WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1965

ENROLLED
SENATE BILL NO. 20

(By Mr. , Mr. President)

PASSED March 17, 1965
In Effect July 1, 1965

FILED IN THE OFFICE OF
JOE F. BURDETT
SECRETARY OF STATE
THIS DATE 3-19-65
AN ACT to amend and reenact section one, article one, and sections three and six, article four, all of chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to workmen's compensation.

Be it enacted by the Legislature of West Virginia:

That section one, article one, and sections three and six, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:


Section 1. Compensation Commissioner; Appointment;

2 Legal Services by Attorney General.—There shall be a
state workmen’s compensation commissioner who shall
be appointed by the governor by and with the advice and
consent of the senate and who shall serve at the will and
pleasure of the governor during the term for which the
governor was elected and until the commissioner’s suc-
cessor has been appointed and qualified. An appointment
may be made to fill a vacancy or otherwise when the sen-
ate is not in session, but shall be acted upon at the next
session thereof. The person so appointed shall take the
oath or affirmation prescribed by section five of article
four of the constitution, and such oath shall be certified by
the person who administers the same and shall be filed in
the office of the secretary of state. He shall give bond in
the penalty of twenty-five thousand dollars conditioned
for the faithful performance of the duties of his office,
which bond shall be approved by the attorney general
as to form, and by the governor as to sufficiency. The
surety of such bond may be a bonding or surety com-
pany, in which case the premiums shall be paid out of
the appropriation made for the administration of this
chapter. The commissioner shall hold no position of
trust or profit, or engage in any occupation or business, interfering or inconsistent with his duties as such commissioner. The commissioner shall receive an annual salary of fourteen thousand dollars, payable out of the workmen's compensation fund. The commissioner shall have an official seal for the authentication of his orders and proceedings, upon which seal shall be engraved the words, "West Virginia Workmen's Compensation Commissioner", and such other design as the commissioner may prescribe. The courts in this state shall take judicial notice of the seal of the commissioner and in all cases copies of orders, proceedings, or records in the office of the West Virginia compensation commissioner shall be equal to the original in evidence.

The attorney general shall perform all legal services required by the commissioner under the provisions of this chapter: Provided, That in any case in which an application for review is prosecuted from any final decision of the workmen's compensation appeal board to the supreme court of appeals, as provided by section four, article five of this chapter, or in any court proceeding
before the workmen's compensation appeal board, in which such representation shall appear to the commissioner to be desirable, he may designate a regular employee of his office, qualified to practice before such court, to represent him upon such appeal or proceeding, and in no case shall the person so appearing for the commissioner before the court receive remuneration therefor other than his regular salary.

Wherever in this chapter or elsewhere in law reference is made to "State Director of Workmen's Compensation" or "compensation commissioner" such reference shall henceforth be construed and understood to mean "State Workmen's Compensation Commissioner".

Article 4. Disability and Death Benefits.

Section 3. Disbursements for Medicine, Hospital Treatment, Artificial Limbs and Other Appliances; Contract by Employer with Hospital Prohibited.—Except in case of silicosis, the commissioner shall disburse and pay from the fund for such personal injuries to such employees as may be entitled thereto hereunder as follows:

(a) Such sums for medicines, medical, surgical, dental
and hospital treatment, crutches, artificial limbs and such
other and additional approved mechanical appliances and
devices, as may be reasonably required, but not in
excess of three thousand dollars: Provided, That in
special cases where the treatment required, in the opinion
of competent medical authority, is such as to necessitate
an expenditure in excess of such amount, the commis-
sioner may pay out of any available funds such additional
sum as may be necessary, but such additional sum shall
not be charged to the account of the employer.

(b) Payment for such medicine, medical, surgical,
dental and hospital treatment, crutches, artificial limbs
and such other and additional approved mechanical appli-
ances and devices authorized under subdivision (a) here-
of may be made to the injured employee, or to the person
or persons who have furnished such service, or who have
advanced payment for same, as the commissioner may
demn proper, but no such payments or disbursements
shall be made or awarded by him unless duly verified
statements on forms prescribed by the commissioner shall
be filed with the commissioner within six months after
the cessation of such treatment or the delivery of such appliances: *Provided, however,* That no payment hereunder shall be made unless such verified statement shows no other or additional charge for such treatment, appliance or device has been or will be made against any person, firm or corporation. Failure on the part of the doctor or hospital to submit to the commissioner within such six months' period bills for services rendered to an injured employee shall preclude collection thereof from the injured employee.

(c) No employer shall enter into any contracts with any hospital, its physicians, officers, agents or employees to render medical, dental or hospital service or to give medical or surgical attention therein to any employee for injury compensable within the purview of this chapter, and no employer shall permit or require any employee to contribute, directly or indirectly, to any fund for the payment of such medical, surgical, dental, or hospital service within such hospital for such compensable injury. Any employer violating this section shall be liable in damages to his or its employees and shall not avail him-
self of any of the common law defenses mentioned in section eight, article two of this chapter, and any employer or hospital or agent or employee thereof violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be sentenced to pay a fine not exceeding one thousand dollars or to undergo imprisonment not exceeding one year, or both.

Sec. 6. Classification of Disability Benefits.—Where compensation is due an employee under the provisions of this chapter for a personal injury other than first stage silicosis, such compensation shall be as provided in the following schedule:

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

(b) Subdivision (a) shall be limited as follows: Aggregate award for a single injury causing temporary dis-
Enr. S. B. No. 20]

ability shall be for a period not exceeding two hundred eight weeks.

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

For permanent disability of from one per cent to eighty-four per cent, inclusive, sixty-six and two-thirds per cent of the average weekly earnings for a period to be computed on the basis of four weeks’ compensation for each per cent of disability determined.

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

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

The loss of a great toe shall be considered a ten per cent disability.
The loss of a great toe (one phalanx) shall be considered a five per cent disability.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

100 The total and irrecoverable loss of the hearing of one ear shall be considered a fifteen per cent disability, and

101 the injured employee shall be entitled to compensation for a period of sixty weeks. The total and irrecoverable loss of the hearing of both ears shall be considered a forty-five per cent disability, and the injured employee shall be entitled to compensation for a period of one hundred eighty weeks.

108 For the partial loss of hearing in one, or both ears, the percentage of disability shall be determined by the com-
missioner, using as a basis the total loss of hearing in both ears.

113 (e) Should a claimant to whom has been made a per-
manent partial award of from one per cent to eighty-four per cent, both inclusive, die from sickness or noncom-
pensable injury, the unpaid balance of such award shall be paid to claimant’s dependents as defined in this chap-
ter, if any; such payment to be made in the same install-
ments that would have been paid to claimant if living:
Provided, however, That no payment shall be made to any widow of such claimant after her remarriage, and that this liability shall not accrue to the estate of such claimant and shall not be subject to any debts of, or charges against, such estate.

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

(g) The percentage of all permanent disabilities other than those enumerated in subdivisions (c), (d), (e), and (f) of this section shall be determined by the commissioner, and award made in accordance with the provisions of subdivision (c).

(h) Compensation payable under any subdivision of this section shall be limited as follows: Not to exceed a maximum of forty-two dollars a week nor to be less than a minimum of twenty-two dollars a week.

(i) Where an injury results in temporary total disability for which compensation is awarded under sub-
division (a) of this section and such injury is later determined permanent partial disability under subdivision (c), the amount of compensation so paid shall be considered as payment of the compensation payable for such injury in accordance with the schedule in subdivision (c):

Provided further, That in cases where the amount of permanent partial disability is specifically provided for under subdivision (d) of this section, payments made under subdivision (a) shall not be considered as payment of the compensation for such injury. Compensation, either total temporary or permanent partial, under this section shall be payable only to the injured employee and the right thereto shall not vest in his or her estate, except that any unpaid compensation which would have been paid or payable to the employee up to the time of his death, if he had lived, shall be paid to the dependents of such injured employee if there be such dependents at the time of death.

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

Loss of both eyes or the sight thereof.
Loss of both hands or the use thereof.
Loss of both feet or the use thereof.
Loss of one hand and one foot or the use thereof.
In all other cases permanent disability shall be determined by the commissioner in accordance with the facts in the case, and award made in accordance with the provisions of subdivision (c).
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

A. Ray Parker
Chairman Senate Committee

James W. Loop
Chairman House Committee

Originated in the Senate.

Takes effect July 1, 1965

J. H. Morgan
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Howard C. Lawson
President of the Senate

H. Robert White
Speaker House of Delegates

The within approved this the 19 day of March, 1965.

H. B. Smith
Governor