WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1939

ENROLLED

HOUSE BILL No. 157
(Originating in the Committee on the Judiciary)
(By Mr. ________________________________)

PASSED March 14, 1939

In Effect from Passage
ENROLLED

COMMITTEE SUBSTITUTE FOR

House Bill No. 157

(Originating in the Committee on the Judiciary)

(Passed March 11, 1939; in effect from passage.)

AN ACT to amend and reenact sections one, four, five, ten and eleven, article one, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, sections one and five (including certain misdemeanors and penalties for violations of said section five as hereby amended and reenacted), article two of said chapter of said code, sections one, six, nine-b, ten, fifteen, fifteen-a, sixteen and eighteen, article four of said chapter of said code, and to add (following present section nineteen) a new section to article four of said chapter of said code, to be known as section twenty, and to amend and reenact sections one, two, three and five, article five of said chapter of said code, and to add (following section one) four
new sections to article five of said chapter of said code, to be known, respectively, as sections one-a, one-b, one-c and one-d, 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, five, ten and eleven, article one, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, be amended and reenacted; that sections one and five (including certain misdemeanors and penalties for violations of said section five as hereby amended and reenacted), article two of said chapter of said code, be amended and reenacted; that sections one, six, nine-b, ten, fifteen, fifteen-a, sixteen and eighteen, article four of said chapter of said code, be amended and reenacted; that a new section be added (following present section nineteen) to article four of said chapter of said code, to be known as section twenty; that sections one, two, three and five, article five of said chapter of said code, be amended and reenacted; and that (following section one) four new sections be added to article five of said chapter of said code, to be known, respectively, as sections one-a, one-b, one-c and one-d, the foregoing, respectively, to read as follows:
Article 1.

Section 1. There shall be a state compensation commis-

tioner who shall be a citizen of this state entitled to vote and

shall be appointed by the governor by and with the advice

and consent of the senate. The compensation commissioner in

office on the date this code takes effect, unless sooner re-

moved, continue to serve until his term expires and his suc-

cessor has been appointed and has qualified. On or before the

first day of June, nineteen hundred thirty-five, and on or

before the first day of June of each sixth year thereafter, the

governor shall appoint a compensation commissioner to serve

for a term of six years commencing on said first day of June.

An appointment may be made to fill a vacancy or otherwise

when the senate is not in session, but shall be acted upon at

the next session thereof. The person so appointed shall take

the oath or affirmation prescribed by section five of article

four of the Constitution, and such oath shall be certified by

the person who administers the same and shall be filed in the

office of the secretary of state. He shall give bond in the pen-

alty of twenty-five thousand dollars conditioned for the faith-

ful performance of the duties of his office, which bond shall be
approved by the attorney general as to form, and by the governor as to sufficiency. The surety of such bond may be a bonding or surety company, in which case the premiums shall be paid out of the appropriation made for the administration of this chapter. The commissioner shall hold no position of trust or profit, or engage in any occupation or business, interfering or inconsistent with his duties as such commissioner.

The commissioner shall receive an annual salary of six thousand dollars, payable in the same manner as the salaries of other state officers are paid and charged to the appropriations which shall be made from time to time hereafter by the state for the administration of this chapter. The commissioner shall have an official seal for the authentication of his orders and proceedings, upon which seal shall be engraved the words, "West Virginia Compensation Commissioner", and such other design as the commissioner may prescribe. The courts in this state shall take judicial notice of the seal of the commissioner, and in all cases copies of orders, proceedings or records in the offices of the West Virginia compensation commissioner, certified by the secretary of the commissioner under his seal, shall be equal to the original in evidence.
The attorney general shall perform all legal services required by the commissioner under the provisions of this chapter: Provided, however, That in any case in which an application for review is prosecuted by the commissioner from any final decision of the workmen's compensation appeal board to the supreme court of appeals, as provided by section four, article five of this chapter, the commissioner may designate a regular employee of his office, qualified to practice before the said court, to represent him upon the said appeal, and in no case shall the person so appearing for the commissioner before the court receive remuneration therefor other than his regular salary.

Sec. 4. The offices of the commissioner shall be open for the transaction of business between the hours of nine o'clock a. m., and five o'clock p. m., of each and every day excepting Saturdays after twelve o'clock noon, Sundays and legal holidays, and be in charge of his secretary or some other competent person. All proceedings of the commissioner shall be shown on his record of proceedings, which shall be a public record and shall contain a record of each case considered and the award with respect thereto and of all salaries allowed to any
Sec. 5. The commissioner shall keep and maintain his office at the seat of government, and shall provide a suitable room or rooms, necessary office furniture, supplies, books, periodicals, maps and other equipment. After due notice, showing the time and place, the commissioner may hold hearings anywhere within the state, or elsewhere by agreement of claimant and employer, with the approval of the commissioner.

Sec. 10. Each officer who serves such subpoenas shall receive the same fee as a sheriff, and each witness who appears in obedience to a subpoena before the commissioner, or an inspector, or an examiner, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in the circuit court, which shall be audited and paid out of the workmen's compensation fund in the same manner as other expenses are audited and paid, if such witness was subpoenaed without the request of either claimant or employer at the instance of the commissioner or an inspector or an examiner. The witness fees and mileage of any witnesses subpoenaed by,
or at the instance of, either claimant or employer shall be paid
by the party who subpoenaes such witness.

Sec. 11. In an investigation, the commissioner may cause
depositions of witnesses residing within or without the state
to be taken in the manner prescribed by law for like depo-
sitions as provided for transcripts in the circuit court, but such
depositions shall be upon reasonable notice to claimant and
employer or their respective attorneys. The commissioner
shall also have discretion to accept and consider depositions
taken outside the state by either the claimant or employer,
provided due and reasonable notice of the taking of such de-
positions was given to the other party, claimant or employer,
as the case may be, or their respective attorneys, provided
however, The commissioner, upon due notice both to the em-
ployer and claimant, shall have authority to refuse to permit
the taking of such depositions or to reject such depositions
after the taking thereof, if in his opinion they were taken at
such place or under such circumstances as imposed an undue
burden or hardship upon the opposite party, and the commis-
sioner's discretion to accept, refuse to approve, or reject such
depositions shall be binding in the absence of abuse of such
discretion.

Article 2.

Section 1. The State of West Virginia and all govern-
mental agencies or departments created by it are hereby re-
quired to subscribe to, and pay premiums into the workmen's
compensation fund for the protection of their employees, and
shall be subject to all requirements of this act, and all rules
and regulations prescribed by the commissioner with ref-
erence to rates, classifications and premium payments.

All persons, firms, associations and corporations regu-
larly employing other persons for the purpose of carry-
ing on any form of industry or business in this state,
are employers within the meaning of this chapter and
subject to its provisions. All persons in the service of
employers as herein defined, and employed by them for
the purpose of carrying on the industry, business or
work in which they are engaged, including persons reg-
ularly employed in the state whose duties necessitate tem-
porary employment by the same employer without the
state of a temporary or transitory nature, and check-
weighmen employed according to law, and all members of rescue teams assisting in mine accidents with the consent of the owner who, in such case, shall be deemed the employer, or at the direction of the chief of the department of mines, are employees within the meaning of this chapter and subject to its provisions. 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, except in case of temporary employment without the state, as hereinbefore defined; 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 agen-
cies 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 premiums 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 deposit 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 commissioner. Upon notice to such employer of the acceptance of his application by the commissioner, he shall be an employer 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 hereunder, shall, at the time of making application to the commissioner, in addition to other requirements of this chapter, furnish such commissioner with a certificate from the secretary of state showing that it has complied with all the requirements 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.

Sec. 5. For the purpose of creating a workmen's compensation fund each employer subject to this chapter shall pay the premiums of liability based upon and being such a percentage of the payroll of such employer as may have been determined by the commissioner and be then in effect. The premiums shall be paid monthly, on or before the twentieth of each month, for the preceding month, and shall be the prescribed percentage of the total earnings of all employees within the meaning of this chapter, for such preceding month. The minimum premium to be paid by any employer for any month shall be fifty cents. The premiums and deposits provided for in this chapter shall be paid by the employers to the state compensation commissioner, who shall issue receipts for all sums so received, mailing the original to the person, firm or corporation paying the same, transmitting a copy thereof to the state treasurer and state auditor, and retaining a copy for his own records. All sums received by the state compensation commissioner as herein provided shall be deposited in the state treasury to the credit
of the workmen’s compensation fund in the manner now
prescribed by law for depositing money in the state
treasury. Each employer shall make a payroll report
to the commissioner on or before the twentieth of each
month for the preceding month, and such report
shall be on the form or forms prescribed by the
commissioner, and furnish all information required by
him.

Failure to pay premiums as herein provided or to make the
monthly payroll reports required by the commissioner shall
deprive the employer so delinquent of the benefits and pro-
tection afforded by this chapter, and shall automatically ter-
minate the election of such employer to pay into the work-
men’s compensation fund as herein provided, and such em-
ployer shall be liable to his employees as provided in section
eight of this article; and the commissioner shall not be re-
quired to notify the delinquent employer of such termination,
but he shall notify the employees of such employer by written
notice posted as hereinafter provided for in this section. The
termination of election of such delinquent employer shall date
from twelve o’clock p. m., of the last day of the month in
which he fails to pay the premiums or make payroll reports, as above provided, for the preceding month.

The employer so delinquent may be reinstated upon application under such terms as are prescribed by this chapter and by the commissioner hereunder, after the payment into the workmen’s compensation fund of all unpaid premiums, penalties and charges. Such reinstatement shall be in effect from and after the date that the new application is accepted by the commissioner: Provided, however, That such delinquent employer shall be entitled to the benefits and protection of this chapter until twelve o’clock p. m., of the last day of the month immediately succeeding the month in which his election is terminated, and his employees shall be entitled to compensation for injuries received during such period, but not thereafter unless such delinquent employer becomes reinstated as herein provided.

Any employer hereafter electing to avail himself of the benefits of this chapter shall at the time of making application to the commissioner deposit in the workmen’s compensation fund an amount estimated to be equal to the amount of the premiums which shall be paid by him for the next succeeding
two months. Any employer whose deposit is less than the amount of his premiums for the last two months shall, upon written request from the commissioner mailed to his address as carried upon the books of the commissioner, by twelve o'clock p. m. of the twentieth of the month in which request is mailed, pay to the commissioner a sum sufficient to make his deposit at least equal to the amount of his premiums for the last two preceding months, and failure of any employer to comply with such written request within the time specified shall deprive him of the benefits and protection afforded by this chapter, and shall automatically terminate his election to pay into the workmen's compensation fund as herein provided, and such employer shall be liable to his employees as provided in section eight of this article; and the commissioner shall not be required to notify the delinquent employer of such termination, but he shall notify the employees of such employer by written notice posted as hereafter provided for in this section. The termination of election of such employer shall date from twelve o'clock p. m. of the last day of the month in which he is notified by the commissioner that his deposit is not equal to the sum of his premium for the last two preceding months.
Such employer may be reinstated upon application under such terms as are prescribed by this chapter and the rules of the commissioner. The deposit hereinbefore described shall be credited to the employer's account on the books of the commissioner and used to pay premiums and any other sums due the fund when such employer becomes delinquent in the payment of the same.

Upon withdrawal from the fund or termination of election of any employer, he shall be refunded the balance due him of his deposit, after deducting all amounts owed by him to the workmen's compensation fund, and the commissioner shall notify the employees of such employer of said termination in such manner as he may deem best and sufficient.

Notices to employees in this section provided for shall be given by posting written notice that the employer is delinquent under the compensation law of West Virginia, and that neither the employer nor the employees of such employer are protected by said law as to any accidents happening after the date specified in said notice. Such notice shall be in the form prescribed by the commissioner and shall be posted in a conspicuous place at the chief works of the employer, as the
same appear in records of the commissioner. If the said chief
works of the employer cannot be found or identified, then said
notice shall be posted at the front door of the court house of the
county in which said chief works are located, according to the
records in the commissioner's office. Any person who shall,
prior to the reinstatement of the said employer, as hereinbefore
provided for, or prior to sixty days after the posting of said
notice, whichever shall first occur, remove, deface or render
illegible the said notice, shall be guilty of a misdemeanor,
and upon conviction thereof shall be fined not to exceed five
hundred dollars, and the said notice shall state this provision
upon its face. The commissioner may require any sheriff,
deputy sheriff, constable, or other official of the State of West
Virginia, who may be authorized to serve civil process, to post
such notice and to make return thereof of the fact of such post-
ing to the commissioner, and any failure of such officer to
post any notice within ten days after he shall have received
the same from the commissioner, without just cause or excuse,
shall constitute a wilful failure or refusal to perform a duty
required of him by law within the meaning of section 28, article
5, chapter 61 of the Official Code of West Virginia. Any per-
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son actually injured by reason of such failure shall have an
action against said official, and upon any official bond he may
have given, for such damages as such person may actually have
incurred, but not to exceed, in the case of any surety upon
said bond, the amount of the penalty of said bond. Any official
posting said notice as herein required shall be entitled to the
same fee as is now or may hereafter be provided for the service
of process in suits instituted in courts of record in the State
of West Virginia, which fee shall be paid by the commissioner
out of any funds at his disposal, but shall be charged by him
against the account of the employer to whose delinquency such
notice relates.

Article 4.

Sec. 1. Subject to the provisions and limitations elsewhere
in this chapter set forth, the commissioner shall disburse
the workmen's compensation fund to the employees of such
employers as are not delinquent in the payment of premiums
for the month in which the injury occurs, and who have other-
wise complied fully with the provisions of this chapter, and
which employees shall have received personal injuries in the
course of and resulting from their employment in this state, or
in temporary employment without the state, as defined and limited by section 1, article 2 of this chapter, or to the dependents, if any, of such employees in case death has ensued, according to the provisions hereinafter made; and also for the expenses of the administration of this chapter, as provided in section two, article one of this chapter.

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

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

(b) Subdivision (a) shall be limited as follows: Aggregate award for a single injury causing temporary disability shall be for a period not exceeding fifty-two weeks: Provided, That in case an injured employee, by reason of having an ununited fracture or having undergone a surgical operation to correct a vicious union following a fracture, or for the repair of an ununited fracture, or having suffered an injury to the spine
or pelvic bones which is of a temporary nature, or for any ankylose joint, is disabled for a longer period than fifty-two weeks, the period during which compensation shall be paid may be, but shall not exceed, seventy-eight weeks;

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

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

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

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

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

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

For a thirty per cent disability, sixty-six and two-thirds per cent of the average weekly earnings for a period of one hundred and twenty weeks.

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

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

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

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

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

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

For a disability from eighty-five to one hundred per cent,
sixty-six and two thirds per cent of the average weekly earn-
ings during the remainder of life.

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

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

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

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

The loss of other toes shall be considered a four per cent
disability,
The loss of other toes (one phalange) shall be considered a two per cent disability,
The loss of all toes shall be considered a twenty-five per cent disability,
The loss of fore part of foot shall be considered a thirty per cent disability,
The loss of foot shall be considered a thirty-five per cent disability,
The loss of leg shall be considered a forty-five per cent disability,
The loss of thigh shall be considered a fifty per cent disability,
The loss of thigh at hip joint shall be considered a sixty per cent disability,
The loss of little or fourth finger (one phalange) shall be considered a three per cent disability,
The loss of little or fourth finger shall be considered a five per cent disability,
The loss of ring or third finger (one phalange) shall be considered a three per cent disability,
The loss of ring or third finger shall be considered a five per cent disability,
The loss of middle or second finger (one phalange) shall be considered a three per cent disability,
The loss of middle or second finger shall be considered a seven per cent disability,
The loss of index or first finger (one phalange) shall be considered a six per cent disability,
The loss of index or first finger shall be considered a ten per cent disability,
The loss of thumb (one phalange) shall be considered a twelve per cent disability,
The loss of thumb shall be considered a twenty per cent disability,
The loss of thumb and index finger shall be considered a thirty-two per cent disability,
The loss of index and middle finger shall be considered a twenty per cent disability,
The loss of middle and ring finger shall be considered a fifteen per cent disability,
The loss of ring and little finger shall be considered a ten per cent disability,
The loss of thumb, index and middle finger shall be considered a forty per cent disability,
The loss of index, middle and ring finger shall be considered a thirty per cent disability,
The loss of middle, ring and little finger shall be considered a twenty per cent disability,
The loss of four fingers shall be considered a thirty-two per cent disability,
The loss of hand shall be considered a fifty per cent disability,
The loss of forearm shall be considered a fifty-five per cent disability,
The loss of an arm shall be considered a sixty per cent disability;
(e) The total and irrecoverable loss of the sight of one eye shall be considered a thirty-three per cent disability, and the injured employee shall be entitled to compensation for a period of one hundred and thirty-two weeks;
For the partial loss of vision in one, or both eyes, the per-
percentage of disability shall be determined by the commissioner,
using as a basis the total loss of one eye;
Should a claimant to whom has been made a permanent par-
tial award of less than eighty-five per cent for one of the
specific disabilities as set forth in subdivision (d) and subdi-
vision (e) hereof die from sickness or non-compensable injury,
the unpaid balance of such award shall be paid to claimant’s
dependents as defined in this chapter, if any; such payment
to be in the same installments that would have been paid to
claimant if living: Provided, however, That no payment shall
be made to any widow of such claimant after her remarriage
but this liability shall not accrue to the estate of such claimant
and shall not be subject to any debts of, or charges against,
said estate.
(f) The award for permanent disabilities intermediate to
those fixed by the foregoing schedule and permanent disability
of from two per cent to eighty-five per cent shall be in the
same proportion and shall be computed and allowed by the
commissioners;
(g) The percentage of all permanent disabilities other than
those enumerated in subdivisions (e), (d), (e), and (f) of
this section shall be determined by the commissioner, using as a basis the loss of an arm at or above the elbow, and award made in accordance with the schedule in subdivision (c);

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

(i) Where an injury results in temporary total disability for which compensation is awarded under subdivision (a) of this section, and such injury is later determined permanent partial disability under subdivision (c), the amount of compensation so paid shall be considered as payment of the compensation payable for such injury in accordance with the schedule in subdivision (c). Compensation under this section shall be payable only to the injured employee, and the right thereto shall not vest in his or her estate; except that such compensation as may have accrued to the date of his or her death shall be paid to the dependents of such injured employee, if there be such dependents at the time of death;

(j) The following permanent disabilities shall be conclusively presumed to be total in character:

180 Loss of both eyes or the sight thereof,
181 Loss of both hands or the use thereof,
182 Loss of both feet or the use thereof,
183 Loss of one hand and one foot,
184 Any injury resulting in total disability.

185 In all other cases permanent disability shall be determined
186 by the commissioner in accordance with the facts in the case,
187 and award made in accordance with the schedule in sub-
188 division (c); Provided, That the claimant shall have the right
189 of appeal from the decision of the commissioner as provided
190 by article five of this chapter.

Sec. 9. (b) Where an employee has a definitely ascertainable
2 physical impairment originating as hereafter set forth in this
3 section, such impairment, and the effect thereof, in case of
4 injury as hereinafter set forth and any aggravation thereof on
5 account of such injury, may be waived by said employee, not-
6 withstanding any other provisions of this chapter, but such
7 waiver shall be in the manner hereinafter provided. If said
8 physical impairment shall be so waived, then in the event that
9 such employee shall thereafter receive an injury in the course
10 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 compensation shall be awarded only in
the amount that would have been allowable had such employee
not had such pre-existing 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 employee, and either acknowledged before an
officer duly qualified to administer oaths in this state, or be
witnessed by two persons, neither of whom shall be the em-
ployer, 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 certificate shall contain a statement that such physician
has examined the said employee, has found such impairment to
exist, that such impairment is definitely ascertainable, and a
statement of the character and nature of such impairment.
This section shall only apply to definitely ascertainable
physical impairments, either
(a) Originating, either before or after October 1, 1913,
otherwise than from an injury received in the course of and
resulting from employment, or
(b) Originating, prior to October 1, 1913, from an injury
in the course of and resulting from employment, or
(c) Originating after October 1, 1913, from an injury in
the course of and resulting from employment by an employer,
who at the time of said injury had not elected to comply with,
or was not in good standing under, the Workmen's Compensa-
tion Law of West Virginia, or
(d) Originating in any injury of whatsoever origin when-
ever received, occurring without the State of West Virginia,
except injuries received after October 1, 1913, in the employ
of a subscriber in good standing under the Compensation
Fund of West Virginia in the course of and resulting from
temporary employment without the state as defined and lim-
ited by Section 1, Article 2 of this Chapter.

If any employee, or person seeking employment, who, as a
part of the written waiver hereinbefore provided for, or by sep-
arate writing signed by him, filed with the employer, or pros-
spective employer, shall make a statement of fact as to the origin
of any physical impairment, such employee, or prospective
employee, shall be bound by said statements, and shall be
estopped from denying the truth of the facts stated therein.

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

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

(b) If the deceased employee be under the age of twenty-
one years and unmarried and leave a wholly dependent father
or mother, the father, or if there be no father, the mother shall
be paid fifty per cent of the average monthly support actually
received from the employee during the preceding twelve
months to continue for six years after the death of the de-
ceased, and shall not amount to more than a maximum of
twenty dollars per month. Provided, however, That payment
of compensation awarded under this subdivision to a depen-
dent father shall be continued and paid to his surviving widow,
mother of the deceased employee, to continue as per original
award to father. Compensation in either case shall cease upon
the death of the dependent;

(c) If the deceased employee be under the age of twenty-
one and unmarried and leave a partially dependent father or
mother, the father, or if there be no father, the mother shall
be paid fifty per cent of the average monthly support actually
received from the employee during the preceding twelve
months, to continue for such portion of the period of six
years after the date of death as the commissioner may deter-
mine, and not to amount to more than a maximum of twenty
dollars per month: Provided, however, That payment of com-
ensation awarded under this subdivision to a dependent
father shall be continued and paid to his surviving widow,
mother of the deceased employee, to continue as per original
award to father. Compensation in either case shall cease upon
the death of the dependent;

(d) If the deceased employee leaves a dependent widow
or invalid widower, the payment shall be thirty dollars per
month until death or remarriage of such widow or widower,
and in addition five dollars per month for each child under
sixteen years of age, to be paid until such child reaches such
age, or, if an invalid child, to continue as long as such child remains an invalid. Provided, That if such widow or invalid widower shall remarry within two years from the date of the death of such employee, such widow or widower shall be paid at the time of remarriage twenty per cent of the amount that would be due for the period remaining between the date of such remarriage and the end of ten years from the date of death of said employee, and such widow or widower shall be advised in writing by the commissioner of his or her rights under this proviso at the time of making the original award: Provided further, That if upon investigation and hearing, as provided in article five of this chapter, it shall be ascertained that said widow or widower is living with a man or woman, as the case may be, as man and wife and not married, or the widow living a life of prostitution, the commissioner may stop the payment of the benefits herein provided to said widow or widower.

If the deceased employee be a widow or widower and leave a child or children under the age of sixteen years, the payment shall be ten dollars per month to each child until he or she reaches the age of sixteen years.
In all awards of compensation to children, the award shall be until they reach the age of sixteen years or their death prior thereto;

(e) If the deceased employee be an adult and there be no dependent widow, or widower, or child under sixteen years of age, but there are wholly dependent persons at the time of death, the payment shall be fifty per cent of the average monthly support actually received from the employee during the preceding twelve months, to continue for the remainder of the period between the date of death and six years after the date of injury, and shall not amount to more than a maximum of twenty dollars per month.

(f) If the deceased employee be an adult and there be no dependent widow, widower or child under sixteen years of age, or wholly dependent person, but there are partly dependent persons at the time of death, the payment shall be fifty per cent of the average monthly support actually received from the employee during the preceding twelve months, and to continue for such portion of the period of six years after the date of death as the commissioner in the case may determine, and not
to amount to more than a maximum of twenty dollars per month.

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

(g) Dependent, as used in this chapter, shall mean a widow, invalid widower, child under sixteen years of age, invalid child, or a posthumous child, who, at the time of the injury causing death, is dependent in whole or part for his or her support upon the earnings of the employee; also the following persons who are and continue to be residents of the United States or its territorial possessions: step child, under sixteen years of age; child under sixteen years of age legally adopted prior to the injury causing death; father, mother, grandfather or grandmother, who, at the time of the injury causing death, is dependent in whole or part for his or her support upon the earnings of the employee; an invalid brother or sister wholly dependent for his or her support upon the earnings of the employee at the time of the injury causing death.

Sec. 15. To entitle any employee or dependent of a deceased
employee to compensation under this chapter, the application
therefor must be made on a form or forms prescribed by the
commissioner and filed in the office of the commissioner within
six months from and after the date of injury or death, as
the case may be, and all proofs of dependency in fatal cases
must be filed with the commissioner within nine months from
and after the death: Provided, That in case an employer
fails to report an injury within six months from and after
the date such injury is received, the commissioner shall accept
the application for compensation filed by the employee after
the expiration of six months but within twelve months from
the date of such injury: Provided, further, That if such em-
ployee shows by competent evidence that the employer had
knowledge of such injury and failed to file a report thereof,
then such employee shall have an additional year within which
to file his application for compensation, and the com-
mis sioner shall receive such application so filed by such em-
ployee, and award compensation to an employee who would
have been so entitled had the injury been reported and appli-
cation filed within the prescribed period of six months. Non-
resident aliens who may be entitled to benefits under prior
law with respect to accidents occurring prior to the effective date of this act may be officially represented by the consular officers of the country of which such aliens may be citizens or subjects, but no compensation shall be paid to such non-resident aliens in fatal cases through the consular officers of the country of which such aliens may be citizens or subjects until such consular officer or a representative of such consular officer is appointed personal representative of the deceased party by proper authority in the county in which the deceased resided, or in which the seat of government is located. Nothing herein contained shall be construed as giving such consular officer the right to make application for compensation in behalf of non-resident aliens.

Sec. 15 (a) Notwithstanding any other provisions of this chapter, no benefits under any of the provisions of this chapter and no commutation of periodical benefits under the provisions of section seventeen of this article shall be made to non-resident alien beneficiaries on account of any accident occurring after the effective date of this act. Non-resident alien beneficiaries within the meaning hereof shall mean persons not citizens of the United States residing outside of the terri-
torial limits of the United States at the time of the injury with
respect of which benefits would otherwise have been payable
to them in the absence of such non-resident alienage. In case
of non-resident alien beneficiaries entitled under prior law to
benefits on account of accidents occurring prior to the effect-
tive date of this act, the commissioner in his discretion may
make, and such beneficiary shall be required to accept, com-
mutation of such benefits into a lump sum settlement and
payment, at the rate of one-half of like benefits to resident
beneficiaries.

Sec. 16. The power and jurisdiction of the commissioner
over each case shall be continuing, and he may from time to
time, after due notice to the employer, make such modifications
or changes with respect to former findings or orders as may be
justified: Provided, That no further award may be made in
fatal cases arising after March 7, 1929, except within two
years after the death of the employee, or, in cases of non-
fatal injuries on and after March 7, 1929, except within three
years after payments for temporary disability shall have
ceased and within one year after the commissioner shall have
made the last payment in any permanent disability case, and,
Provided, further, that no further award may be made in either fatal or non-fatal cases arising on account of injuries occurring prior to March 7, 1929, unless written application for such award, signed personally by claimant, or, in case of claimant’s infancy or physical or mental incapacity, by his or her guardian, next friend, or committee, be filed with the commissioner on or before September 15, 1939. In any case in which an injured employee shall make application for a further adjustment of his claim, if such application be in writing and filed within the applicable time limit as prescribed by the next preceding paragraph, the commissioner shall pass upon and determine the merits of such application within thirty days after the filing thereof.

Sec. 18. Except by this section provided compensation shall be paid only to such employees or their dependents, and shall be exempt from all claims of creditors and from any attachment, execution, or assignment other than compensation to counsel for legal services, under the provisions of, and subject to the limitations contained in, Section 5, Article 5 of this chapter. Payments may be made in such periodical installments as may seem best to the commissioner in each case,
Sec. 20. The commissioner shall have authority, after due notice to the employer and claimant, whenever he shall deem it necessary, to order an autopsy, and may designate a duly licensed physician to make such post-mortem examination or examinations as may be necessary to determine the cause of a deceased employee's death, and the said physician shall file with the commissioner a written report of his said findings; the claimant and the employer respectively, shall have the right to select a physician of his or its own choosing and at his or its own expense, to participate in the post-mortem examination, and the respective physicians selected by the claimant and the employer shall have the right to concur in any report made by the physician selected by the commissioner, or each may file with the commissioner a separate report.

Article 5:

Sec. 1. The commissioner shall have full power and authority to hear and determine all questions within his jurisdiction, but upon the making or refusing to make any award,
or upon the making of any modification or change with respect
to former findings or orders, as provided by section sixteen,
article four of this chapter, the commissioner shall give notice,
in writing, to the employer, employee, claimant, or dependen,
as the case may be, of his action, which notice shall state the
time allowed for filing an objection to such finding, and such
action of the commissioner shall be final unless the employer,
employee, claimant or dependent shall, within thirty days
after the receipt of such notice, object, in writing, to such
finding. Upon receipt of such objection the commissioner
shall, within thirty days from 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 repre-
sentative 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 commis-
sioner 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 post-
poned 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 the opinion that the facts have not been ade-
quately developed at such hearing, he may order supplemental
hearing upon due notice to the parties. After final hearing
the commissioner shall, within sixty days, render his decision
affirming, reversing or modifying his former action, which
shall be final: Provided, however, That the claimant or the
employer may apply to the appeal board herein created for a
review of such decision; but no appeal or review shall lie un-
less application therefor be made within thirty days of receipt
of notice of the commissioner's final action, or in any event
within sixty days of the date of such final action, regardless
of notice.

Sec. 1 (a). In any case wherein an injured employee
makes application in writing for a further adjustment of his
claim under the provisions of section sixteen, article four, of
this chapter, and such application discloses cause for a fur-
ther adjustment thereof, the commissioner shall, after due
notice to the employer, make such modifications or changes
with respect to former findings or orders in such claim as
may be justified, and any party dissatisfied with any such
modification or change so made by the commissioner, shall,
upon proper and timely objection, be entitled to a hearing, as
provided in section one of this article.

Sec. 1 (b). If, however, in any case in which application
for further adjustment of a claim is filed under the next pre-
ceding section, it shall appear to the commissioner that such
application fails to disclose a progression or aggravation in
the claimant's condition, or some other fact or facts which
were not theretofore considered by the commissioner in his
former findings, and which would entitle such claimant to
greater benefits than he has already received, the commis-
sioner shall, within sixty days from the receipt of such appli-
cation, notify the claimant and the employer that such appli-
cation fails to establish a prima facie cause for reopening the
claim. Such notice shall be in writing and shall state the time
allowed for appeal to the appeal board from such decision
of the commissioner. The claimant may, within thirty days
after receipt of such notice, apply to the appeal board for a
review of such decision.

Sec. 1 (c). In any case wherein an employer makes ap-
application in writing for a modification of any award pre-
viously made to an employee of said employer, and such ap-
plication discloses cause for a further adjustment thereof, the
commissioner shall, after due notice to the employee, make
such modifications or changes with respect to former findings
or orders in such form as may be justified, and any party dis-
satisfied with any such modification or change so made by
the commissioner, shall upon proper and timely objection, be
entitled to a hearing as provided in section one of this article.

Sec. 1 (d). If in any such case it shall appear to the com-
mmissioner that such application fails to disclose some fact or
facts which were not theretofore considered by the commis-
sioner in his former findings, and which would entitle such
employer to any modification of said previous award, the com-
mmissioner shall, within sixty days from the receipt of such
application, notify the claimant and employer that such application fails to establish a just cause for modification of said award. Such notice shall be in writing and shall state the time allowed for appeal to the appeal board from such decision of the commissioner. The employer may, within thirty days after receipt of said notice, apply to the appeal board for a review of such decision.

Sec. 2. There is hereby created a board to be known as the 'Workmen's Compensation Appeal Board', which shall be referred to in this article as the 'board', to be composed of three members, none of whom shall be a contributor to the compensation fund or in any way connected with a contributor thereto and none of whom shall be a beneficiary of the compensation fund or in any way connected with a beneficiary thereof. Two members of such board shall be of opposite politics to the third, and all three shall be citizens of this 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. 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.
They shall receive an annual salary of two thousand, four
hundred dollars each, payable in monthly installments, which
shall be the total compensation, including any and all ex-
penses, of such member or members. The Governor shall des-
ignate 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 deem proper, at regular
sessions commencing on the first Tuesday in February, April,
June, August, October, and December and continuing as long
as may be necessary for the proper and expeditious transac-
tion of the business before it. All clerical services required
by the board shall be paid for by the compensation commis-
sioner 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.

Sec. 3. Any employer, employee, claimant, or dependent,
who shall feel aggrieved at any final action of the commis-
sioner taken after a hearing held in accordance with the pro-
visions of section one of this article, and any claimant or em-
ployer who shall feel aggrieved at any action of the commis-
sioner in refusing to reopen a claim under the provisions of
sections one (b) and one (d) 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 com-
missioner, directed to said board, within thirty days after
receipt of notice of the action complained of, or in any event,
regardless 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 tran-
script of the proceedings before him and certify and transmit
the same to the board. In such certificate, he shall incor-
porate a brief recital of the proceedings therein had and re-
cite each order entered and the date thereof. The board shall
review the action of the commissioner complained of at its
next meeting after the filing of notice of appeal, provided said
notice of appeal shall have been filed thirty days before said
meeting of the board, unless such review be postponed by agreement 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 evidence 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 commissioner for good cause. After the completion of such supplemental 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 decided 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.

Section 5. If any claimant shall employ an attorney to
represent him in a contested 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 employment with such claimant, it shall be the duty of the commissioner 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 claimant.

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: Provided, however, that if any claimant shall employ an attorney to represent him in an uncontested claim for compensation while such claim is pending before the commissioner,
the attorney shall be required to furnish an itemized state-
ment of the services rendered to the claimant, and the com-
missioner shall have authority to fix the fee of the said at-
torney, the maximum amount of which shall not exceed the
sum of twenty-five dollars. In no event shall the commis-
sioner pay aggregate attorney fees of more than six hundred
dollars in any one claim, nor shall the commissioner pay ag-
gregate attorney fees of more than twenty-five per cent of
the total award of any claim.

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 prescribed by the constitution of the state, has become a law without his approval.

This the 17th day of March, 1899.

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

Chairman Senate Committee

Dee P. Neth

Chairman House Committee

Originated in the House of Delegates

Takes effect upon passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within bill was presented to the Governor for his approval on the 21st day of January, 1939, and is now in the hands of the Secretary of State.

Governor.