either party or upon its own motion, remand
said cause to the commissioner for the taking of such new,
additional or further evidence as in the opinion of the board
may be necessary for a full and complete development of
the facts of the case. In the event the board shall remand
the cause to the commissioner for the taking of further evi-

dence therein, the commissioner shall proceed to take such

new, additional or further evidence in accordance with any

instructions given by the board, and shall take the same

within thirty days after receipt of the order remanding the
case, giving to the interested parties at least ten days’ notice

of such supplemental hearing, unless the taking of evidence

shall be postponed by agreement of parties, or by the com-

missioner for good cause. After the completion of such sup-

plemental hearing the commissioner shall, within sixty days,

render his decision affirming, reversing or modifying his

former action, which decision shall be appealable to, and

proceeded with by the appeal board in like manner as in the

first instance. The board may remand any cause as often as

in its opinion is necessary for a full development and just

decision of the case. The board may take evidence or consider

ex parte statements furnished in support of any motion to

remand the cause to the commissioner. All evidence taken by

or filed with the board shall become a part of the record. All

appeals from the action of the commissioner shall be de-

cided by said board at the same session at which they are
heard, unless good cause for delay thereof be shown and entered of record. In all proceedings before the board, either party may be represented by counsel.

**Article 5.**

Section 4. From any final decision of the board, an application for review may be prosecuted by either party, or by the commissioner, to the supreme court of appeals within thirty days from the date thereof by the filing of a petition therefor to said court against the board and the adverse party (claimant or employer, as the case may be) as respondents, and the clerk of said court shall notify each of said respondents and the commissioner of the filing of such petition. The board shall, within ten days after receipt of such notice, file with the clerk of said court the record of the proceedings had before it, including all the evidence. The court or any judge thereof in vacation may thereupon determine whether or not a review shall be granted. And if granted to a non-resident of this state, he shall be required to execute and file with the clerk before such order of review shall become effective, a bond, with security to be approved by the clerk, conditioned to perform any judgment which may
be awarded against him thereon. The board may certify to
said court and request its decision of any question of law
arising upon the record, and withhold its further proceeding
in the case, pending the decision of the court on the certified
question, or until notice that the court has declined to docket
the same. If a review be granted or the certified question be
docketed for hearing, the clerk shall notify the board and the
parties litigant or their attorneys and the commissioner, of
that fact by mail. If a review be granted or the certified
question docketed, the case shall be heard by said court in the
same manner as in other cases, except that neither the record
nor briefs need be printed. Every such review granted or
certified question docketed prior to thirty days before the be-
ginning of the term, shall be placed upon the docket for such
term. The attorney general shall, without extra compensa-
tion, represent the board in such cases. The court shall de-
termine the matter so brought before it and certify its deci-
sion to the board and to the commissioner. The cost of such
proceedings on petition, including a reasonable attorney's
fee, not exceeding thirty dollars to the claimant's attorney,
shall be fixed by the court and taxed against the employer if
the latter be unsuccessful, and if the claimant, or the com-
missioner (in case the latter be the applicant for review) be
unsuccessful, such costs, not including attorney’s fees, shall
be taxed against the commissioner, payable out of any funds
available in his hands, or shall be taxed against the claimant,
in the discretion of the court. But there shall be no cost taxed
upon a certified question.

Article 5.

Section 5. If any claimant shall employ an attorney to
represent him in his claim for compensation while such claim
is pending before the commissioner, the appeal board, or the
supreme court of appeals, and such attorney shall file with the
commissioner an attested copy of his contract of employ-
ment with such claimant, it shall be the duty of the com-
missioner to protect such attorney in the collection of his
fees to the extent hereinafter provided; and if said contract of
employment shall not violate the following schedule of fees,
the commissioner shall make payment of such fee directly to
such attorney out of any award or awards made to the claim-
ant. If the claim is finally determined while pending before
the commissioner and no appeal is filed therein with the appeal
board the attorney fee shall not exceed two hundred dollars; if
the claim is finally determined while pending before the appeal
board, the attorney fee shall not exceed three hundred fifty
dollars; and if the claim is finally determined by the supreme
court of appeals, or if an appeal is allowed by said court, then
the attorney fee shall not exceed six hundred dollars. In no
event shall the commissioner pay aggregate attorney fees of
more than six hundred dollars in any one claim, nor shall the
commissioner pay aggregate attorney fees of more than
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.

Chairman Senate Committee

Chairman House Committee

Originated in the

Takes effect

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