

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1945

ENROLLED

SENATE BILL No. 183

(By Mr. Vickers, Mr. President,

PASSED March 7 1945

In Effect 90 days from Passage

JARRETT PRINTING COMPANY, CHARLESTON, W. VA.



183-10

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Senate Bill No. 183
(BY MR. VICKERS, MR. PRESIDENT)

[Passed March 7, 1945; in effect ninety days from passage.]

AN ACT to repeal article six except as hereinafter provided; to amend and reenact sections one, two, twelve and sixteen, article one; to amend and reenact sections one, three, four, eight and nine, article two; to amend and reenact section one, article three, and to amend article three by adding thereto a new section, to be designated section one-a; to amend and reenact sections one, two, three, four, six, eight, nine-b, ten, thirteen, fourteen, fifteen, fifteen-a, sixteen and twenty, article four, and to amend article four by adding thereto five new sections, to be designated sections six-a, eight-a, eight-b, eight-c, and fifteen-b; to amend and reenact sections two, three, four and five,

article five, and to amend article five by adding thereto new sections to be designated sections four-a and four-b, all of chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and all relating to workmen's compensation and its administration.

Be it enacted by the Legislature of West Virginia:

That article six, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed except as hereinafter provided; that sections one, two, twelve and sixteen, article one, be amended and reenacted; that sections one, three, four, eight and nine, article two, be amended and reenacted; that section one, article three, be amended and reenacted, and that a new section, to be designated section one-a, be added to article three; that sections one, two, three, four, six, eight, nine-b, ten, thirteen, fourteen, fifteen, fifteen-a, sixteen and twenty, article four, be amended and reenacted, and that five new sections, to be designated sections six-a, eight-a, eight-b, eight-c and fifteen-b, be added to article four; that sections two, three, four and five, article five, be amended and reenacted, and that two new sections, to be

designated sections four-a and four-b, be added to article five; all of chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and all to read as follows:

Article 1. General Administrative Provisions.

Section

1. Compensation commissioner; appointment; legal services by attorney general.
2. Expense of administration.
12. Copies of proceedings as evidence.
16. Omission to perform duty required by commissioner; perjury.

Section 1. *Compensation Commissioner; Appointment; Legal Services by Attorney General.*—There shall be a state compensation commissioner 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 shall, unless sooner removed, continue to serve until his term expires and his successor has been appointed and has qualified. On or before the first day of June, one thousand nine 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

14 on the first day of June. An appointment may be made
15 to fill a vacancy or otherwise when the senate is not in
16 session, but shall be acted upon at the next session there-
17 of. The person so appointed shall take the oath or af-
18 firmation prescribed by section five of article four of the
19 constitution, and such oath shall be certified by the per-
20 son who administers the same and shall be filed in the of-
21 fice of the secretary of state. He shall give bond in the
22 penalty of twenty-five thousand dollars conditioned for
23 the faithful performance of the duties of his office, which
24 bond shall be approved by the attorney general as to form,
25 and by the governor as to sufficiency. The surety of
26 such bond may be a bonding or surety company, in
27 which case the premiums shall be paid out of the appro-
28 priation made for the administration of this chapter. The
29 commissioner shall hold no position of trust or profit, or
30 engage in any occupation or business, interfering or in-
31 consistent with his duties as such commissioner. The
32 commissioner shall receive an annual salary of six thou-
33 sand dollars, payable in the same manner as the salaries
34 of other state officers are paid and charged to the appro-

35 priations which shall be made from time to time here-
36 after by the state for the administration of this chapter.
37 The commissioner shall have an official seal for the au-
38 thentication of his orders and proceedings, upon which
39 seal shall be engraved the words, "West Virginia Com-
40 pensation Commissioner", and such other design as the
41 commissioner may prescribe. The courts in this state
42 shall take judicial notice of the seal of the commissioner,
43 and in all cases copies of orders, proceedings or records
44 in the office of the West Virginia compensation commis-
45 sioner, certified by the secretary of the commissioner un-
46 der his seal, shall be equal to the original in evidence.

47 The attorney general shall perform all legal services
48 required by the commissioner under the provisions of
49 this chapter: *Provided, however,* That in any case in
50 which an application for review is prosecuted from any
51 final decision of the workmen's compensation appeal
52 board to the supreme court of appeals, as provided by
53 section four, article five of this chapter, or in any court
54 proceeding, including a proceeding before the workmen's
55 compensation appeal board, in which such representation

56 shall appear to the commissioner to be desirable, he may
57 designate a regular employee of his office, qualified to
58 practice before such court, to represent him upon such
59 appeal or proceeding, and in no case shall the person
60 so appearing for the commissioner before the court re-
61 ceive remuneration therefor other than his regular salary.

Sec. 2. *Expense of Administration.*—All expenses pecu-
2 liar to the administration of this chapter, and, when on
3 official business, the traveling and incidental expenses
4 of the commissioner and salaries or other compensation,
5 traveling and other expenses of all officers or employees
6 of the commissioner, and all expenses for furniture, books,
7 maps, stationery, appliances, property of all kinds and
8 dues for membership in all organizations pertaining to
9 workmen's compensation or safety in which the commis-
10 sioner deems it advisable to maintain membership, shall
11 be paid out of the workmen's compensation fund.

Sec. 12. *Copies of Proceedings as Evidence.*—A tran-
2 scribed copy of the evidence and proceedings, or any
3 specific part thereof, on any investigation or hearing,
4 taken by a stenographer appointed by the commissioner

5 and certified and sworn to by such stenographer to be a
6 true and correct transcript of the testimony in the in-
7 vestigation or hearing, or of a particular witness, or of a
8 specific part thereof, or to be a correct transcript of the
9 proceedings had on such investigation or hearing so pur-
10 porting to be taken and subscribed, may be received in
11 evidence by the commissioner with the same effect as if
12 such stenographer were present and testified to the facts
13 certified. A copy of such transcript shall be furnished on
14 demand to any party upon payment of the fee prescribed
15 therefor in the rules and regulations of the commissioner,
16 such fee not to exceed that prescribed for transcripts in
17 the circuit court.

Sec. 16. *Omission to Perform Duty Required by Com-*
2 *missioner; Perjury.*—Any person, firm or corporation
3 knowingly failing to make any report or perform any
4 duty required by the commissioner within the time speci-
5 fied shall be guilty of a misdemeanor, and, upon conviction
6 thereof, shall be fined not more than twenty-five hun-
7 dred dollars. Any person or firm, or the officer of any
8 corporation, who knowingly makes a false report or state-

9 ment under oath, affidavit or certification respecting any
10 information required by the commissioner, or who shall
11 knowingly testify falsely in any proceeding before the
12 commissioner, shall be deemed guilty of perjury, and,
13 upon conviction thereof, shall be punished as provided
14 by law.

Article 2. Employers and Employees Subject to Chapter;

Premiums.

Section

1. Employers and employees, including state, its agencies and political subdivisions, subject to chapter.
3. Report blanks and other forms for use of employers.
4. Classification of industries; accounts by commissioner; rate of premiums.
8. Election not to pay or default in payment of premiums; defenses prohibited.
9. Election of employer to provide own system of compensation.

Section 1. *Employers and Employees, Including State,*
2 *Its Agencies and Political Subdivisions, Subject to Chap-*
3 *ter.*—The state of West Virginia and all governmental
4 agencies or departments created by it are hereby required
5 to subscribe to, and pay premiums into, the workmen's
6 compensation fund for the protection of their employees,
7 and shall be subject to all requirements of this chapter,
8 and all rules and regulations prescribed by the commis-

9 sioner with reference to rates, classifications, and pre-
10 miums payments.

11 All persons, firms, associations and corporations regu-
12 larly employing other persons for the purpose of carrying
13 on any form of industry or business in this state, includ-
14 ing county courts, boards of education, municipalities and
15 other political subdivisions of the state, are employers
16 within the meaning of this chapter and subject to its
17 provisions: *Provided, however,* That the provisions of
18 section eight, article two of this chapter shall not apply to
19 such county courts, boards of education, municipalities,
20 or other political subdivisions of the state: *And provided*
21 *further,* That the failure of such county courts, boards of
22 education, municipalities or other political subdivisions of
23 the state to elect to subscribe to, and to pay premiums
24 into, the workmen's compensation fund, shall not im-
25 pose any liability upon them, or either of them, other than
26 such liability as would exist notwithstanding the pro-
27 visions of this chapter. All persons in the service of em-
28 ployers as herein defined, and employed by them for the
29 purpose of carrying on the industry, business or work in

30 which they are engaged, including persons regularly em-
31 ployed in the state whose duties necessitate employment
32 of a temporary or transitory nature by the same employer
33 without the state, and check-weighmen employed accord-
34 ing to law, and all members of rescue teams assisting in
35 mine accidents with the consent of the owner who, in such
36 case, shall be deemed the employer, or at the direction of
37 the chief of the department of mines; are employees with-
38 in the meaning of this chapter and subject to its provisions:
39 *Provided, however,* That this chapter shall not apply to
40 employers of employees in domestic service or persons
41 whose employment is prohibited by law, nor to employees
42 of an employer while employed without the state, except
43 in case of temporary employment without the state as
44 hereinbefore provided; nor shall a member of a firm of
45 employers, or any official of an association or of a cor-
46 poration employer, including managers, or any elective
47 or appointive official of the state, county, county court,
48 board of education, municipality or other political sub-
49 division of the state, whose term of office is definitely
50 fixed by law, be deemed an employee within the meaning

51 of this chapter: *And provided further*, That employers of
52 not more than three employees for a period of not more
53 than one month, who shall be called herein "casual em-
54 ployers" and employers of employees in agricultural serv-
55 ice, may voluntarily elect to subscribe to, and pay premi-
56 ums into, the workmen's compensation fund for the pro-
57 tection of their employees, and in such case shall be sub-
58 ject to all requirements of this chapter and all rules and
59 regulations prescribed by the commissioner with reference
60 to rates, classifications and premiums payments; but such
61 casual employers and employers of employees in agricul-
62 tural service shall not be required to subscribe to the
63 workmen's compensation fund and their failure to sub-
64 scribe to such fund shall not impose any liability upon them
65 other than such liability as would exist notwithstanding
66 the provisions of this chapter; nor shall the provisions
67 of section eight of this article apply to casual employers
68 or to employers of employees in agricultural service.

69 The premium and actual expenses in connection with
70 governmental agencies and departments of the state of
71 West Virginia, shall be paid out of the state treasury

72 from appropriations made for such agencies and depart-
73 ments, in the same manner as other disbursements are
74 made by such agencies and departments.

75 County courts, boards of education, municipalities and
76 other political subdivisions of the state which shall elect
77 to become subscribers to the workmen's compensation
78 fund shall provide for the funds to pay their prescribed
79 premiums into the fund, and such premiums, and pre-
80 miums of state agencies and departments, shall be paid
81 into the fund in the same manner as herein provided for
82 other employers subject to this chapter.

83 Any employer whose employment in this state is to
84 be for a definite or limited period, which could not be con-
85 sidered "regularly employing" within the meaning of this
86 section, may elect to pay into the workmen's compensa-
87 tion fund the premiums herein provided for, and at the
88 time of making application to the commissioner such em-
89 ployer shall furnish a statement under oath showing the
90 probable length of time the employment will continue
91 in this state, the character of the work, an estimate of the
92 monthly payroll, and any other information which may

93 be required by the commissioner. At the time of making
94 application such employer shall deposit with the state
95 compensation commissioner to the credit of the work-
96 men's compensation fund the amount required by section
97 five of this article, which amount shall be returned to
98 such employer, if his application be rejected by the com-
99 missioner. Upon notice to such employer of the accept-
100 ance of his application by the commissioner, he shall be
101 an employer within the meaning of this chapter and sub-
102 ject to all of its provisions.

103 Any foreign corporation employer electing to comply
104 with the provisions of this chapter and to receive the
105 benefits hereunder, shall, at the time of making applica-
106 tion to the commissioner, in addition to other require-
107 ments of this chapter, furnish such commissioner with
108 a certificate from the secretary of state showing that it
109 has complied with all the requirements necessary to en-
110 able it legally to do business in this state, and no appli-
111 cation of such foreign corporation employer shall be ac-
112 cepted by the commissioner until such certificate is filed.

113 For the purpose of this chapter, a mine shall be ad-

114 judged within this state when the main opening, drift,
115 shaft or slope is located wholly within this state.

116 Any employee within the meaning of this chapter
117 whose employment necessitates his temporary absence
118 from this state in connection with such employment, and
119 such absence is directly incidental to carrying on an in-
120 dustry in this state, who shall have received injury during
121 such absence in the course of and resulting from his em-
122 ployment, shall not be denied the right to participate in
123 the workmen's compensation fund.

Sec. 3. *Report Blanks and Other Forms for Use of Em-*
2 *ployers.*—The commissioner shall prepare report blanks
3 for the use of, and furnish the same to, employers subject
4 to this chapter. Every employer receiving from the com-
5 missioner any blank or blanks with direction for filling
6 out and returning the same shall return the same, within
7 the period fixed by the commissioner, filled out so as to
8 answer fully and correctly all pertinent questions therein
9 propounded, and if unable to do so, shall give good and
10 sufficient reasons for such failure. Every employer sub-
11 ject to the provisions of this chapter, who may hereafter

12 elect to pay the premiums as provided herein, and to re-
13 ceive the benefits hereunder, shall make application on
14 the forms prescribed by the commissioner for such pur-
15 pose; and all employers who desire to discontinue the
16 payment of the premiums required under this chapter
17 shall so notify the commissioner on forms to be furnished
18 by the commissioner for the purpose.

Sec. 4. *Classification of Industries; Accounts by Com-*
2 *missioner; Rate of Premiums.*—The commissioner shall
3 distribute into groups or classes the industries subject to
4 this chapter, in accordance with the nature of the busi-
5 ness and the degree of hazard incident thereto. And the
6 commissioner shall have power, in like manner, to re-
7 classify such industries into groups or classes at any time,
8 and to create additional groups or classes. The commis-
9 sioner may make necessary expenditures to obtain statis-
10 tical and other information to establish the classes pro-
11 vided for in this section.

12 The commissioner shall keep an accurate account of all
13 money or moneys paid or credited to the compensation
14 fund, and of the liability incurred and disbursements

15 made against same; and an accurate account of all money
16 or moneys received from each individual subscriber, and
17 of the liability incurred and disbursements made on ac-
18 count of injuries and death of the employees of each sub-
19 scribe, and of the receipts and incurred liability of
20 each group or class.

21 In fatal and total permanent disability cases, the
22 amount charged against the employer's account shall be
23 such sum as is estimated to be the average cost of such
24 cases to the fund; provided the commissioner decides
25 that the injury or injuries causing death or permanent
26 disability were received in the course of and resulted from
27 the employee's employment.

28 It shall be the duty of the commissioner to fix and
29 maintain the lowest possible rates of premiums consistent
30 with the maintenance of a solvent workmen's compensa-
31 tion fund and the creation and maintenance of a reason-
32 able surplus in each group after providing for the pay-
33 ment to maturity of all liability incurred by reason of in-
34 jury or death to employees entitled to benefits under
35 the provisions of this chapter. A readjustment of rates

36 shall be made yearly on the first day of July, or at any
37 time the same may be necessary. The determination of
38 the lowest possible rates of premiums within the mean-
39 ing hereof and of the existence of any surplus or deficit
40 in the fund, shall be predicated solely upon the experience
41 and statistical data compiled from the records and files
42 in the commissioner's office under this and prior work-
43 men's compensation laws of this state for the period from
44 the first day of June, one thousand nine hundred thirteen,
45 to the nearest practicable date prior to such adjustment:
46 *Provided, however,* That any expected future return, in
47 the nature of interest or income from invested funds shall
48 be predicated upon the average realization from invest-
49 ments to the credit of the compensation fund for the two
50 years next preceding. Any reserves set up for future lia-
51 bilities and any commutation of benefits shall likewise be
52 predicated solely upon prior experience under this and
53 preceding workmen's compensation laws and upon ex-
54 pected realization from investments determined by the re-
55 spective past periods, as aforesaid.

56 The commissioner may fix a rate of premiums applica-
57 ble alike to all subscribers forming a group or class, and
58 such rates shall be determined from the record of such
59 group or class shown upon the books of the commissioner:
60 *Provided, however,* That if any group has a sufficient
61 number of employers with considerable difference in their
62 degrees of hazard, the commissioner may fix a rate for
63 each subscriber of such group, such rate to be based upon
64 the subscriber's record on the books of the commissioner
65 for the twelve months last ending June thirtieth of the
66 year in which the rate is to become effective; and the
67 liability part of such record shall include such cases as
68 have been acted upon by the commissioner during such
69 twelve months' period, irrespective of the date the in-
70 jury was received; and any subscriber in a group so rated,
71 whose record for such twelve months' period cannot be
72 obtained, shall be given a rate based upon his record for
73 any part of such period as may be deemed just and
74 equitable by the commissioner; and the commissioner
75 shall have authority to fix a reasonable minimum and
76 maximum for any group to which this individual

77 method of rating is applied, and to add to the rate de-
78 termined from the subscriber's record such amount as is
79 necessary to liquidate any deficit in the schedule or to
80 create a reasonable surplus.

81 It shall be the duty of the commissioner, whenever he
82 changes any rate, to notify every employer affected there-
83 by of that fact and of the new rate and when the same
84 takes effect. It shall also be his duty to furnish to each
85 employer yearly, or oftener if requested by the employer,
86 a statement giving the name of each of his employees
87 who were paid for injury and the amounts so paid during
88 the period covered by the statement.

Sec. 8. *Election Not to Pay or Default in Payment of*
2 *Premiums; Defenses Prohibited.*—All employers subject
3 to this chapter, except the state of West Virginia and the
4 governmental agencies or departments created by it, who
5 shall not have elected to pay into the workmen's com-
6 pensation fund the premiums provided by this chapter
7 and have not elected to pay individually and directly or
8 from benefit funds compensation and expenses to injured
9 employees or fatally injured employees' dependents un-

10 der the provisions of section nine of this article, or having
11 so elected, shall be in default in the payment of the same,
12 or not having otherwise fully complied with the pro-
13 visions of section five or section nine of this article, shall
14 be liable to their employees (within the meaning of this
15 article) for all damages suffered by reason of personal
16 injuries sustained in the course of employment caused
17 by the wrongful act, neglect or default of the employer
18 or any of the employer's officers, agents or employees
19 while acting within the scope of their employment and in
20 the course of their employment and also to the personal
21 representatives of such employees where death results
22 from such personal injuries, and in any action by any such
23 employee or personal representative thereof, such defend-
24 ant shall not avail himself of the following common law
25 defenses: The defense of the fellow-servant rule; the de-
26 fense of the assumption of risk; or the defense of contribu-
27 tory negligence; and further shall not avail himself of any
28 defense that the negligence in question was that of some
29 one whose duties are prescribed by statute: *Provided,*
30 *however,* That such provision depriving a defendant em-

31 ployer of certain common law defenses under the circum-
32 stances therein set forth shall not apply to an action
33 brought against a county court, board of education,
34 municipality, or other political subdivision of the state or
34 against a casual employer or an employer of employees
35 in agricultural service.

Sec. 9. *Election of Employer to Provide Own System of*
2 *Compensation.*—Notwithstanding anything contained in
3 this chapter, employers subject to this chapter who are of
4 sufficient financial responsibility to insure the payment of
5 compensation to injured employees and the dependents
6 of fatally injured employees, whether in the form of
7 pecuniary compensation or medical attention, funeral ex-
8 penses or otherwise as herein provided, of the value at
9 least equal to the compensation provided in this chapter,
10 or employers of such financial responsibility who main-
11 tain their own benefit funds, or system of compensation,
12 to which their employees are not required or permitted to
13 contribute, or such employers as shall furnish bond or
14 other security to insure such payments, may, upon a find-
15 ing of such facts by the compensation commissioner, elect

16 to pay individually and directly, or from such benefit
17 funds, department or association, such compensation and
18 expenses to injured employees or fatally injured em-
19 ployees' dependents. The compensation commissioner
20 shall require security or bond from such employer, to be
21 approved by him, and of such amount as is by him con-
22 sidered adequate and sufficient to compel or secure to such
23 employees, or their dependents, payment of the com-
24 pensation and expenses herein provided for, which shall
25 in no event be less than the compensation paid or fur-
26 nished out of the state workmen's compensation fund in
27 similar cases to injured employees or the dependents of
28 fatally injured employees whose employers contribute to
29 such fund. Any employer electing under this section
30 shall on or before the twenty-fifth day of each month, for
31 the preceding month, file with the commissioner a sworn
32 statement of the total earnings of all his employees sub-
33 ject to this chapter for such preceding month, and shall
34 pay into the workmen's compensation fund a sum suf-
35 ficient to pay his proper proportion of the expenses of
36 the administration of this chapter, as may be determined

37 by the commissioner. The commissioner shall make and
38 publish rules and regulations governing the mode and
39 manner of making application, and the nature and ex-
40 tent of the proof required to justify the finding of facts
41 by the commissioner, to consider and pass upon such elec-
42 tion by employers subject to this chapter, which rules and
43 regulations shall be general in their application. Any
44 employer subject to this chapter who shall elect to carry
45 his own risk and who has complied with the requirements
46 of this section and the rules of the compensation commis-
47 sioner shall not be liable to respond in damages at com-
48 mon law or by statute for the injury or death of any em-
49 ployee, however occurring, after such election and during
50 the period that he is allowed by the commissioner to
51 carry his own risk; provided the injured employee has
52 remained in his service with notice given, as provided for
53 in section seven of this article, that his employer has
54 elected to carry his own risk as herein provided. The
55 continuation in the service of such employer with such
56 notice shall be deemed a waiver by the employee and by
57 the parents of any minor employee of the right of action,

58 as aforesaid, which the employee or his or her parents
59 would otherwise have.

60 Any employer whose record upon the books of the
61 compensation commissioner shows a liability against the
62 workmen's compensation fund, incurred on account of
63 injury to or death of any of his employees, in excess of
64 premiums paid by such employer, shall not be granted
65 the right, individually and directly or from such benefit
66 funds, department or association, to compensate his in-
67 jured employees and the dependents of his fatally injured
68 employees until he has paid into the workmen's com-
69 pensation fund the amount of such excess of liability over
70 premiums paid, including his proper proportion of the
71 liability incurred on account of explosions or catastrophes
72 occurring within the state and charged against such fund.

73 All employers who have heretofore elected, or shall
74 hereafter elect, to pay compensation and expenses di-
75 rectly, as provided in this section, shall, unless they give
76 the catastrophe security or bond hereinafter provided for,
77 pay into the surplus fund referred to in section one, article
78 three of this chapter upon the same basis and in the

79 same percentages, subject to the limitations herein set
80 forth, as funds are set aside for the maintenance of the
81 surplus fund out of payments made by premium-paying
82 subscribers, such payments to be made at the same time
83 as hereinbefore provided with respect to payment of
84 proportion of expenses of administration. In case there
85 be a catastrophe, as defined in section one, article three
86 of this chapter, to the employees of any employer making
87 such payments, the employer shall not be liable to pay
88 compensation or expenses arising from or necessitated by
89 the catastrophe, and such compensation and expenses
90 shall not be charged against such employer, but such
91 compensation and expenses shall be paid from the surplus
92 fund in the same manner and to the same extent as in
93 the case of premium-paying subscribers.

94 If an employer elect to make payments into the sur-
95 plus fund as aforesaid, then the bond or other security
96 required by this section shall be of such amount as the
97 commissioner considers adequate and sufficient to com-
98 pel or secure to the employees or their dependents pay-
99 ment of compensation and expenses, except any com-

100 pension and expenses that may arise from, or be
101 necessitated by, any catastrophe, as defined in section
102 one, article three of this chapter, which last are secured
103 by and shall be paid from the surplus fund, as herein-
104 before provided.

105 If an employer elect not to make payments into the
106 surplus fund, as hereinbefore provided, then, in addition
107 to bond or security in the amount hereinbefore set forth,
108 such employer shall furnish catastrophe security or bond,
109 approved by the commissioner, in such additional amount
110 as the commissioner shall consider adequate and sufficient
111 to compel or secure payment of all compensation and ex-
112 penses arising from, or necessitated by, any catastrophe
113 that might thereafter ensue.

114 All employers hereafter making application to carry
115 their own risk under the provisions of this section, shall
116 with such application, make a written statement as to
117 whether such employer elects to make payments as afore-
118 said into the surplus fund, or not to make such payments
119 and to give the catastrophe security or bond hereinbefore
120 in such case provided for.

121 All employers who have heretofore elected to carry
122 their own risk under the provisions of this section shall
123 be deemed to have elected to make payments into the
124 surplus fund unless, within thirty days after the effective
125 date of this act, they notify the commissioner in writing
126 to the contrary: *Provided, however,* That such employers,
127 as have heretofore elected, under the rules heretofore
128 promulgated by the commissioner, not to make payments
129 into the surplus fund, shall be deemed to have elected
130 to give the catastrophe security or bond hereinbefore pro-
131 vided for and not to make payments into the surplus
132 fund. Any catastrophe security or bond heretofore given
133 under rules and regulations promulgated by the com-
134 missioner and approved by him shall be valid under this
135 section, and any election heretofore made under rules
136 and regulations of the commissioner to make payments
137 into the surplus fund shall be valid and protective to
138 the person so electing from and after the date of such
139 election.

140 In any case under the provisions of this section that
141 shall require the payment of compensation or benefits by

142 an employer in periodical payments, and the nature of
143 the case makes it possible to compute the present value
144 of all future payments, the commissioner may, in his dis-
145 cretion, at any time compute and permit or require to be
146 paid into the workmen's compensation fund an amount
147 equal to the present value of all unpaid compensation for
148 which liability exists, in trust; and thereupon such em-
149 ployer shall be discharged from any further liability upon
150 such award, and payment of the same shall be assumed
151 by the workmen's compensation fund.

Article 3. Workmen's Compensation Fund.

Section

1. Compensation fund; surplus fund; catastrophe and catastrophe payment defined; compensation by employers.
- 1-a. Transfer of silicosis fund to workmen's compensation fund.

Section 1. *Compensation Fund; Surplus Fund; Catastrophe and Catastrophe Payment Defined; Compensation by Employers.*—The commissioner shall establish a workmen's compensation fund from the premiums and other funds paid thereto by employers, as herein provided, for the benefit of employees of employers who have paid the premiums applicable to such employers and have otherwise complied fully with the provisions of section five,

9 article two of this chapter, and for the benefit, to the
10 extent elsewhere in this chapter set out, of employees
11 of employers who have elected, under section nine, article
12 two of this chapter, to make payments into the surplus
13 fund hereinafter provided for, and for the benefit of the
14 dependents of all such employees, and for the payment of
15 the administration expenses of this chapter, and shall
16 adopt rules and regulations with respect to the collection,
17 maintenance and disbursement of such funds not in con-
18 flict with the provisions of this chapter.

19 Ten per cent of all that shall hereafter be paid into the
20 workmen's compensation fund by subscribers not elect-
21 ing to carry their own risk under section nine, article
22 two of this chapter, shall be set aside for the creation of
23 a surplus fund until such surplus shall amount to the
24 sum of five hundred thousand dollars, after which time
25 the sum of five per cent of all the money paid into such
26 fund shall be credited to such surplus fund, until such
27 time as in the judgment of the commissioner, such sur-
28 plus fund shall be sufficiently large to cover the catastro-

29 phe hazard and all losses not otherwise specifically pro-
30 vided for in this chapter.

31 A castastrophe is hereby defined as an accident in
32 which three or more employees are killed or receive
33 injuries, which, in the case of one individual, consist of:
34 Loss of both eyes or the sight thereof; or loss of both
35 hands or the use thereof; or loss of both feet or the use
36 thereof; or loss of one hand and one foot or the use
37 thereof. The aggregate of all medical and hospital bills
38 and other costs, and all benefits payable on account of a
39 catastrophe is hereby defined as "catastrophe payment."
40 In case of a catastrophe to the employees of an employer
41 who is an ordinary premium-paying subscriber to the
42 fund, or to the employees of an employer who, having
43 elected to carry his own risk under section nine, article
44 two of this chapter, has heretofore elected, or may here-
45 after elect, to pay into the surplus fund under the pro-
46 visions of that section, then the catastrophe payment
47 arising from such catastrophe shall not be charged against,
48 or paid by, such employer but shall be paid from the
49 surplus fund.

50 Employers electing, as herein provided, to compensate
51 individually and directly their injured employees and
52 their fatally injured employees' dependents shall do so in
53 the manner prescribed by the commissioner, and shall
54 make all reports and execute all blanks, forms and papers
55 as directed by the commissioner, and as provided in this
56 chapter.

Sec. 1-a. *Transfer of Silicosis Fund to Workmen's
2 Compensation Fund: Claims Under Former Article Six.*
3 Ten per cent of the funds collected and held as the work-
4 men's compensation silicosis fund under the provisions
5 of former article six of this chapter, which article is by
6 this act repealed, shall be transferred to and made a part
7 of the workmen's compensation fund provided for in
8 the preceding section, and the balance thereof shall be
9 refunded to the subscribers thereto in proportion to their
10 contributions to the same under the provisions of said
11 former article six; and all awards heretofore made under
12 the provisions of article six shall be paid from the work-
13 men's compensation fund, or directly by the employer,
14 under order of the commissioner, if the employer has

15 elected to carry his own risk under the provisions of sec-
16 tion nine, article two of this chapter: *Provided, however,*
17 notwithstanding the repeal of said article six, the pro-
18 visions thereof shall be applicable in all cases of the
19 disease or death, because of silicosis, or an employee
20 whose last exposure to silicon dioxide dust has occurred
21 prior to the effective date of this act, whose claim or
22 application for compensation benefits for silicosis, or that
23 of his dependent, has not been filed prior to said date, and
24 whose employer, at the time of such exposure, was sub-
25 ject to the provisions of said article six.

Article 4. Disability and Death Benefits.

Section

1. To whom compensation fund disbursed; silicosis included in "injury" and "personal injury"; definition of silicosis.
2. Disbursement where injury is self-inflicted or intentionally caused by employer; rules and safety appliances; "wilful self-exposure" defined.
3. Disbursements for medicine, hospital treatment, artificial limbs and other appliances; contract by employer with hospital prohibited.
4. Funeral expenses.
6. Classification of disability benefits.
- 6-a. Stages of silicosis; benefits and mode of payment to employees and dependents.
8. Physical examination of claimant; expenses.
- 8-a. Silicosis medical board created; qualifications; term of office; duties; remuneration.
- 8-b. Silicosis medical board; procedure; autopsy.
- 8-c. Silicosis medical board; reports and distribution thereof; findings required by board; objection to findings; procedure thereon.

- 9-b. Effect of pre-existing physical impairment; limited compensation.
- 10. Classification of death benefits; "dependent" defined.
- 13. Widow or widower living separate from employee.
- 14. Computation of benefits.
- 15. Application for benefits; nonresident aliens.
- 15-a. Nonresident alien beneficiaries.
- 15-b. Nonmedical questions determined by commissioner on hearing of silicosis claim.
- 16. Commissioner's jurisdiction over case continuous; modification of finding or order; time limitations on awards.
- 20. Post-mortem examinations.

Section 1. *To Whom Compensation Fund Disbursed;*

2 *Silicosis Included in "Injury" and "Personal Injury";*

3 *Definition of Silicosis.*—Subject to the provisions and

4 limitations elsewhere in this chapter set forth, the com-

5 missioner shall disburse the workmen's compensation fund

6 to the employees of such employers as are not delinquent

7 in the payment of premiums for the month in which the

8 injury occurs, and in case of catastrophe, in addition to

9 the employees next above described, to the employees of

10 employers who have elected, under section nine, article

11 two of this chapter to make payments into the surplus

12 fund as provided in that section, and which employees

13 shall have received personal injuries in the course of and

14 resulting from their employment in this state, or in tem-

15 porary employment without the state as provided in sec-

16 tion one, article two of this chapter, or to the dependents,
17 if any, of such employees in case death has ensued, ac-
18 cording to the provisions hereinafter made; and also for
19 the expenses of the administration of this chapter, as
20 provided in section two, article one of this chapter.

21 For the purpose of this chapter the terms "injury" and
22 "personal injury" shall be extended to include silicosis,
23 and the commissioner shall likewise disburse the work-
24 men's compensation fund to the employees of such em-
25 ployers as are not delinquent in the payment of premiums
26 for the last month in which such employees have been
27 exposed to silicon dioxide dust in harmful quantities,
28 and which employees shall have contracted silicosis
29 in this state in the course of and resulting from
30 their employment, or to the dependents, if any, of such
31 employees, in case death has ensued, according to the
32 provisions hereinafter made: *Provided, however,* That
33 compensation shall not be payable for the disease of
34 silicosis, or death resulting therefrom, unless the em-
35 ployee has been exposed to the inhalation of silicon diox-
36 ide dust in harmful quantities over a period of not less

37 than two years in the state of West Virginia. An applica-
38 tion for benefits on account of silicosis shall set forth
39 the name of the employer or employers and the time
40 worked for each, and the commissioner may allocate to
41 and divide any charges on account of such claim among
42 the employers for whom the claimant was employed dur-
43 ing a period of two years immediately preceding the filing
44 of the application. The allocation shall be based upon the
45 time and degree of exposure with each employer.

46 For the purpose of this chapter silicosis is defined as
47 an insidious fibrotic disease of the lung or lungs due to the
48 prolonged inhalation and accumulation, sustained in the
49 course of and resulting from his employment, of minute
50 particles of dust containing silicon dioxide (SiO_2) over
51 such a period of time and in such amounts as result in
52 the substitution of fibrous tissues for normal lung tissues;
53 and the term "silicosis" as used herein shall also include
53 silicosis accompanied by tuberculosis of the lungs.

Sec. 2. Disbursement Where Injury is Self-Inflicted or
2 *Intentionally Caused by Employer; Rules and Safety*
3 *Appliances; "Wilful Self-Exposure" Defined. — Not-*

4 withstanding anything hereinbefore or hereinafter con-
5 tained, no employee or dependent of any employee
6 shall be entitled to receive any sum from the work-
7 men's compensation fund, or to direct compensation
8 from any employer making the election and receiving
9 the permission mentioned in section nine, article two
10 of this chapter, or otherwise under the provisions of
11 this chapter, on account of any personal injury to or
12 death of any employee caused by a self-inflicted in-
13 jury, wilful misconduct, wilful disobedience to such
14 rules and regulations as may be adopted by the employer
15 and approved by the commissioner, and which rules and
16 regulations have been and are kept posted in conspicu-
17 ous places in and about the work, wilful self-exposure in
18 case of silicosis, as defined herein, or the intoxication of
19 such employee, or the failure of such employee to use
20 or make use of any protective or safety appliance or
21 appliances prescribed by the commissioner and furnished
22 by the employer for the use of or applicable to such em-
23 ployee. For the purpose of this chapter, the commissioner
24 may cooperate with the state department of mines and

25 the state department of labor in promoting general safety
26 programs and in formulating rules and regulations to
27 govern hazardous employments. If injury or death result
28 to any employee from the deliberate intention of his
29 employer to produce such injury or death, the employee,
30 the widow, widower, child or dependent of the employee
31 shall have the privilege to take under this chapter, and
32 shall also have cause of action against the employer, as if
33 this chapter had not been enacted, for any excess of dam-
34 ages over the amount received or receivable under this
35 chapter.

36 As used in this section, the term "wilful self-exposure"
37 causing the contraction of the disease of silicosis, shall
38 include: (1) Failure or omission on the part of an em-
39 ployee truthfully to state to the best of his knowledge,
40 in answer to inquiry made by the employer, the place,
41 duration and nature of previous employment; (2) Failure
42 or omission on the part of an employee truthfully to
43 furnish, to the best of his knowledge, in answer to an
44 inquiry made by the employer, full information as to
45 the previous state of his health, as to exposure to lung

46 diseases, and as to any special medical attention that he
47 may have previously received in connection with a dis-
48 eased condition of his lungs.

Sec. 3. *Disbursements for Medicine, Hospital Treatment,*
2 *Artificial Limbs and Other Appliances; Contract by Em-*
3 *ployer with Hospital Prohibited.*—Except in case of sili-
4 cosis, the commissioner shall disburse and pay from the
5 fund for such personal injuries to such employees as may
6 be entitled thereto hereunder as follows:

7 (a) Such sums for medicine, medical, surgical, dental
8 and hospital treatment, crutches, artificial limbs and such
9 other and additional approved mechanical appliances and
10 devices as may be reasonably required; not, however, in
11 any case to exceed the sum of eight hundred dollars:
12 *Provided, however,* That in exceptional cases where the
13 treatment required, in the opinion of competent medical
14 authority, is such as to necessitate an expenditure in
15 excess of such amount, the commissioner may, with the
16 approval of the employer, pay such sum as may be neces-
17 sary, not, however, in any such special case to exceed

18 an additional sum of eight hundred dollars or a total
19 sum of sixteen hundred dollars.

20 (b) Payment for such medicine, medical, surgical, den-
21 tal and hospital treatment, crutches, artificial limbs and
22 such other and additional approved mechanical appli-
23 ances and devices authorized under subdivision (a)
24 hereof may be made to the injured employee, or to the
25 person or persons who have furnished such service, or
26 who have advanced payment for same, as the commis-
27 sioner may deem proper, but no such payments or dis-
28 bursements shall be made or awarded by him unless
29 duly verified statements on forms prescribed by the
30 commissioner shall be filed with the commissioner within
31 three months after the cessation of such treatment or
32 the delivery of such appliances.

33 (c) No employer shall enter into any contracts with
34 any hospital, its physicians, officers, agents or employees,
35 to render medical, dental or hospital service or to give
36 medical or surgical attention therein to any employee for
37 accidental injury compensable within the purview of this
38 act, and no employer shall permit or require any employee

39 to contribute, directly or indirectly, to any fund for the
40 payment of such medical, surgical, dental or hospital
41 service within such hospital for such accidental com-
42 pensable injury. Any employer violating this section
43 shall be liable in damages to his or its employee, and shall
44 not avail himself of any of the common law defenses
45 mentioned in section eight, article two of this chapter,
46 and any employer or hospital or agent or employee
47 thereof violating the provisions of this section shall be
48 guilty of a misdemeanor and upon conviction thereof
49 shall be sentenced to pay a fine not exceeding one thou-
50 sand dollars or to undergo imprisonment not exceeding
51 one year, or both.

Sec. 4. *Funeral Expenses.*—In case the personal injury
2 causes death, and disability is continuous from the date of
3 such injury to date of death, reasonable funeral expenses,
4 not to exceed one hundred and fifty dollars, shall be paid
5 from the fund, payment to be made to the persons who
6 have furnished the service and supplies, or to the persons
7 who have advanced payment for same, as the commis-

8 sioner may deem proper, in addition to such award as
9 may be made to the employee's dependents.

Sec. 6. *Classification of Disability Benefits.*—Where
2 compensation is due an employer under the provisions of
3 this chapter for a personal injury other than silicosis, such
4 compensation shall be as provided in the following
5 schedule:

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

11 (b) Subdivisions (a) shall be limited as follows: Ag-
12 gregate award for a single injury causing temporary
13 disability shall be for a period not exceeding fifty-two
14 weeks: *Provided, however,* That in case an injured em-
15 ployee, by reason of having an ununited fracture or hav-
16 ing undergone a surgical operation to correct a vicious
17 union following a fracture, or for the repair of an un-
18 united fracture, or having suffered an injury to the spine
19 or pelvic bones which is of a temporary nature, or for

20 any ankylose joint, is disabled for a longer period than
21 fifty-two weeks, the period during which compensation
22 shall be paid may be seventy-eight weeks: *Provided,*
23 *further,* That if at the end of such period of fifty-two or
24 seventy-eight weeks the temporary disability continues
25 but does not warrant a finding of permanent disability, the
26 commissioner may grant a temporary extension for such
27 further period as may appear necessary, but in no case
28 shall the combined periods exceed one hundred and fifty-
29 six weeks.

30 (c) If the injury causes permanent disability, the per-
31 centage of disability to total disability shall be determined
32 and the award computed and allowed as follows:

33 For permanent disability of from one per cent to eighty-
34 five per cent, sixty-six and two-thirds per cent of the
35 average weekly earnings for a period to be computed on
36 the basis of four weeks' compensation for each per cent of
37 disability determined.

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

41 (d) If the injury results in the total loss by severance
42 of any of the members named in this subdivision, the
43 percentage of disability shall be determined in accordance
44 with the following table, and award made as provided
45 in subdivision (c) of this section:

46 The loss of a great toe shall be considered a ten per
47 cent disability.

48 The loss of a great toe (one phalanx) shall be consid-
49 ered a five per cent disability.

50 The loss of other toes shall be considered a four per
51 cent disability.

52 The loss of other toes (one phalanx) shall be considered
53 a two per cent disability.

54 The loss of all toes shall be considered a twenty-five
55 per cent disability.

56 The loss of fore part of foot shall be considered a thirty
57 per cent disability.

58 The loss of foot shall be considered a thirty-five per
59 cent disability.

60 The loss of leg shall be considered a forty-five per cent
61 disability.

62 The loss of thigh shall be considered a fifty per cent
63 disability.

64 The loss of thigh at hip joint shall be considered a sixty
65 per cent disability.

66 The loss of little or fourth finger (one phalanx) shall
67 be considered a three per cent disability.

68 The loss of little or fourth finger shall be considered a
69 five per cent disability.

70 The loss of ring or third finger (one phalanx) shall be
71 considered a three per cent disability.

72 The loss of ring or third finger shall be considered a
73 five per cent disability.

74 The loss of middle or second finger (one phalanx) shall
75 be considered a three per cent disability.

76 The loss of middle or second finger shall be considered
77 a seven per cent disability.

78 The loss of index or first finger (one phalanx) shall be
79 considered a six per cent disability.

80 The loss of index or first finger shall be considered a ten
81 per cent disability.

82 The loss of thumb (one phalanx) shall be considered a
83 twelve per cent disability.

84 The loss of thumb shall be considered a twenty per cent
85 disability.

86 The loss of thumb and index finger shall be considered
87 a thirty-two per cent disability.

88 The loss of index and middle finger shall be considered
89 a twenty per cent disability.

90 The loss of middle and ring finger shall be considered
91 a fifteen per cent disability.

92 The loss of ring and little finger shall be considered a
93 ten per cent disability.

94 The loss of thumb, index and middle finger shall be
95 considered a forty per cent disability.

96 The loss of index, middle and ring finger shall be
97 considered a thirty per cent disability.

98 The loss of middle, ring and little finger shall be
99 considered a twenty per cent disability.

100 The loss of four fingers shall be considered a thirty-two
101 per cent disability.

102 The loss of hand shall be considered a fifty per cent
103 disability.

104 The loss of forearm shall be considered a fifty-five per
105 cent disability.

106 The loss of arm shall be considered a sixty per cent
107 disability.

108 The total and irrecoverable loss of the sight of one eye
109 shall be considered a thirty-three per cent disability, and
110 the injured employee shall be entitled to compensation
111 for a period of one hundred and thirty-two weeks.

112 For the partial loss of vision in one, or both eyes, the
113 percentage of disability shall be determined by the com-
114 missioner, using as a basis the total loss of one eye.

115 (e) Should a claimant to whom has been made a
116 permanent partial award of from one per cent to eighty-
117 five per cent, both inclusive, die from sickness or non-
118 compensable injury, the unpaid balance of such award
119 shall be paid to claimant's dependents as defined in this
120 chapter, if any; such payment to be in the same install-
121 ments that would have been paid to claimant if living:
122 *Provided, however,* That no payment shall be made to
123 any widow of such claimant after her remarriage, and
124 that this liability shall not accrue to the estate of such

125 claimant and shall not be subject to any debts of, or
126 charges against, such estate.

127 (f) The award for permanent disabilities intermediate
128 to those fixed by the foregoing schedule and permanent
129 disability of from one per cent to eighty-five per cent
130 shall be in the same proportion and shall be computed and
131 allowed by the commissioner.

132 (g) The percentage of all permanent disabilities other
133 than those enumerated in subdivisions (c), (d), (e), and
134 (f) of this section shall be determined by the commis-
135 sioner, and award made in accordance with the pro-
136 visions of subdivision (c).

137 (h) Compensation payable under any subdivision of
138 this section shall be limited as follows: Not to exceed
139 a maximum of eighteen dollars a week, nor to be less
140 than a minimum of ten dollars a week.

141 (i) Where an injury results in temporary total dis-
142 ability for which compensation is awarded under sub-
143 division (a) of this section and such injury is later de-
144 termined permanent partial disability under subdivision
145 (c), the amount of compensation so paid shall be con-

146 sidered as payment of the compensation payable for such
147 injury in accordance with the schedule in subdivision
148 (c). Compensation, either total temporary or permanent
149 partial, under this section shall be payable only to the
150 injured employee and the right thereto shall not vest in
151 his or her estate, except that any unpaid compensation
152 which would have been paid or payable to the employee
153 up to the time of his death, if he had lived, shall be paid
154 to the dependents of such injured employee if there be
155 such dependents at the time of death.

156 (j) The following permanent disabilities shall be con-
157 clusively presumed to be total in character:

158 Loss of both eyes or the sight thereof.

159 Loss of both hands or the use thereof.

160 Loss of both feet or the use thereof.

161 Loss of one hand and one foot or the use thereof.

162 In all other cases permanent disability shall be deter-
163 mined by the commissioner in accordance with the facts
164 in the case, and award made in accordance with the
165 provisions of subdivision (c).

Sec. 6-a. *Stages of Silicosis; Benefits and Mode of Payment to Employees and Dependents.*—An employee shall, for the purposes hereof, be deemed to have silicosis: (1) In the first stage when it is found by the commissioner that the earliest detectable specific signs of silicosis are present, whether or not capacity for work is or has been impaired by such silicosis; (2) In the second stage when it is found by the commissioner that definite and specific physical signs of silicosis are present, and that capacity for work is or has been impaired by that disease; (3) In the third stage when it is found by the commissioner that the employee has silicosis accompanied by active tuberculosis of the lungs resulting in total and permanent disability.

Where compensation for silicosis is due an employee under the provisions hereof, such compensation shall be as provided in the following schedule: (a) If the employee is suffering from silicosis in the first stage, the employee shall receive eight hundred dollars as compensation in full for silicosis that he has sustained as a result of and in the course of his employment, to be payable as a lump sum or in periodic installments in the

22 discretion of the commissioner, and shall be a final pay-
23 ment and operate as a full release by the employee for
24 compensation and for any claim against the employer
25 that the employee may thereafter have for silicosis, and
26 irrespective of whether the employee thereafter continues
27 in the same employment, he shall not have the right to
28 receive any or further compensation or make any claim be-
29 cause of silicosis, either to the compensation commissioner
30 or against his employer, anything to the contrary in this
31 chapter notwithstanding. (b) If the employee is suffer-
32 ing from silicosis in the second stage, the employee shall
33 receive sixteen hundred dollars as compensation in full
34 for silicosis that he has sustained as a result of and in
35 the course of his employment, to be payable as a lump
36 sum or in periodic installments in the discretion of
37 the commissioner, and shall be a final payment and oper-
38 ate as a full release by the employee for compensation
39 and for any claim against the employer that the employee
40 may thereafter have for silicosis, and irrespective of
41 whether the employee thereafter continues in the same
42 employment, he shall not have the right to receive any

43 or further compensation or make any claim because of
44 silicosis either to the commissioner or against his em-
45 ployer, anything to the contrary in this chapter not-
46 withstanding. (c) If the employee is suffering from
47 silicosis in the third stage, the compensation shall be paid
48 therefor in the same manner and at the same rate as is
49 provided for permanent disability under the provisions of
50 subdivisions (c), (f) and (h) of the preceding section.
51 (d) If the employee dies from silicosis within six years
52 from the date of his last injurious exposure to silicon
53 dioxide dust in harmful quantities and the commissioner
54 determines that he was suffering from silicosis in the
55 third stage, the benefits shall be in the amounts and to
56 the persons provided for in section ten of this article;
57 as to such benefits sections eleven to fourteen, inclusive,
58 of this article shall apply.

Sec. 8. *Physical Examination of Claimant; Expenses.*—

2 The commissioner shall have authority, after due notice
3 to the employer and claimant, whenever in his opinion
4 it shall be necessary, to order a claimant of compensation
5 for a personal injury other than silicosis to appear for

6 examination before a medical examiner selected by the
7 commissioner; and the claimant and employer, respect-
8 ively, shall each have the right to select a physician of
9 his or its own choosing and at his or its own expense to
10 participate in such examination. The claimant and em-
11 ployer shall, respectively, be furnished with a copy of
12 the report of examination made by the medical examiner
13 selected by the commissioner. The respective physicians
14 selected by the claimant and employer shall have the
15 right to concur in any report made by the medical exam-
16 iner selected by the commissioner, or each may file with
17 the commissioner a separate report, which separate report
18 shall be considered by the commissioner in passing upon
19 the claim. If the compensation claimed is for silicosis, the
20 commissioner shall have the power, after due notice to
21 the employer, and whenever in his opinion it shall be
22 necessary, to order a claimant to appear for examination
23 before the medical board hereinafter provided. In either
24 case the claimant shall be entitled to reasonable traveling
25 and other expenses necessarily incurred by him in obey-
26 ing such order, which shall be paid out of the amount

27 allowed under this chapter for medical, surgical, dental
28 and hospital treatment.

Sec. 8-a. *Silicosis Medical Board Created; Qualifications;
2 Term of Office; Duties; Remuneration.*—There shall be a
3 medical board, known as the “silicosis medical board,”
4 which shall consist of three licensed physicians, who shall
5 be appointed by the commissioner. No person shall be ap-
6 pointed as a member of such board, or as a consultant
7 thereto, who has not by special study or experience, or
8 both, acquired special knowledge of pulmonary diseases.
9 All members of the silicosis medical board shall be phy-
10 sicians of good professional standing, admitted to practice
11 medicine and surgery in this state, and one of them shall
12 be a roentgenologist. One of the board shall be designated
13 annually as chairman by the commissioner. The term of
14 office of each member of such board shall be six years.
15 The function of the board shall be to determine all medi-
16 cal questions relating to cases of compensation for sili-
17 cosis under the direction and supervision of the com-
18 missioner. The commissioner, from time to time, shall
19 fix the per diem salary, computed on the basis of actual

20 time devoted to the discharge of their duties, to be paid
21 each member of such board, and they shall also be
22 entitled to reasonable and necessary traveling and other
23 expenses incurred while actually engaged in the per-
24 formance of their duties.

Sec. 8-b. *Silicosis Medical Board; Procedure; Autopsy.*

2 —The silicosis medical board, upon reference to it by the
3 commissioner of a case of silicosis, shall notify the em-
4 ployee, or in case he is dead the claimant, and the
5 employer, to appear before such board at a time and
6 place stated in the notice. If the employee be living, he
7 shall appear before the board at the time and place
8 specified and submit to such examination, including clini-
9 cal and X-ray examinations, as the board may require.
10 If a physician licensed to practice medicine in the state
11 shall make affidavit that the employee is psysically un-
12 able to appear at the time and place designated by the
13 board, such board shall, on notice to the proper parties,
14 change the place and time of examination to such other
15 place and time as may reasonably facilitate the hearing or
16 examination of the employee. The employee, or in case he

17 is dead, the claimant, and the employer shall also produce
18 as evidence to the board all reports of medical and X-ray
19 examinations which may be in their respective possession
20 or control, showing the past or present condition of the
21 employee. If the employee be dead, the notice of the
22 board shall further require that the claimant produce
23 necessary consents and permits so that an autopsy may be
24 performed, if the board shall so direct. When in the
25 opinion of the board an autopsy is deemed necessary
26 accurately and scientifically to ascertain and determine
27 the cause of death, such autopsy examination shall be
28 ordered by the board, which shall designate a duly li-
29 censed physician, a pathologist, or such other specialists
30 as may be deemed necessary by the board, to make such
31 examination and tests to determine the cause of death
32 and certify his or their written findings, in triplicate, to
33 the board, which findings shall be public records. In the
34 event that a claimant for compensation for such death
35 refuses to consent and permit such autopsy to be made,
36 all rights for compensation shall thereupon be forfeited.
37 The employee, or if he be dead, the claimant, and the

38 employer, shall be entitled to be present at all exami-
39 nations conducted by the board, and to be represented by
40 attorneys and physicians.

Sec. 8-c. *Silicosis Medical Board; Reports and Distribu-*
2 *tion Thereof; Findings Required of Board; Objection to*
3 *Findings; Procedure Thereon.*—The silicosis medical
4 board, as soon as practicable, after it has completed its
5 investigation, shall make its written report, to the com-
6 missioner of its findings and conclusions on every medi-
7 cal question in controversy, and the commissioner shall
8 send one copy thereof to the employee or claimant and
9 one copy to the employer, and the board shall also re-
10 turn to and file with the commissioner all the evidence,
11 as well as all statements under oath, if any, of the per-
12 sons who appeared before it on behalf of the employee or
13 claimant, or employer, and also all medical reports and
14 X-ray examinations produced by or on behalf of the
15 employee or claimant, or employer.

16 The findings and conclusions of the board shall set
17 forth, among other things, the following:

18 (a) Whether or not the claimant or the deceased em-
19 ployee has contracted silicosis, and, if so, the stage thereof.

20 (b) If the claimant or the deceased employee has con-
21 tracted such disease, whether or not the exposure in the
22 employment was sufficient to have caused silicosis or to
23 have perceptibly aggravated an existing silicosis.

24 (c) What, if any, physician appeared before the board
25 on behalf of the claimant, and what, if any, X-rays were
26 produced by or on behalf of the claimant, and what, if
27 any, physician appeared before the board on behalf of the
28 employer, and what, if any, X-rays were produced by or
29 on behalf of the employer.

30 If either party objects to the whole or any part of such
31 findings and conclusions of the board, he shall file with
32 the commissioner, within fifteen days of the mailing of
33 such copy to him unless for good cause shown the com-
34 missioner extends such time, his objections thereto in
35 writing, specifying the particular statements of the
36 board's findings and conclusions to which he objects.
37 After the time has expired for the filing of objections to
38 the findings and conclusions of the board, the commis-

39 sioner shall proceed to act as provided in this chapter.
40 If after the time has expired for the filing of objections
41 to the findings and conclusions of the board no objections
42 have been filed, the report of a majority of the board of
43 its findings and conclusions on any medical question shall
44 be taken to be plenary and conclusive evidence of the
45 findings and conclusions therein stated. If objection has
46 been filed to the findings and conclusions of the board,
47 notice thereof shall be given to the board, and the mem-
48 bers thereof joining in such findings and conclusions shall
49 appear at the time fixed by the commissioner for the
50 hearing to submit to examination and cross-examination
51 in respect to such findings and conclusions. At such
52 hearing evidence to support or controvert the findings
53 and conclusions of the board shall be limited to examina-
54 tion and cross-examination of the members of the board,
55 and to the taking of testimony of other qualified physi-
56 cians and roentgenologists.

Sec. 9-b. *Effect of Pre-Existing Physical Impairment;*
2 *Limited Compensation.*—Where an employee has a defin-
3 itely ascertainable physical impairment originating as

4 hereafter set forth in this section, then in the event that
5 such employee shall thereafter receive an injury in the
6 course of and resulting from his employment, such
7 physical impairment, and the effect thereof, and an ag-
8 gravation thereof, shall not be taken into consideration
9 in fixing the amount of compensation allowed by reason
10 of such injury, and such compensation shall be awarded
11 only in the amount that would have been allowable had
12 such employee not had such pre-existing physical im-
13 pairment. This section shall only apply to definitely
14 ascertainable physical impairments, either

15 (a) Originating either before or after October 1, 1913,
16 otherwise than from an injury received in the course of
17 and resulting from employment, or

18 (b) Originating, prior to October 1, 1913, from an in-
19 jury in the course of and resulting from employment,
20 or

21 (c) Originating after October 1, 1913, from an injury
22 in the course of and resulting from employment by an
23 employer, who at the time of such injury had not elected

24 to comply with, or was not in good standing, under the
25 workmen's compensation law of West Virginia, or
26 (d) Originating in any injury of whatsoever origin
27 whenever received, occurring without the state of West
28 Virginia, except injuries received after October 1, 1913,
29 in the employ of a subscriber in good standing under the
30 compensation fund of West Virginia in the course of and
31 resulting from temporary employment without the state
32 as defined and limited by section one, article two of this
33 chapter.

Sec. 10. *Classification of Death Benefits; "Dependent"*

2 *Defined.*—In case a personal injury other than silicosis,
3 suffered by an employee in the course of and resulting
4 from his employment, causes death within the period of
5 six years and the disability is continuous from date of
6 such injury until date of death, or if death results from
7 determined third degree silicosis within six years from
8 the date of his last injurious exposure to silicon dioxide
9 dust in harmful quantities, the benefits shall be in the
10 amounts and to the persons as follows:

11 (a) If there be no dependents, the disbursements shall

12 be limited to the expense provided for in sections three
13 and four of this article.

14 (b) If the deceased employee leaves a dependent widow
15 or invalid widower, the payment shall be thirty dollars
16 a month until death or remarriage of such widow or
17 widower, and in addition ten dollars a month for each
18 child under sixteen years of age, to be paid until such
19 child reaches such age, or, if an invalid child, fifteen
20 dollars a month, to continue as long as such child re-
21 mains an invalid: *Provided, however,* That if such widow
22 or invalid widower shall remarry within two years from
23 the date of the death of such employee, such widow or
24 widower shall be paid at the time of remarriage twenty
25 per cent of the amount that would be due for the period
26 remaining between the date of such remarriage and the
27 end of ten years from the date of death of such employee,
28 and such widow or widower shall be advised in writing
29 by the commissioner of his or her rights under this
30 proviso at the time of making the original award: *Pro-*
31 *vided, further,* That if upon investigation and hearing,
32 as provided in article five of this chapter, it shall be

33 ascertained that such widow or widower is living with
34 a man or woman, as the case may be, as man and wife
35 and not married, or that the widow is living a life of
36 prostitution, the commissioner shall stop the payment of
37 the benefits herein provided to such widow or widower.

38 If the deceased employee be a widow or widower and
39 leave a child or children under the age of sixteen years,
40 the payment shall be fifteen dollars a month to each child
41 until he or she reaches the age of sixteen years.

42 In all awards of compensation to children, unless other-
43 wise provided herein, the award shall be until they
44 reach the age of sixteen years or their death prior thereto.

45 (c) If the deceased employee leaves no dependent
46 widow or widower and leaves a wholly dependent father
47 or mother, he or she shall be paid the sum of twenty dol-
48 lars a month, payments to continue until death, and if
49 there be no widow or widower and both the father and
50 mother are wholly dependent, then a joint award shall
51 be made to the father and mother in the sum of twenty
52 dollars a month until death. Upon the death of either the
53 father or mother in any case in which a joint award has

54 been made to them, the full award of twenty dollars a
55 month shall be paid to the survivor until his or her
56 death.

57 (d) If the deceased employee leaves no dependent
58 widow or widower or wholly dependent father or mother
59 but there are other wholly dependent persons, as de-
60 fined in paragraph (f) of this section, the payment shall
61 be twenty dollars a month, to continue for six years after
62 the death of the deceased.

63 (e) If the deceased employee leaves no dependent
64 widow or widower, child under sixteen years of age, or
65 wholly dependent person, but there are partially depend-
66 ent persons at the time of death, the payment shall be
67 twelve dollars and fifty cents a month, to continue for
68 such portion of the period of six years after the date of
69 death, as the commissioner may determine.

70 Compensation under subdivisions (b), (c), (d), and (e)
71 hereof shall, except as may be specifically provided to the
72 contrary therein, cease upon the death of the dependent,
73 and the right thereto shall not vest in his or her estate.

74 (f) Dependent, as used in this chapter, shall mean a

75 widow; invalid widower; child under sixteen years of
76 age; invalid child; or a posthumous child, who, at the
77 time of the injury causing death, is dependent in whole
78 or in part for his or her support upon the earnings of
79 the employee; also the following persons who are and
80 continue to be residents of the United States or its terri-
81 torial possessions; stepchild under sixteen years of age;
82 child under sixteen years of age legally adopted prior
83 to the injury causing death; father; mother; grandfather
84 or grandmother, who, at the time of the injury causing
85 death, is dependent in whole or in part for his or her
86 support upon the earnings of the employee; an invalid
87 brother or sister wholly dependent for his or her sup-
88 port upon the earnings of the employee at the time of
89 the injury causing death.

Sec. 13. *Widow or Widower Living Separate from*
2 *Employee.*—Notwithstanding anything herein contained,
3 no sum shall be paid to a widow or widower who shall
4 have abandoned the employee before the injury causing
5 death, but nothing herein contained shall be construed to
6 preclude a widow or widower from receiving compensa-

7 tion in accordance with section ten of this article if such
8 widow or widower has been abandoned within a period
9 of two years by the employee for any reason except such
10 reason as would have entitled the deceased employee to
11 an annulment or a divorce from the bonds of matrimony
12 as provided in article two, chapter forty-eight of this
13 code.

Sec. 14. *Computation of Benefits.*—The average weekly
2 wage earnings, wherever earned, of the injured person
3 at the time of the injury, shall be taken as the basis
4 upon which to compute the benefits. The time of injury
5 within the meaning of this section shall be two months,
6 six or twelve months immediately preceding the date of
7 the injury, whichever is most favorable to the injured
8 employee. In cases involving third stage silicosis “time
9 of injury” within the meaning of this section shall be the
10 day of cessation of work.

Sec. 15. *Application for Benefits; Nonresident Aliens.*—
2 To entitle any employee or dependent of a deceased
3 employee to compensation, other than for silicosis, under
4 this chapter, the application therefor must be made on a

5 form or forms prescribed by the commissioner and filed
6 in the office of the commissioner within six months from
7 and after the date of injury or death, as the case may be,
8 and all proofs of dependency in fatal cases must be filed
9 with the commissioner within nine months from and
10 after the death: *Provided, however,* That in case an em-
11 ployer fails to report an injury within five months from
12 and after the date such injury occurs the claimant shall
13 have two months from and after the date of the filing of
14 the report by the employer within which to file his
15 application for compensation with the commissioner:
16 *Provided further,* That no employee shall be entitled to
17 compensation regardless of whether or not report of in-
18 jury be submitted by the employer unless application
19 therefor be filed in the office of the commissioner within
20 one year from the date of the injury. In case the em-
21 ployee is mentally or physically incapable of filing such
22 application, it may be filed by his attorney or by a member
23 of his family.

24 To entitle any employee to compensation for silicosis
25 under the provisions hereof, the application therefor must

26 be made on a form or forms prescribed by the commis-
27 sioner and filed in the office of the commissioner within
28 one year from and after the date of the last injurious
29 exposure to silicon dioxide dust, or, in the case of death,
30 the application shall be filed as aforesaid by the dependent
31 of such employee within six months from and after such
32 employee's death.

33 Nonresident aliens who may be entitled to benefits
34 under prior law with respect to injuries sustained prior
35 to March eleventh, one thousand nine hundred thirty-
36 nine, may be officially represented by the consular officers
37 of the country of which such aliens may be citizens or
38 subjects, but no compensation shall be paid to such non-
39 resident aliens in fatal cases through the consular officers
40 of the country of which such aliens may be citizens or
41 subjects until such consular officers or a representative
42 of such consular officer or a representative of such con-
43 sular officer is appointed personal representative of the
44 deceased party by proper authority in the county in
45 which the deceased resided, or in which the seat of
46 government is located. Nothing herein contained shall

47 be construed as giving such consular officer the right to
48 make application for compensation on behalf of non-
49 resident aliens.

Sec. 15-a. *Nonresident Alien Beneficiaries.*—Notwith-
2 standing any other provisions of this chapter, no benefits
3 under any such provisions and no commutation of peri-
4 odical benefits under the provisions of section seventeen
5 of this article shall be made to nonresident alien bene-
6 ficiaries on account of any injury sustained after March
7 eleventh, one thousand nine hundred thirty-nine. Non-
8 resident alien beneficiaries within the meaning hereof
9 shall mean persons not citizens of the United States re-
10 siding outside of the territorial limits of the United States
11 at the time of the injury with respect to which benefits
12 would otherwise have been payable to them in the ab-
13 sence of such nonresident alienage. In case of nonresident
14 alien beneficiaries entitled under prior law to benefits on
15 account of accidents occurring prior to March eleventh,
16 one thousand nine hundred thirty-nine, the commissioner
17 in his discretion may make, and such beneficiary shall be
18 required to accept, commutation of such benefits into a

19 lump sum settlement and payment, at the rate of one .
20 half of like benefits to resident beneficiaries.

Sec. 15-b. *Nonmedical Questions Determined by Com-*
2 *missioner on Hearing of Silicosis Claim.*—On the hearing
3 of a claim for compensation for silicosis, the commissioner
4 shall hear, determine and file findings covering, but not
5 limited thereto, the following nonmedical questions:

6 (a) Whether the employee was in fact, within one
7 year prior to the filing of his claim, in the employ of the
8 employer, and, if so, the duration of such employment
9 and whether or not such employment was subject to the
10 provisions hereof.

11 (b) The occupation or occupations, process or processes
12 in which the employee was engaged during such employ-
13 ment, and the approximate periods of work in each such
14 occupation or process.

15 (c) The employments, previous and subsequent to the
16 employment out of which the claim arose, the duration
17 thereof, and the exposure therein to the hazard of silicon
18 dioxide dust.

19 (d) Whether the employee contracted such disease
20 through wilful self-exposure.

21 (e) The average weekly wages of the employee at the
22 time he ceased work for his last employer in whose
23 employment he was exposed to silicon dioxide dust. The
24 time of cessation of work, within the meaning of this
25 section, shall be two months, six months or twelve months
26 immediately preceding the date of the injury, whichever
27 is most favorable to the injured employee.

28 (f) Whether the last injurious exposure to silicon
29 dioxide dust in the employment with the employer, oc-
30 curred within one year prior to the filing of the claim for
31 silicosis benefits, and if the employee is no longer in the
32 service of the employer, the date upon which such em-
33 ployee ceased so to work; and, if the employee has died,
34 the date and place of such death, and the place of inter-
35 ment of the body.

Sec. 16. *Commissioner's Jurisdiction over Case Con-
2 tinuous; Modification of Finding or Order; Time Limita-
3 tion on Awards.*—The power and jurisdiction of the com-
4 missioner over each case shall be continuing, and he may

5 from time to time, after due notice to the employer, make
6 such modifications or changes with respect to former
7 findings or orders as may be justified: *Provided, however,*
8 That no further award may be made in fatal cases arising
9 after March seventh, one thousand nine hundred twenty-
10 nine, except within two years after the death of the
11 employee, or, in case of nonfatal injuries on and after
12 March seventh, one thousand nine hundred twenty-nine,
13 except within three years after payments for temporary
14 disability shall have ceased and within one year after
15 the commissioner shall have made the last payment in
16 any permanent disability case: *And provided further,*
17 That no further award may be made in either fatal or
18 nonfatal cases arising on account of injuries occurring
19 prior to March seventh, one thousand nine hundred
20 twenty-nine, unless written application for such award,
21 signed personally by claimant, or, in case of claimant's
22 infancy or physical or mental incapacity, by his or her
23 guardian, next friend, or committee, be filed with the
24 commissioner on or before September fifteenth, one thou-
25 sand nine hundred thirty-nine. In any case in which an

26 injured employee shall make application for a further
27 adjustment of his claim, if such application be in writing
28 and filed within the applicable time limit as prescribed
29 herein, the commissioner shall pass upon and determine
30 the merits of such application within thirty days after
31 the filing thereof.

Sec. 20. *Post-Mortem Examinations.*—The commis-
2 sioner shall have authority, after due notice to the em-
3 ployer and claimant, whenever he shall deem it necessary,
4 to order an autopsy, and may designate a duly licensed
5 physician to make such post-mortem examination or
6 examinations as may be necessary to determine the cause
7 of the deceased employee's death, and such physician shall
8 file with the commissioner a written report of his findings;
9 the claimant and the employer respectively, shall have the
10 right to select a physician of his or its own choosing and
11 at his or its own expense, to participate in the post-
12 mortem examination, and the respective physicians
13 selected by the claimant and the employer shall have the
14 right to concur in any report made by the physician
15 selected by the commissioner, or each may file with the

16 commissioner a separate report. In any case, including
17 silicosis cases, in which either the employer or a claimant
18 requests that an autopsy be performed, then such au-
19 topsy shall be directed as hereinbefore provided, and in
20 the event that a claimant for compensation for such
21 death refuses to consent and permit such autopsy to be
22 made all rights to compensation shall be forfeited.

Article 5. Review.

Section

2. Workmen's compensation appeal board.
3. Appeals to board; procedure.
4. Appeals from final decisions of board.
- 4-a. Findings of fact.
5. Fees of attorney for claimant.

Section 2. Workmen's Compensation Appeal Board—

2 There shall be a board to be known as the "Workmen's
3 Compensation Appeal Board," which shall be referred to
4 in this chapter as the "board," to be composed of three
5 members, none of whom shall be a contributor to the
6 compensation fund or in any way connected with a
7 contributor thereto and none of whom shall be a bene-
8 ficiary of the compensation fund or in any way connected
9 with a beneficiary thereof. Two members of such board

10 shall be of opposite politics to the third, and all three
11 shall be citizens of this state who have resided therein
12 for a period of at least five years. All members of the
13 board shall be appointed by the governor for a term of
14 six years. The governor is hereby vested with power to
15 remove any member of the board according to section
16 four, article six, chapter six, of this code. They shall
17 each receive an annual salary of two thousand four hun-
18 dred dollars, payable in monthly installments, and shall
19 also be entitled to reasonable and necessary traveling
20 and other expenses incurred while actually engaged in
21 the performance of their duties. The governor shall
22 designate one of the members of the board as chairman
23 thereof, and the board shall meet at the capitol or at
24 such other places throughout the state as it may deem
25 proper, at regular sessions commencing on the first Tues-
26 day in February, April, June, August, October and Decem-
27 ber, and continuing as long as may be necessary for the
28 proper and expeditious transaction of the business before
29 it. All clerical services required by the board shall be paid
30 for by the compensation commissioner from any funds

31 at his disposal. The board shall, from time to time, com-
32 pile and promulgate such rules of practice and procedure
33 as to it shall appear proper for the prompt and efficient
34 discharge of its business and such rules shall be sub-
35 mitted to the supreme court of appeals for approval, and
36 if approved by such court shall have the same force and
37 effect as the approved rules of procedure of circuit courts.

Sec. 3. *Appeals to Board; Procedure.*—Any employer,
2 employee, claimant, or dependent, who shall feel ag-
3 grieved at any final action of the commissioner taken after
4 a hearing held in accordance with the provisions of
5 section one of this article, and any claimant or employer
6 who shall feel aggrieved at any action of the commissioner
7 in refusing to reopen a claim under the provisions of
8 sections one-b and one-d of this article, shall have the
9 right to appeal to the board created in section two of this
10 article for a review of such action. The aggrieved party
11 shall file a written notice of appeal with the compensation
12 commissioner, directed to such board, within thirty days
13 after receipt of notice of the action complained of, or in

14 any event, regardless of notice, within sixty days after
15 the date of the action complained of, and the commissioner
16 shall notify the other party immediately upon the filing of
17 a notice of appeal. The commissioner shall forthwith
18 make up a transcript of the proceedings before him and
19 certify and transmit the same to the board. In such
20 certificate, he shall incorporate a brief recital of the
21 proceedings therein had and recite each order entered
22 and the date thereof. The board shall review the action
23 of the commissioner complained of at its next meeting
24 after the filing of notice of appeal, provided such notice
25 of appeal shall have been filed thirty days before such
26 meeting of the board, unless such review be postponed
27 by agreement of parties or by the board for good cause.
28 The board shall set a time and place for the hearing of
29 arguments on each claim and shall notify the interested
30 parties thereof, and briefs may be filed by the interested
31 parties in accordance with the rules of procedure pre-
32 scribed by the board. And thereupon, after a review of
33 the case, the board shall sustain the finding of the
34 commissioner or enter such order or make such award as

35 the commissioner should have made and shall thereupon
36 certify the same to the commissioner, who shall proceed
37 in accordance therewith. Or, instead of affirming or re-
38 versing the commissioner as aforesaid, the board may,
39 upon motion of either party or upon its own motion, for
40 good cause shown, to be set forth in the order of the
41 board, remand the case to the commissioner for the
42 taking of such new, additional or further evidence as
43 in the opinion of the board may be necessary for a full
44 and complete development of the facts of the case. In
45 the event the board shall remand the case to the com-
46 missioner for the taking of further evidence therein, the
47 commissioner shall proceed to take such new, additional
48 or further evidence in accordance with any instructions
49 given by the board, and shall take the same within thirty
50 days after receipt of the order remanding the case, giving
51 to the interested parties at least ten days' notice of such
52 supplemental hearing, unless the taking of evidence shall
53 be postponed by agreement of parties, or by the com-
54 missioner for good cause. After the completion of such
55 supplemental hearing the commissioner shall, within

56 sixty days, render his decision affirming, reversing or
57 modifying his former action, which decision shall be
58 appealable to, and proceeded with by the appeal board
59 in like manner as in the first instance. The board may
60 remand any case as often as in its opinion is necessary
61 for a full development and just decision of the case. The
62 board may take evidence or consider ex parte statements
63 furnished in support of any motion to remand the case
64 to the commissioner. All evidence taken by or filed with
65 the board shall become a part of the record. All appeals
66 from the action of the commissioner shall be de-
67 cided by the board at the same session at which they are
68 heard, unless good cause for delay thereof be shown and
69 entered of record. In all proceedings before the board,
70 either party may be represented by counsel.

Sec. 4. *Appeals from Final Decisions of Board.*—From
2 any final decision of the board, including any order of
3 remand, an application for review may be prosecuted by
4 either party, or by the commissioner, to the supreme
5 court of appeals within thirty days from the date thereof
6 by the filing of a petition therefor to such court against

7 the board and the adverse party (claimant or employer,
8 as the case may be) as respondents, and the clerk of such
9 court shall notify each of the respondents and the com-
10 missioner of the filing of such petition. The board shall,
11 within ten days after receipt of such notice, file with the
12 clerk of the court the record of the proceedings had be-
13 fore it, including all the evidence. The court or any judge
14 thereof in vacation may thereupon determine whether or
15 not a review shall be granted. And if granted to a non-
16 resident of this state, he shall be required to execute and
17 file with the clerk before such order of review shall be-
18 come effective, a bond, with security to be approved by
19 the clerk, conditioned to perform any judgment which
20 may be awarded against him thereon. The board may
21 certify to the court and request its decision of any ques-
22 tion of law arising upon the record, and withhold its
23 further proceeding in the case, pending the decision of
24 court on the certified question, or until notice that the
25 court has declined to docket the same. If a review be
26 granted or the certified question be docketed for hearing,
27 the clerk shall notify the board and the parties litigant or

28 their attorneys and the commissioner, of that fact by
29 mail. If a review be granted or the certified question
30 docketed, the case shall be heard by the court in the same
31 manner as in other cases, except that neither the record
32 nor briefs need be printed. Every such review granted or
33 certified question docketed prior to thirty days before
34 the beginning of the term, shall be placed upon the docket
35 for such term. The attorney general shall, without extra
36 compensation, represent the board in such cases. The
37 court shall determine the matter so brought before it
38 and certify its decision to the board and to the commis-
39 sioner. The cost of such proceedings on petition, including
40 a reasonable attorney's fee, not exceeding thirty dollars
41 to the claimant's attorney, shall be fixed by the court and
42 taxed against the employer if the latter be unsuccessful,
43 and if the claimant, or the commissioner (in case the latter
44 be the applicant for review) be unsuccessful, such costs,
45 not including attorney's fees, shall be taxed against the
46 commissioner, payable out of any funds available in his
47 hands, or shall be taxed against the claimant, in the dis-

48 cretion of the court. But there shall no cost taxed upon a
49 certified question.

Sec. 4-a. *Findings of Fact.*—In a judicial proceeding to
2 review a decision of the board, the findings of fact of the
3 board shall have like weight to that accorded to the
4 findings of facts of a trial chancellor or judge in equity
5 procedure.

Sec. 4-b. *Jurisdictional Findings and Decisions Appeal-*
2 *able.*—In any case where the jurisdiction of the commis-
3 sioner is contested, his order in respect thereto shall be
4 deemed final for the purpose of appeal to the board and
5 any decision of the board in respect to such questions of
6 jurisdiction, shall be deemed final for the purpose of
7 appeal to the supreme court of appeals.

Sec. 5. *Fees of Attorney for Claimant.*—If any claimant
2 shall employ an attorney to represent him in connection
3 with any claim arising under this chapter and such
4 attorney shall file with the commissioner an executed
5 copy of his contract of employment with such claimant,
6 it shall be the duty of the commissioner to protect such
7 attorney in the collection of the amount provided for

8 therein from any award made under the provisions of
9 this chapter in favor of the claimant, up to but not in
10 excess of twenty-five per cent of the total amount
11 awarded.

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

Charles C. Morris
Chairman Senate Committee

John D. Ingalls
Chairman House Committee

Originated in the Senate

Takes effect 90-days from passage

Howard Myers
Clerk of the Senate

W. R. Huff
Clerk of the House of Delegates

Donald M. Tucker
President of the Senate

John E. Amos
Speaker House of Delegates

The within Approved this the 12th
day of March, 1945.

W. S. O'Brien
Filed in the office of the Secretary of State
of West Virginia
MAR 12 1945
W. S. O'BRIEN,
Secretary of State