

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1965

ENROLLED

SENATE BILL NO. 20

(By Mr. Carson, Mr. President)

PASSED March 12, 1965

In Effect July 1, 1965 Passage

FILED IN THE OFFICE OF
JOE F. BURDETT
SECRETARY OF STATE
THIS DATE 3-19-65

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Senate Bill No. 20

(By MR. CARSON, MR. PRESIDENT)

[Passed March 12, 1965; in effect July 1, 1965.]

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:

Article 1. General Administrative Provisions.

Section 1. Compensation Commissioner; Appointment;

2 Legal Services by Attorney General.—There shall be a

3 state workmen's compensation commissioner who shall
4 be appointed by the governor by and with the advice and
5 consent of the senate and who shall serve at the will and
6 pleasure of the governor during the term for which the
7 governor was elected and until the commissioner's suc-
8 cessor has been appointed and qualified. An appointment
9 may be made to fill a vacancy or otherwise when the sen-
10 ate is not in session, but shall be acted upon at the next
11 session thereof. The person so appointed shall take the
12 oath or affirmation prescribed by section five of article
13 four of the constitution, and such oath shall be certified by
14 the person who administers the same and shall be filed in
15 the office of the secretary of state. He shall give bond in
16 the penalty of twenty-five thousand dollars conditioned
17 for the faithful performance of the duties of his office,
18 which bond shall be approved by the attorney general
19 as to form, and by the governor as to sufficiency. The
20 surety of such bond may be a bonding or surety com-
21 pany, in which case the premiums shall be paid out of
22 the appropriation made for the administration of this
23 chapter. The commissioner shall hold no position of

24 trust or profit, or engage in any occupation or business,
25 interfering or inconsistent with his duties as such com-
26 missioner. The commissioner shall receive an annual
27 salary of fourteen thousand dollars, payable out of the
28 workmen's compensation fund. The commissioner shall
29 have an official seal for the authentication of his orders
30 and proceedings, upon which seal shall be engraved the
31 words, "West Virginia Workmen's Compensation Com-
32 missioner", and such other design as the commissioner
33 may prescribe. The courts in this state shall take judicial
34 notice of the seal of the commissioner and in all cases
35 copies of orders, proceedings, or records in the office of
36 the West Virginia compensation commissioner shall be
37 equal to the original in evidence.

38 The attorney general shall perform all legal services
39 required by the commissioner under the provisions of
40 this chapter: *Provided*, That in any case in which an
41 application for review is prosecuted from any final deci-
42 sion of the workmen's compensation appeal board to the
43 supreme court of appeals, as provided by section four,
44 article five of this chapter, or in any court proceeding

45 before the workmen's compensation appeal board, in
46 which such representation shall appear to the commis-
47 sioner to be desirable, he may designate a regular em-
48 ployee of his office, qualified to practice before such court,
49 to represent him upon such appeal or proceeding, and
50 in no case shall the person so appearing for the commis-
51 sioner before the court receive remuneration therefor
52 other than his regular salary.

53 Wherever in this chapter or elsewhere in law refer-
54 ence is made to "State Director of Workmen's Compens-
55 sation" or "compensation commissioner" such reference
56 shall henceforth be construed and understood to mean
57 "State Workmen's Compensation Commissioner".

Article 4. Disability and Death Benefits.

Section 3. Disbursements for Medicine, Hospital Treat-
2 **ment, Artificial Limbs and Other Appliances; Contract by**
3 **Employer with Hospital Prohibited.**—Except in case of
4 silicosis, the commissioner shall disburse and pay from
5 the fund for such personal injuries to such employees as
6 may be entitled thereto hereunder as follows:
7 (a) Such sums for medicines, 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, but not in
11 excess of three thousand dollars: *Provided*, That in
12 special cases where the treatment required, in the opinion
13 of competent medical authority, is such as to necessitate
14 an expenditure in excess of such amount, the commis-
15 sioner may pay out of any available funds such additional
16 sum as may be necessary, but such additional sum shall
17 not be charged to the account of the employer.

18 (b) Payment for such medicine, medical, surgical,
19 dental and hospital treatment, crutches, artificial limbs
20 and such other and additional approved mechanical appli-
21 ances and devices authorized under subdivision (a) here-
22 of may be made to the injured employee, or to the person
23 or persons who have furnished such service, or who have
24 advanced payment for same, as the commissioner may
25 deem proper, but no such payments or disbursements
26 shall be made or awarded by him unless duly verified
27 statements on forms prescribed by the commissioner shall
28 be filed with the commissioner within six months after

29 the cessation of such treatment or the delivery of such
30 appliances: *Provided, however,* That no payment here-
31 under shall be made unless such verified statement shows
32 no other or additional charge for such treatment, appli-
33 ance or device has been or will be made against any per-
34 son, firm or corporation. Failure on the part of the doctor
35 or hospital to submit to the commissioner within such six
36 months' period bills for services rendered to an injured
37 employee shall preclude collection thereof from the in-
38 jured employee.

39 (c) No employer shall enter into any contracts with
40 any hospital, its physicians, officers, agents or employees
41 to render medical, dental or hospital service or to give
42 medical or surgical attention therein to any employee for
43 injury compensable within the purview of this chapter,
44 and no employer shall permit or require any employee
45 to contribute, directly or indirectly, to any fund for the
46 payment of such medical, surgical, dental, or hospital
47 service within such hospital for such compensable injury.
48 Any employer violating this section shall be liable in
49 damages to his or its employees and shall not avail him-

50 self of any of the common law defenses mentioned in
51 section eight, article two of this chapter, and any em-
52 ployer or hospital or agent or employee thereof violating
53 the provisions of this section shall be guilty of a misde-
54 meanor and upon conviction thereof shall be sentenced
55 to pay a fine not exceeding one thousand dollars or to
56 undergo imprisonment not exceeding one year, or both.

Sec. 6. Classification of Disability Benefits.—Where

2 compensation is due an employee under the provisions of
3 this chapter for a personal injury other than first stage
4 silicosis, such compensation shall be as provided in the fol-
5 lowing 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 forty-two dollars
10 a week nor to be less than a minimum of twenty-two
11 dollars a week.

12 (b) Subdivision (a) shall be limited as follows: Aggre-
13 gate award for a single injury causing temporary dis-

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

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

19 For permanent disability of from one per cent to eighty-
20 four per cent, inclusive, sixty-six and two-thirds per cent
21 of the average weekly earnings for a period to be com-
22 puted on the basis of four weeks' compensation for each
23 per cent of disability determined.

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

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

32 The loss of a great toe shall be considered a ten per cent
33 disability.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

82 The loss of index, middle and ring finger shall be con-
83 sidered a thirty per cent disability.

84 The loss of middle, ring and little finger shall be con-
85 sidered a twenty per cent disability.

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

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

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

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

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

98 For the partial loss of vision in one, or both eyes, the

99 percentage of disability shall be determined by the com-
100 missioner, using as a basis the total loss of one eye.

101 The total and irrecoverable loss of the hearing of one
102 ear shall be considered a fifteen per cent disability, and
103 the injured employee shall be entitled to compensation
104 for a period of sixty weeks. The total and irrecoverable
105 loss of the hearing of both ears shall be considered a forty-
106 five per cent disability, and the injured employee shall be
107 entitled to compensation for a period of one hundred
108 eighty weeks.

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

113 (e) Should a claimant to whom has been made a per-
114 manent partial award of from one per cent to eighty-four
115 per cent, both inclusive, die from sickness or noncom-
116 pensable injury, the unpaid balance of such award shall
117 be paid to claimant's dependents as defined in this chap-
118 ter, if any; such payment to be made in the same install-
119 ments that would have been paid to claimant if living:

120 *Provided, however,* That no payment shall be made to any
121 widow of such claimant after her remarriage, and that this
122 liability shall not accrue to the estate of such claimant
123 and shall not be subject to any debts of, or charges against,
124 such estate.

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

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

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

139 (i) Where an injury results in temporary total dis-
140 ability for which compensation is awarded under sub-

141 division (a) of this section and such injury is later de-
142 termined permanent partial disability under subdivision
143 (c), the amount of compensation so paid shall be con-
144 sidered as payment of the compensation payable for such
145 injury in accordance with the schedule in subdivision (c):
146 *Provided further*, That in cases where the amount of
147 permanent partial disability is specifically provided for
148 under subdivision (d) of this section, payments made
149 under subdivision (a) shall not be considered as payment
150 of the compensation for such injury. Compensation, either
151 total temporary or permanent partial, under this section
152 shall be payable only to the injured employee and the
153 right thereto shall not vest in his or her estate, except that
154 any unpaid compensation which would have been paid or
155 payable to the employee up to the time of his death, if
156 he had lived, shall be paid to the dependents of such
157 injured employee if there be such dependents at the time
158 of death.

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

161 Loss of both eyes or the sight thereof.

162 Loss of both hands or the use thereof.

163 Loss of both feet or the use thereof.

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

165 In all other cases permanent disability shall be deter-
166 mined by the commissioner in accordance with the facts
167 in the case, and award made in accordance with the pro-
168 visions 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* Passage.
Thomas Thier
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Howard W. Hanson
President of the Senate

H. Lehan White
Speaker House of Delegates

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

Glenn C. Smith
Governor



Presented to the Governor's Office
March 18, 1965
2:40 P.M.