

REVISION OF TITLE 65 OF THE CODE OF VIRGINIA

**REPORT OF THE
VIRGINIA CODE COMMISSION**

To

THE GOVERNOR

And

THE GENERAL ASSEMBLY OF VIRGINIA



HD 20, 1968

COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
Richmond
1967

MEMBERS OF COMMISSION

JAMES M. THOMSON, *Chairman*

E. ALMER AMES, JR., *Vice-Chairman*

FRED W. BATEMAN

JOHN WINGO KNOWLES

G. M. LAPSLEY

ROBERT D. McILWAINE, III

A. L. PHILPOTT

STAFF

G. M. LAPSLEY

WILDMAN S. KINCHELOE, JR.

ROBERT L. MASDEN

FRANK R. DUNHAM

MRS. MARY R. SPAIN

DANIEL E. BRAY, JR.

COUNSEL

HUGH R. THOMPSON, JR.

FRANCIS C. LEE

REVISION OF TITLE 65 OF THE CODE OF VIRGINIA

REPORT OF
THE VIRGINIA CODE COMMISSION
TO
THE GOVERNOR AND THE GENERAL ASSEMBLY
OF VIRGINIA

Richmond, Virginia, December 19, 1967

To:

HONORABLE MILLS E. GODWIN, JR., *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

The General Assembly at its Regular Session of 1966 directed the Virginia Code Commission, by Chapter 315 of the Acts of that Session, to revise certain titles of the Code of Virginia, including Title 65, relating to workmen's compensation.

Extracts from Chapter 315 follow:

"§ 1. The Code of Virginia shall be gradually revised by revising one or more titles at a time. In revising each title, all other sections of the Code relating to the same subject matter shall be revised to the extent necessary. Experts shall be employed by the Virginia Code Commission to assist in the project. The Commission may also accept the services of qualified volunteers who are willing to serve without pay. Tentative drafts of proposed revisions shall be printed and circulated among interested persons and their comments solicited.

"§ 2. The Commission shall undertake the revision of Titles 59, 60, 61, 62, 63, 64 and 65 and submit to the Governor and the General Assembly on or before October one, nineteen hundred sixty-seven, a report of its recommendations, together with suggested legislation necessary to carry such recommendations into effect."

Francis C. Lee, Esquire, of the Richmond City Bar, was retained as Counsel to assist in the revision of this Title.

Counsel examined the provisions of this Title in detail and consulted the members of the State Industrial Commission. The Code Commission met with Counsel on several occasions, and discussed in detail changes recommended by members of the Code Commission, by Counsel and by the members of the Industrial Commission.

As a result of its efforts, the Code Commission considered it desirable that there be a general renumeration of the sections, the deletion of certain obsolete sections, and the amendment of other sections. We are of the opinion that this can be better accomplished by the repeal of Title 65 and the enactment of Title 65.1 in lieu thereof.

Included in this Report is the Report of Counsel to the Commission on Title 65. Also, following each section of the draft of Title 65.1 are

Counsel's notes identifying the source of the provisions of the section and commenting upon any changes therein. Furthermore, preceding the draft of Title 65.1 there is set forth a table of comparable sections, for the purpose of tracing each of the provisions of Title 65 into proposed Title 65.1. This table also indicates those sections of Title 65 which have been deleted. Those who are interested in the major features of the Revision should read the Report of Counsel and the notes following the several sections of Title 65.1, to which reference is hereby made.

RECOMMENDATIONS

The Code Commission submits this Report, and recommends that the Legislature enact the attached bill in 1968.

The Commission wishes to express appreciation for the valuable assistance rendered by Counsel in the preparation of this Revision, and for the cooperation of the members of the Industrial Commission.

Respectfully submitted,

JAMES M. THOMSON, *Chairman*

E. ALMER AMES, JR., *Vice-Chairman*

FRED W. BATEMAN

JOHN WINGO KNOWLES

G. M. LAPSLEY

ROBERT D. McILWAIN, III

A. L. PHILPOTT

McCAUL and PEARSALL
Attorneys at Law
State-Planters Bank Building

December 19, 1967

The Honorable James M. Thomson, *Chairman*
The Honorable E. Almer Ames, Jr.
The Honorable Fred Bateman
The Honorable John Wingo Knowles
The Honorable G. M. Lapsley
The Honorable R. D. McIlwaine, III
The Honorable A. L. Philpott

Virginia Code Commission
State Capitol
Richmond, Virginia

Gentlemen:

Pursuant to your instructions, I have prepared a draft of revision of Title 65 of the Code of Virginia, relating to Workmen's Compensation.

This draft has been prepared in the usual form, i.e., a bill suitable for introduction at the 1968 Session of the General Assembly of Virginia, together with a table of contents and a table of comparable sections.

The bill is designed to repeal present Title 65 of the Code and to provide in substitution a Title 65.1. In addition to a general renumeration of sections to provide an orderly sequence of materials, several provisions considered to be obsolete have been deleted and phraseology in a number of sections has been amended. The principal changes which appear in Title 65.1 are as follows:

The last sentence formerly appearing in Section 65-4 has been transferred to Section 65.1-6 for the purpose of combining the related subject matter. Section 65.1-6 relates to average weekly wages. Presently, the provision relating to the average weekly wage of non-commissioned officers and members of the National Guard, the Virginia State Guard and the Virginia Reserve Militia, registered members on duty or in training of the United States Civil Defense Corp of this State, and forest wardens appears in Section 65-4, which defines "employee";

Section 65.1-10 relates to the composition of the Industrial Commission. The present Section 65-9 contains a transition provision which is no longer applicable to the membership of the Industrial Commission, and has been deleted as obsolete;

Sections relating to the employment of deputies, bailiffs and other clerical assistants have been regrouped in order to more orderly present the subject matter. The Commission has been granted additional authority to employ more than one bailiff and to delegate additional duties to deputies and bailiffs. The substance of Sections 65-10, 65-10.1 and 65-14 has been incorporated into Sections 65.1-11, 65.1-12 and 65.1-13;

Section 65.1-20 is a revision of Section 65-18, which grants additional authority to the Commission to punish for contempt or disobedience of its orders. The Commission is empowered to levy a fine as Circuit Courts may levy, not to exceed \$20.00; however, the Commission has not been empowered to impose a jail sentence.

In Section 65.1-58 the words "Armed Forces" have been substituted for "Army or Navy" formerly appearing in Section 65-55 in order to bring all military employees within the purview of the Act;

In Section 65.1-91 a new sentence has been added in order to provide an enforcement provision on the right of an employer or the Industrial Commission to require an autopsy. Anyone obstructing or interfering with an order of the Commission for an autopsy shall be punished for contempt;

In Section 65.1-93 the ten day restriction on reaching an agreement between the employer and the injured employee has been deleted, now providing that agreements may be reached at any time and filed with the Commission for approval:

The chapter entitled Vocational Rehabilitation previously appearing as Chapter 11 of Title 65 has been deleted as antiquated. While the General Assembly historically appropriates a certain portion of payments received by the Industrial Commission to vocational rehabilitation purposes, the provisions of Chapter 11, Title 65 have not been administered by the Industrial Commission for many years. It is felt that the vocational rehabilitation program is administered adequately by other State agencies.

The text of Title 65.1 as prepared by counsel conforms with the instructions and desires expressed by the Virginia Code Commission. All revisions and deletions have been discussed with the members of the Industrial Commission, and counsel wishes to express appreciation for the courteous and enthusiastic assistance of the Commissioners.

Counsel is of the opinion that the accompanying draft of Title 65.1 represents a substantial improvement over the present Title 65 and recommends its submission to the Governor and the General Assembly for introduction at the 1968 Session.

Respectfully,

FRANCIS C. LEE

TABLE OF CONTENTS

Title 65.1

WORKMEN'S COMPENSATION

Chapter 1

Definitions and General Provisions §§ 65.1-1 to 65.1-9

Chapter 2

Industrial Commission §§ 65.1-10 to 65.1-22

Chapter 3

Application and Effect of Act §§ 65.1-23 to 65.1-45

Chapter 4

Occupational Diseases §§ 65.1-46 to 65.1-53

Chapter 5

Compensation and Payment Thereof §§ 65.1-54 to 65.1-84

Chapter 6

Notice of Accident; Filing Claims;

Medical Attention and Examination §§ 65.1-85 to 65.1-91

Chapter 7

Procedure §§ 65.1-92 to 65.1-102

Chapter 8

Insurance and Self-Insurance §§ 65.1-103 to 65.1-123

Article 1

Insurance and Self-Insurance §§ 65.1-103 to 65.1-118

Article 2

Assignment of Risk §§ 65.1-119 to 65.1-123

Chapter 9

Records and Reports §§ 65.1-124 to 65.1-128

Chapter 10

Administrative Fund and Tax Therefor §§ 65.1-129 to 65.1-137

TABLE OF COMPARABLE SECTIONS

<i>Title 65</i>	<i>This Report</i>	<i>Title 65</i>	<i>This Report</i>
65-1	65.1-1	65-47	65.1-50
65-2	65.1-2	65-48	65.1-51
65-3	65.1-3	65-49	65.1-52
65-4	65.1-4	65-50	65.1-53
	and	65-51	65.1-54
	65.1-6	65-52	65.1-55
65-5	65.1-5	65-53	65.1-56
65-6	65.1-6	65-54	65.1-57
65-7	65.1-7	65-55	65.1-58
65-7.1	65.1-8	65-56	65.1-59
65-8	65.1-9	65-57	65.1-60
65-9	65.1-10	65-58	65.1-61
65-10	65.1-11	65-59	65.1-62
65-10.1	65.1-13	65-60	65.1-63
65-11	65.1-14	65-61	65.1-64
65-12	65.1-15	65-62	65.1-65
65-13	65.1-16	65-63	65.1-66
65-14	65.1-11	65-64	65.1-67
	and	65-65	65.1-68
	65.1-12	65-66	65.1-69
65-15	65.1-17	65-67	65.1-70
65-16	65.1-18	65-68	65.1-71
65-17	65.1-19	65-69	65.1-72
65-18	65.1-20	65-70	65.1-73
65-18.1	65.1-21	65-71	65.1-74
65-19	65.1-22	65-72	65.1-75
65-20	65.1-23	65-73	65.1-76
65-21	65.1-24	65-74	65.1-77
65-22	65.1-25	65-75	65.1-78
65-23	65.1-26	65-76	65.1-79
65-24	65.1-27	65-77	65.1-80
65-25	65.1-28	65-78	65.1-81
65-26	65.1-29	65-79	65.1-82
65-27	65.1-30	65-80	65.1-83
65-28	65.1-31	65-81	65.1-84
65-29	65.1-32	65-82	65.1-85
65-30	65.1-33	65-83	65.1-86
65-31	65.1-34	65-84	65.1-87
65-32	65.1-35	65-85	65.1-88
65-33	65.1-36	65-86	65.1-89
65-34	65.1-37	65-87	65.1-90
65-35	65.1-38	65-88	65.1-91
65-36	65.1-39	65-89	65.1-92
65-37	65.1-40	65-90	65.1-93
65-38	65.1-41	65-91	65.1-94
65-39	65.1-42	65-91.1	65.1-95
65-39.1	65.1-43	65-92	65.1-96
65-40	65.1-44	65-93	65.1-97
65-41	65.1-45	65-94	65.1-98
65-42	65.1-46	65-95	65.1-99
65-43	Repealed	65-96	65.1-100
65-43.1	65.1-47	65-97	65.1-101
65-44	65.1-48	65-98	65.1-102
65-45	Repealed	65-99	65.1-103
65-46	65.1-49	65-100	65.1-104

<i>Title 65</i>	<i>This Report</i>	<i>Title 65</i>	<i>This Report</i>
65-101	65.1-105	65-116	65.1-125
65-102	65.1-106	65-117	65.1-126
65-103	65.1-107	65-118	65.1-127
65-104	65.1-108	65-119	65.1-128
65-105	65.1-109	65-120	65.1-129
65-106	65.1-110	65-121	65.1-130
65-107	65.1-111	65-122	65.1-131
65-108	65.1-112	65-123	65.1-132
65-109	65.1-113	65-124	65.1-133
65-110	65.1-114	65-125	65.1-134
65-111	65.1-115	65-126	65.1-135
65-112	65.1-116	65-127	65.1-136
65-113	65.1-117	65-128	65.1-137
65-114	65.1-118	65-129	Deleted
65-114.1	65.1-119	65-130	Deleted
65-114.2	65.1-120	65-131	Deleted
65-114.3	65.1-121	65-132	Deleted
65-114.4	65.1-122	65-133	Deleted
65-114.5	65.1-123	65-134	Deleted
65-115	65.1-124		

A BILL to revise, rearrange, amend and recodify the general laws of Virginia relating to workmen's compensation; to that end to repeal Title 65 of the Code of Virginia, which title includes Chapters 1 to 11 and §§ 65-1 to 65-134, inclusive, of the Code of Virginia, as amended, and relates to workmen's compensation; to amend the Code of Virginia by adding thereto, in lieu of the foregoing title, chapters and sections of the Code repealed by this act, a new title numbered 65.1 which new title includes new chapters numbered 1 to 10, inclusive, and new sections numbered 65.1-1 to 65.1-137, inclusive, relating to workmen's compensation; and to prescribe when such revision and recodification shall become effective.

Be it enacted by the General Assembly of Virginia :

1. That Title 65 of the Code of Virginia, which title includes chapters 1 to 11 and §§ 65-1 to 65-134, inclusive, of the Code of Virginia, as amended, is repealed.
2. That the Code of Virginia be amended by adding thereto, in lieu of the title, chapters and sections of the Code herein repealed, a new title numbered 65.1, new chapters numbered 1 to 10, inclusive, and new sections numbered 65.1-1 to 65.1-137, inclusive, which new title, chapters and sections are as follows:

Title 65.1

WORKMEN'S COMPENSATION.

CHAPTER 1.

DEFINITIONS AND GENERAL PROVISIONS.

§ 65.1-1. **Short title.**—This title shall be known as the “Virginia Workmen’s Compensation Act” and is hereinafter sometimes referred to as “the Act” or “this Act”.

Source: § 65-1.

Note: The phrase “, other than Chapter 11 hereof,” has been deleted from the first line.

§ 65.1-2. **Meanings of certain terminology and scope of law.**—The meanings to be attached to certain terminology and the scope and coverage of this Act are as set forth specifically in the several following sections.

Source: § 65-2.

Note: No change.

§ 65.1-3. **Employers defined.**—Unless the context otherwise requires, “employers” includes the State and any municipal corporation therein or any political division thereof and any individual, firm, association or corporation, or the receiver or trustee of the same, or the legal representative of a deceased employer, using the service of another for pay. If the employer is insured it includes his insurer so far as applicable.

Source: § 65-3.

Note: No change.

§ 65.1-4. **Employee defined.**—Unless the context otherwise requires, “employee” includes every person, including a minor, in the service of another under any contract of hire or apprenticeship, written or implied,

except one whose employment is not in the usual course of the trade, business, occupation or profession of the employer; and as relating to those so employed by the State the term "employee" includes the officers and members of the National Guard, the Virginia State Guard and the Virginia Reserve Militia, registered members on duty or in training of the United States Civil Defense Corps of this State, the forest wardens, the judges, clerks and other employees of regional juvenile and domestic relations courts and all other officers and employees of the State, except only such as are elected by the people or by the General Assembly, or appointed by the Governor, either with or without the confirmation of the Senate, provided that this exception shall not apply to any "State employee" as defined in paragraph (5) of § 51-111.10 nor to members of the Industrial Commission and the State Corporation Commission, nor to the Superintendent of State Police; as relating to municipal corporations and political subdivisions of the State, the term "employee" includes all officers and employees thereof, except such as are elected by the people or by the governing body of the municipal corporation or political subdivision, who act in purely administrative capacities and are to serve for a definite term of office. Policemen and firemen, and sheriffs and their deputies, town and city sergeants and town and city deputy sergeants, county and city commissioners of the revenue, county and city treasurers, attorneys for the Commonwealth, clerks of courts of record, juvenile and domestic relations courts and county and municipal courts, and their deputies, officers and employees, shall be deemed to be employees of the respective cities, counties or towns in which their services are employed and by whom their salaries are paid or in which their compensation is earnable. Every executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation, municipal or otherwise, shall be an employee of such corporation under this Act, except as otherwise provided herein with respect to municipal corporations and political subdivisions of the State. Any reference to an employee who has been injured shall, when the employee is dead, include also his legal representative, dependents and other persons to whom compensation may be payable.

Source: § 65-4.

Note: The last sentence formerly in § 65-4 relating to average weekly wage has been transferred to § 65.1-6.

§ 65.1-5. Employees of independent contractors.—Nothing in this Act contained shall be construed to make, for the purposes of this Act, the employees of an independent contractor the employees of the person or corporation employing or contracting with such independent contractor.

Source: § 65-5.

Note: No change.

§ 65.1-6. Average weekly wages defined.—Unless the context otherwise requires, "average weekly wages" means the earnings of the injured employee in the employment in which he was working at the time of the injury during the period of fifty-two weeks immediately preceding the date of the injury, divided by fifty-two; but if the injured employee lost more than seven consecutive calendar days during such period, although not in the same week, then the earnings for the remainder of the fifty-two weeks shall be divided by the number of weeks remaining after the time so lost has been deducted. When the employment prior to the injury extended over a period of less than fifty-two weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed, provided results fair and just to both parties will be thereby obtained. When by reason of a

shortness of time during which the employee has been in the employment of his employer or the casual nature or terms of his employment it is impractical to compute the average weekly wages as above defined, regard shall be had to the average weekly amount which during the fifty-two weeks previous to the injury was being earned by a person of the same grade and character employed in the same class of employment in the same locality or community.

But when for exceptional reasons the foregoing would be unfair either to the employer or employee, such other method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury.

Whenever allowances of any character made to an employee in lieu of wages are a specified part of the wage-contract, they shall be deemed a part of his earnings. For the purpose of this Act the average weekly wage of the noncommissioned officers and members of the National Guard, the Virginia State Guard and the Virginia Reserve Militia, registered members on duty or in training of the United States Civil Defense Corps of this State, and forest wardens, shall be deemed to be such amount as will entitle them to the maximum compensation payable under this Act; provided, however, that any award entered under the provisions of this title on behalf of officers, noncommissioned officers or members of the National Guard or their dependents, or registered members on duty or in training of the United States Civil Defense Corps of this State or their dependents, shall be subject to credit for benefits paid them under existing or future federal law on account of injury or occupational disease covered by the provisions of the Virginia Workmen's Compensation Act.

Source: §§ 65-4 and 65-6.

Note: The last sentence was transferred from former § 65-4 in order to conform with subject matter.

§ 65.1-7. Injury defined.—Unless the context otherwise requires, “injury” and “personal injury” mean only injury by accident, or occupational disease as hereinafter defined, arising out of and in the course of the employment and do not include a disease in any form, except when it results naturally and unavoidably from either of the foregoing causes.

Source: § 65-7.

Note: No change.

§ 65.1-8. Change in condition defined.—Change in condition as used in this Act means a change in physical condition of the employee as well as any change in the conditions under which compensation was awarded or terminated which would affect the right to, amount of, or duration of compensation.

Source: § 65-7.1.

Note: No change.

§ 65.1-9. No relief from penalty for failure or neglect of statutory duty.—Nothing in this Act shall be construed to relieve any employer or employee from penalty for failure or neglect to perform any statutory duty.

Source: § 65-8.

Note: No change.

CHAPTER 2.
INDUSTRIAL COMMISSION.

§ 65.1-10. Commission continued; members and chairman.—The Industrial Commission of Virginia is continued within the Department of Workmen's Compensation, and shall consist of three members, one of whom shall be chosen by the joint vote of the two houses of the General Assembly during the month of January of each regular session of the General Assembly and who shall serve for terms of six years from the first day of February next succeeding election.

Whenever a vacancy in the Commission shall occur or exist when the General Assembly is in session, it shall elect a successor for the unexpired term. If the General Assembly is not in session, the Governor shall forthwith appoint pro tempore a qualified person to fill the vacancy for a term ending thirty days after the commencement of the next session of the General Assembly, and the General Assembly shall elect a successor for the unexpired term.

Not more than one member of the Commission shall be a person who on account of his previous vocation, employment or affiliation shall be classified as a representative of employers, and not more than one such appointee shall be a person who on account of his previous vocation, employment or affiliation shall be classed as a representative of employees. The Commission thus composed shall elect one of its number chairman. Each member of the Commission shall devote his entire time to the duties of his office and shall not hold any position of trust or profit or engage in any occupation or business interfering or inconsistent with his duties as such member.

Source: § 65-9.

Note: The second sentence of the first paragraph of § 65-9, a transition provision, has been deleted as obsolete.

§ 65.1-11. Deputies, clerk, bailiffs, secretary and other employees of the Commission.—The Commission, subject to the provisions of chapter 9 of Title 2, may appoint deputies, a clerk, bailiffs, a secretary and such other clerical or other assistants as it may deem necessary, and the compensation of such secretary and of such clerical and other assistants shall be such as may be provided by law for the purpose.

Source: § 65-10, § 65-14.

Note: Reference to deputies, clerk, and bailiffs added.

§ 65.1-12. Deputy Commissioners; Powers Thereof.—Deputy commissioners shall have the power to subpoena witnesses, administer oaths, take testimony and hear the parties at issue and their representatives and witnesses and decide the issues in a summary manner, and make an award carrying out the decision. Deputies may exercise such other powers and perform such duties of the commission as may be delegated to them by the commission.

Source: § 65-14, in part.

Note: First sentence formerly appeared in § 65-14. Last sentence relating to delegation of powers and duties is new.

§ 65.1-13. Powers and duties of bailiffs of Commission.—The bailiffs of the Commission shall, in all matters within the jurisdiction of the Commission, have the powers, discharge the functions, and perform the duties of a sheriff or sergeant under the law. They shall preserve order during

the public sessions of the Commission, and may make arrests and serve and make return on any writ or process awarded by the Commission, and execute any writ, order, or process of execution awarded upon the findings or judgments of the Commission in any matter within its jurisdiction. They shall exercise such other powers and perform such duties as may be delegated to them.

Source: § 65-10.1.

Note: "Bailiff" has been pluralized. Last sentence added to provide for delegation of other powers and duties to bailiffs.

§ 65.1-14. **Traveling expenses.**—The members of the Commission and its assistants shall be entitled to receive from the State their actual and necessary expenses while traveling on the business of the Commission.

Source: § 65-11.

Note: Provision for swearing to expenses and approval by chairman has been deleted.

§ 65.1-15. **Audit and payment of salaries and expenses.**—All salaries and expenses of the Commission shall be audited and paid out of the State treasury in the manner prescribed for similar expenses in other departments or branches of the State service.

Source: § 65-12.

Note: No change.

§ 65.1-16. **Offices of Commission; records, etc.**—The Commission shall be provided with adequate offices in the capitol or some other suitable building in the city of Richmond, in which the records shall be kept and its official business transacted during regular business hours; it shall also be provided with necessary office furniture, stationery and other supplies.

Source: § 65-13.

Note: No change.

§ 65.1-17. **Where sessions held.**—The Commission or any member thereof may hold sessions at any place within the State as may be deemed necessary by the Commission.

Source: § 65-15.

Note: No change.

§ 65.1-18. **Rules of Commission; process and procedure.**—The Commission may make rules, not inconsistent with this Act, for carrying out the provisions of this Act. Processes and procedure under this Act shall be as summary and simple as reasonably may be. The Commission or any member thereof or any person deputized by it may for the purpose of this Act subpoena witnesses, administer or cause to be administered oaths, and examine or cause to be examined such parts of the books and records of the parties to a proceeding as relate to questions in dispute arising in instances in which the Commission has power to grant compensation, and also in instances in which the like agency of some state has such power, provided like services are rendered to the Commission by such agency of such other state.

Source: § 65-16.

Note: No change.

§ 65.1-19. **Service of process; fees and mileage.**—The county sheriff or city or town sergeant or sheriff, and their respective deputies, shall serve

all subpoenas of the Commission or its deputies and shall receive the same fees as are now provided by law for like civil actions. Each witness who appears in obedience to such subpoena of the Commission shall receive for attendance the fees and mileage for witnesses in civil cases in courts.

Source: § 65-17.

Note: No change.

§ 65.1-20. Enforcing attendance of witnesses, etc.—The Commission or any member or Deputy Commissioner shall have authority to enforce the attendance of all parties in interest and of witnesses and the production and examination of books, papers and records and to punish for contempt or disobedience of its orders as is vested in courts and judges by § 18.1-292 of this Code, but punishment shall be limited to imposition of a fine not to exceed twenty dollars, which shall be recoverable pursuant to the provisions of Chapter 14, Title 19.1 of this Code.

Source: § 65-18.

Note: Authority to punish for contempt or for disobedience of orders has been added.

§ 65.1-21. Means of enforcing attendance of witnesses.—The clerk of the circuit court of the county or the hustings or corporation court of the city in which a proceeding under this title is pending, shall, upon the application of the Commission or any member or deputy thereof, or any party in interest, issue subpoenas for and enforce the attendance at such proceeding of any witnesses whose testimony is sought.

Source: § 65-18.1.

Note: No change.

§ 65.1-22. Blank forms, etc.; reports by and to Commission.—The Commission shall prepare and cause to be printed, and upon request furnish free of charge to any employee or employer, such blank forms and literature as it shall deem requisite to facilitate or promote the efficient administration of this Act.

The Commission shall tabulate the accident reports received from employers in accordance with §§ 65.1-124 and 65.1-125, and shall publish the same in the annual report of the Commission and as often as it may deem advisable, in such detailed or aggregate form as it may deem best. The name of the employer or employee shall not appear in such publications, and the employers' reports themselves shall be private records of the Commission and shall not be open for public inspection except for the inspection of the parties directly involved, and only to the extent of such interest. These reports shall not be used as evidence against any employer in any suit at law brought by any employee for the recovery of damages.

Source: § 65-19.

Note: Internal section references have been conformed.

CHAPTER 3.

APPLICATION AND EFFECT OF ACT.

§ 65.1-23. Presumption of acceptance of provisions of Act to pay and accept compensation.—Every employer and employee, except as herein stated, shall be conclusively presumed to have accepted the provisions of this Act respectively to pay and accept compensation for personal injury or death by accident arising out of and in the course of the employment and shall be bound thereby, unless, in the case of any such employee, he

shall have given prior to any accident resulting in injury or death notice to the contrary in the manner herein provided.

Source: § 65-20.

Note: No change.

§ 65.1-24. Public employees cannot exempt themselves.—No employee of the State or of any municipal corporation or any political subdivision thereof shall have the right to reject the provisions of this Act relative to payment and acceptance of compensation; and the provisions of §§ 65.1-25, 65.1-26, 65.1-36 and 65.1-44 shall not apply to them.

Source: § 65-21.

Note: Internal section references have been conformed.

§ 65.1-25. Waiver of exemption.—An employee, who has exempted himself, by proper notice, from the operation of this Act, may at any time waive such exemption and thereby accept the provisions of this Act by giving notice as herein provided.

Source: § 65-22.

Note: No change.

§ 65.1-26. When notice effective; how given.—The notices referred to in §§ 65.1-23 and 65.1-25 shall not be effective as to any accident resulting in injury or death that occurs within thirty days after the giving of any such notice; provided that if any such accident occurs less than thirty days after the date of employment, a notice under § 65.1-23 given at the time of employment shall be effective as to such accident. The notice shall be in writing or print in substantially the form prescribed by the Industrial Commission and shall be given by the employee by sending the same in registered letter, addressed to the employer at his last known residence or place of business, or by giving it personally to the employer or any of his agents upon whom a summons in civil action may be served under the laws of the State.

A copy of the notice in prescribed form shall also be filed with the Industrial Commission.

Source: § 65-23.

Note: Internal section references have been conformed.

§ 65.1-27. Interstate carriers by rail excepted from Act.—This Act shall not apply to any common carrier by railroad engaging in commerce between any of the several states or territories or between the District of Columbia and any of the states or territories and any foreign nation or nations, nor to any person suffering injury or death while he is employed by such carrier in such commerce; nor shall this Act be construed to lessen the liability of any such common carrier or to diminish or take away in any respect any right that any person so employed or the personal representative or kindred or relation or dependent of such person may have under the act of Congress relating to the liability of common carriers by railroad to their employees in certain cases, approved April twenty-second, nineteen hundred and eight, or under §§ 8-641 to 8-646 or § 56-441.

Source: § 65-24.

Note: No change.

§ 65.1-28. Intrastate carriers; casual employees; other excepted employments.—This Act shall not apply to common carriers by railroad who are engaged in intrastate trade or commerce nor shall this Act be construed

to lessen the liability of such common carriers or take away or diminish any right that any employee or, in case of his death, the personal representative of such employee of such common carrier may have under §§ 8-641 to 8-646 or § 56-441, nor to casual employees, farm and horticultural laborers and domestic servants, nor to employers of such persons, nor to any person, firm or private corporation, including any public service corporation, that has regularly in service less than seven employees in the same business within this State; unless such employees and their employers voluntarily elect to be bound by this Act.

Source: § 65-25.

Note: Common carrier by steam power formerly was excepted. Section now applies to railroad common carrier.

§ 65.1-29. Liability of owner to workmen of subcontractors.—When any person (in this section and §§ 65.1-31 and 65.1-32 referred to as “owner”) undertakes to perform or execute any work which is a part of his trade, business or occupation and contracts with any other person (in this section and §§ 65.1-31 to 65.1-34 referred to as “subcontractor”) for the execution or performance by or under such subcontractor of the whole or any part of the work undertaken by such owner, the owner shall be liable to pay to any workman employed in the work any compensation under this Act which he would have been liable to pay if the workman had been immediately employed by him.

Source: § 65-26.

Note: Internal section references have been conformed.

§ 65.1-30. Liability of contractor to workmen of subcontractor.—When any person (in this and the four succeeding sections referred to as “contractor”) contracts to perform or execute any work for another person which work or undertaking is not a part of the trade, business or occupation of such other person and contracts with any other person (in this section and §§ 65.1-31, 65.1-32, 65.1-33 and 65.1-34 referred to as “subcontractor”) for the execution or performance by or under the subcontractor of the whole or any part of the work undertaken by such contractor, then the contractor shall be liable to pay to any workman employed in the work any compensation under this Act which he would have been liable to pay if that workman had been immediately employed by him.

Source: § 65-27.

Note: Internal section references have been conformed.

§ 65.1-31. Liability of subcontractor to workmen of sub-subcontractor.—When the subcontractor in turn contracts with still another person (in this section and §§ 65.1-32, 65.1-33 and 65.1-34 also referred to as “subcontractor”) for the performance or execution by or under such last subcontractor of the whole or any part of the work undertaken by the first subcontractor, then the liability of the owner or contractor shall be the same as the liability imposed by the two preceding sections.

Source: § 65-28.

Note: Internal section references have been conformed.

§ 65.1-32. Construction of Act when proceedings are against owner or contractor.—When compensation is claimed from or proceedings are taken against the owner or contractor, then in the application of this Act reference to the owner or contractor shall be substituted for reference to the subcontractor, except that the amount of compensation shall be calcu-

lated with reference to the earnings of the workman under the subcontractor by whom he is immediately employed.

Source: § 65-29.

Note: No change.

§ 65.1-33. Indemnity of principal from subcontractor.—When the principal contractor is liable to pay compensation under any of the four preceding sections, he shall be entitled to indemnity from any person who would have been liable to pay compensation to the workman independently of such sections or from an intermediate contractor and shall have a cause of action therefor.

A principal contractor when sued by a workman of a subcontractor shall have the right to call in that subcontractor or any intermediate contractor or contractors as defendant or codefendant.

Source: § 65-30.

Note: No change.

§ 65.1-34. Workman may recover from subcontractor.—Nothing in the five preceding sections shall be construed as preventing a workman from recovering compensation under this Act from a subcontractor instead of from the principal contractor but he shall not collect from both.

Source: § 65-31.

Note: No change.

§ 65.1-35. Voluntary subjection to provisions of Act; effect of taking out insurance or qualifying as self-insurer.—Those employers and employees not subject to this Act may, by complying with the provisions of the Act and the applicable rules of the Industrial Commission, voluntarily elect to be bound by it as to accidents or occupational diseases or both.

Every employer taking out a workmen's compensation insurance policy, or qualifying as a self-insurer, shall be subject to all the provisions of the Workmen's Compensation Act, regardless of the number of employees or whether he is an employer of farm and horticultural laborers and domestic servants. Such employers not otherwise covered by the Act shall be subject to the Act only during the period covered by such insurance. Every employee of an employer who has complied with the foregoing requirements shall be subject to all the provisions of the Act unless and until he notifies the Industrial Commission that he elects not to be bound by the provisions thereof, in which case the provisions of § 65.1-44 shall be applicable.

Source: § 65-32.

Note: Internal section reference has been conformed.

§ 65.1-36. Contracts subject to Act.—Every contract of service between any employer and employee covered by this Act, written or implied, in operation or made or implied prior to the taking effect of this Act, shall be presumed to have continued, subject to the provisions of this Act, and every such contract made subsequent to the taking effect of this Act, unless the employee shall have given or shall give notice, as provided in § 65.1-26, to the employer that the provisions of this Act other than § 65.1-44 and 65.1-124 to 65.1-128 are not intended to apply.

A like presumption shall exist equally in the case of all minors, unless notice of the same character be given by the parent or guardian of the minor.

Source: § 65-33.

Note: Internal section references have been conformed.

§ 65.1-37. Limitation of liability of employer.—No contract or agreement, written or implied, and no rule, regulation or other device shall in any manner operate to relieve any employer in whole or in part of any obligation created by this Act, except as herein otherwise expressly provided.

Source: § 65-34.

Note: No change.

§ 65.1-38. When compensation not allowed for injury or death; burden of proof.—No compensation shall be allowed for an injury or death:

(1) due to the employee's wilful misconduct, including intentional self-inflicted injury,

(2) growing out of his attempt to injure another,

(3) due to intoxication, or

(4) due to wilful failure or refusal to use a safety appliance or perform a duty required by statute or the wilful breach of any rule or regulation adopted by the employer and approved by the Industrial Commission and brought prior to the accident to the knowledge of the employee.

The burden of proof shall be upon him who claims an exemption or forfeiture under this section.

Source: § 65-35.

Note: No change.

§ 65.1-39. Prior injuries.—The provisions of this Act shall not apply to injuries or death or accidents which occurred prior to January first, nineteen hundred and nineteen.

Source: § 65-36.

Note: No change.

§ 65.1-40. Employee's rights under Act exclude all others.—The rights and remedies herein granted to an employee when he and his employer have accepted the provisions of this Act respectively to pay and accept compensation on account of personal injury or death by accident shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents or next of kin, at common law or otherwise, on account of such injury, loss of service or death.

Source: § 65-37.

Note: No change.

§ 65.1-41. Subrogation of employer to employee's rights against third parties; evidence; recovery; compromise.—The making of a lawful claim against an employer for compensation under this Act for the injury or death of his employee shall operate as an assignment to the employer of any right to recover damages which the injured employee or his personal representative or other person may have against any other party for such injury or death, and such employer shall be subrogated to any such right and may enforce, in his own name or in the name of the injured employee or his personal representative, the legal liability of such other party. The amount of compensation paid by the employer or the amount of compensation to which the injured employee or his dependents are entitled shall not be admissible as evidence in any action brought to recover damages. Any amount collected by the employer under the provisions of this section in

excess of the amount paid by the employer or for which he is liable shall be held by the employer for the benefit of the injured employee or other person entitled thereto, less a proportionate share of such amounts as are paid by the employer for reasonable expenses and attorney's fees as provided in § 65.1-43. No compromise settlement shall be made by the employer in the exercise of such right of subrogation without the approval of the Industrial Commission and the injured employee or the personal representative or dependents of the deceased employee being first had and obtained.

Source: § 65-38.

Note: Internal section reference has been conformed.

§ 65.1-42. Protection of employer when employee sues third party.—In any such action by such employee, his personal representative or other person against any person other than the employer, the court shall, on petition or motion of the employer at any time prior to verdict, ascertain the amount of compensation paid and expenses for medical, surgical and hospital attention and supplies, and funeral expenses, incurred by the employer under the provisions of this Act, and deduct therefrom a proportionate share of such amounts as are paid by the plaintiff for reasonable expenses and attorney's fees as provided in § 65.1-43; and in event of judgment against such person other than the employer the court shall in its order require that the judgment debtor pay such compensation and expenses of the employer, less said share of expenses and attorney's fees, so ascertained by the court out of the amount of the judgment, so far as sufficient, and the balance, if any, to the judgment creditor.

Source: § 65-39.

Note: Internal section reference has been conformed.

§ 65.1-43. Expenses and attorney's fees in action under §§ 65.1-41 or 65.1-42.—In any such action, or claim for damages, by such employee, his personal representative or other person against any person other than the employer, and in any such action brought, or claim asserted, by the employer under his right of subrogation provided for in § 65.1-41, if a recovery is effected, either by judgment or voluntary settlement, the reasonable expenses and reasonable attorney's fees of such claimants shall be apportioned pro rata between the employer and the employee, his personal representative or other person, as their respective interests may appear.

Source: § 65-39.1.

Note: Internal section references have been conformed.

§ 65.1-44. Employer's defenses when employee has elected not to come under Act.—An employee who elects not to operate under this Act shall, in any action to recover damages for personal injury or death brought against an employer accepting the compensation provisions of this Act, proceed at common law, and the employer may avail himself of the defenses of contributory negligence, negligence of a fellow servant and assumption of risk, as such defenses exist at common law.

Source: § 65-40.

Note: No change.

§ 65.1-45. Voluntary settlements.—Nothing herein contained shall be construed so as to prevent settlements made by and between the employee and employer, but rather to encourage them, so long as the amount of com-

pensation and the time and manner of payment are approved by the Commission in accordance with § 65.1-93 of this Act. A copy of such settlement agreement shall be filed, by employers, with the Commission.

Source: § 65-41.

Note: Internal section reference has been conformed.

CHAPTER 4. OCCUPATIONAL DISEASES.

§ 65.1-46. **Occupational disease defined.**—As used in this Act, unless the context clearly indicates otherwise, the term “occupational disease” means a disease arising out of and in the course of the employment. No ordinary disease of life to which the general public is exposed outside of the employment shall be compensable, except:

(1) When it follows as an incident of occupational disease as defined in this title; or

(2) When it is an infectious or contagious disease contracted in the course of employment in a hospital or sanitarium.

A disease shall be deemed to arise out of the employment only if there is apparent to the rational mind, upon consideration of all the circumstances:

(1) A direct causal connection between the conditions under which work is performed and the occupational disease,

(2) It can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment,

(3) It can be fairly traced to the employment as the proximate cause,

(4) It does not come from a hazard to which workmen would have been equally exposed outside of the employment,

(5) It is incidental to the character of the business and not independent of the relation of employer and employee, and

(6) It must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a natural consequence, though it need not have been foreseen or expected before its contraction.

Source: § 65-42.

Note: The word “title” has been substituted for the word “law” in exception (1) as it previously appeared in § 65-42 in order to be consistent.

§ 65.1-47. **Schedule of occupational diseases.**—The following diseases and conditions shall be deemed to be occupational diseases, and even they shall not be so considered unless they are in fact occupational within the meaning of the term “occupational disease” as defined in the preceding section:

(1) Anthrax;

(2) Tenosynovitis, bursitis, and epicondylitis;

(3) Cataract of the eyes due to exposure to the heat and glare of molten glass or to radiant rays such as infra-red;

(4) Compressed air illness;

(5) Conjunctivitis or retinitis due to exposure to radiant rays;

- (6) Cellulitis;
- (7) Dermatitis;
- (8) Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye due to pitch, tar, soot, bitumen, anthracene, paraffin, mineral oil or their compounds, products or residues;
- (9) Glanders;
- (10) Infection or inflammation of the skin or eyes or other external contact surfaces or oral or nasal cavities due to irritating oil, cutting compounds, chemical dust, liquid fumes, gases or vapors;
- (11) Infectious or contagious diseases contracted in the course of employment in or in immediate connection with a hospital or sanitarium or public health laboratory;
- (12) Poisoning by: (i) Ammonia; (ii) Arsenic; (iii) Benzol or derivatives of benzene; (iv) Brass; (v) Cadmium; (vi) Carbon bisulphide or any sulphide; (vii) Carbon dioxide; (viii) Carbon monoxide; (ix) Carbon tetrachloride or other toxic chlorinated hydrocarbons or toxic halogenated hydrocarbons; (x) Chlorine; (xi) Cyanide; (xii) Dinitrophenol; (xiii) Formaldehyde and its preparations; (xiv) Hydrochloric acid; (xv) Hydrofluoric acid; (xvi) Hydrogen sulphide; (xvii) Lead; (xviii) Manganese; (xix) Mercury; (xx) Menthanol (wood alcohol); (xxi) Methyl chloride; (xxii) Nickel carbonyl; (xxiii) Nitrous fumes; (xxiv) Nitric acid; (xxv) Petroleum or petroleum products; (xxvi) Phosphorus; (xxvii) Sulphur dioxide; (xxviii) Sulphuric acid; (xxix) Tetrachlormethane or any substance used as or in conjunction with a solvent for acetate of cellulose or nitrocellulose; (xxx) Turpentine; (xxxi) Zinc; or by contact with any other industrial chemical;
- (13) Radium disability or disability due to exposure to radioactive substances and X-ray;
- (14) Silicosis;
- (15) Lung diseases due to the occupational exposure to asbestos, and other fibrous silicates; to nonfibrous silicates, including mica, Fuller's Earth, kaolin; to inorganic dusts of calcium, iron, tin, barium, aluminum, beryllium, and silicon dioxide; to dusts of animal origin; and to dusts of cotton, hay, grain, bagasse, paprica, tobacco, wood, and gum acacia;
- (16) Ulceration due to chrome compound or to caustic chemical acids or alkalies and undulant fever caused by the industrial slaughtering and processing of livestock and the handling of hides.

Source: § 65-43.1.

Note: No change.

§ 65.1-48. Liability of Employer.—The employer shall be liable for all occupational diseases arising out of and in the course of the employment pursuant to all provisions of the Act applicable thereto, unless he shall reject the full coverage and elect by written declaration filed in the offices of the Industrial Commission to be bound only by the schedule of occupational diseases set out in § 65.1-47. Such election shall be effective as of the date the declaration is received by the Industrial Commission, and an election once made shall be effective until withdrawn by a writing filed in the offices of the Industrial Commission. Upon withdrawal of election the employer shall be liable for full coverage of occupational diseases.

Source: § 65-44.

Note: Internal section reference has been conformed.

§ 65.1-49. Provisions in respect to injury by accident, etc., applicable to occupational disease.—When the employer and employee are subject to the provisions of this Act, first communication of the diagnosis of an occupational disease to the employee or death of the employee resulting from an occupational disease as herein listed and defined shall be treated as the happening of an injury by accident, or death by accident, and the employee or in case of his death his dependents shall be entitled to compensation as provided by the Act. An employee who has an occupational disease that is covered by this Act shall be entitled to the same hospital, medical and miscellaneous benefits as an employee who has a compensable injury by accident, except that the period during which the employer shall be required to furnish medical attention shall begin as of the date of first communication of the diagnosis of the occupational disease to the employee, and in the event of death the same funeral benefits shall be paid as in the case of death from a compensable accident. All provisions of the Act in respect to accidents shall be applicable to the coverage provided for by this chapter, except as otherwise provided herein. The provisions of this section, as amended, shall be applicable to occupational diseases contracted before and after July one, nineteen hundred sixty-six.

Source: § 65-46.

Note: No change.

§ 65.1-50. What employer and carrier liable.—When an employee has an occupational disease that is covered by this Act, the employer in whose employment he was last injuriously exposed to the hazards of the disease and the employer's insurance carrier, if any, at the time of the exposure, shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier.

Source: § 65-47.

Note: No change.

§ 65.1-51. Notice to be given.—Within thirty days after a diagnosis of an occupational disease is first communicated to the employee, he, or someone in his behalf, shall give written notice thereof to the employer in accordance with §§ 65.1-85 and 65.1-86.

Source: § 65-48.

Note: Internal section references have been conformed.

§ 65.1-52. Limitation upon claim; "injuriously exposure" defined; diseases covered by limitation.—The right to compensation under this chapter shall be forever barred unless a claim be filed with the Industrial Commission within one year after a diagnosis of an occupational disease is first communicated to the employee or within five years from the date of the last injurious exposure to the disease in employment, whichever first occurs; and, if death results from the occupational disease within either of said periods, unless a claim therefor be filed with the Commission within one year after such death. The limitations imposed by this section as amended shall be applicable to occupational diseases contracted before and after July one, nineteen hundred sixty-two.

"Injurious exposure" as used in this section means an exposure to such disease which is reasonably calculated to bring on the disease in question. This limitation will cover all occupational diseases covered under § 65.1-47, except:

(3) Cataract of the eyes due to exposure to the heat and glare of molten glass or to radiant rays such as infra-red;

(8) Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye due to pitch, tar, soot, bitumen, anthracene, paraffin, mineral oil or their compounds, products or residues;

(13) Radium disability or disability due to exposure to radioactive substances and X-ray;

(16) Ulceration due to chrome compound or to caustic chemical acids or alkalies and undulant fever caused by the industrial slaughtering and processing of livestock and handling of hides.

Source: § 65-49.

Note: No change.

§ 65.1-53. **Waiver.**—When an employee or prospective employee, though not incapacitated for work, is found to be affected by, or susceptible to, a specific occupational disease he may, subject to the approval of the Industrial Commission, be permitted to waive in writing compensation for any aggravation of his condition that may result from his working or continuing to work in the same or similar occupation for the same employer or for another employer.

Source: § 65-50.

Note: No change.

CHAPTER 5.

COMPENSATION AND PAYMENT THEREOF.

§ 65.1-54. **Compensation for total incapacity.**—When the incapacity for work resulting from the injury is total, the employer shall pay, or cause to be paid, as hereinafter provided, to the injured employee during such total incapacity, a weekly compensation equal to sixty per centum of his average weekly wages, but not more than forty-five dollars, nor less than fourteen dollars a week; and in no case shall the period covered by such compensation be greater than five hundred weeks, nor shall the total amount of all compensation exceed eighteen thousand dollars.

Source: § 65-51.

Note: No change.

§ 65.1-55. **Compensation for partial incapacity.**—Except as otherwise provided in § 65.1-56, when the incapacity for work resulting from the injury is partial, the employer shall pay, or cause to be paid, as hereinafter provided, to the injured employee during such incapacity a weekly compensation equal to sixty per centum of the difference between his average weekly wages before the injury and the average weekly wages which he is able to earn thereafter, but not more than forty-five dollars a week. In no case shall the period covered by such compensation be greater than three hundred weeks from the date of the injury. In case the partial incapacity begins after a period of total incapacity, the latter period shall be deducted from the maximum period herein allowed for partial incapacity.

Source: § 65-52.

Note: Internal section reference has been conformed.

§ 65.1-56. **Cases in which incapacity shall be deemed to continue for periods specified in section; compensation.**—In cases included by the following schedule the incapacity in each case shall be deemed to continue

for the period specified and the compensation so paid for such injury shall be as specified therein and shall be in lieu of all other compensation:

(1) For the loss of a thumb sixty per centum of the average weekly wages during sixty weeks.

(2) For the loss of a first finger, commonly called the index finger, sixty per centum of the average weekly wages during thirty-five weeks.

(3) For the loss of a second finger sixty per centum of average weekly wages during thirty weeks.

(4) For the loss of a third finger sixty per centum of average weekly wages during twenty weeks.

(5) For the loss of a fourth finger, commonly called the little finger, sixty per centum of average weekly wages during fifteen weeks.

(6) The loss of the first phalange of the thumb or any finger shall be considered to be equal to the loss of one half of such thumb or finger and the compensation shall be for one-half of the periods of time above specified.

(7) The loss of more than one phalange shall be considered the loss of the entire finger or thumb; provided, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

(8) For the loss of a great toe sixty per centum of the average weekly wages during thirty weeks.

(9) For the loss of one of the toes other than a great toe sixty per centum of the average weekly wages during ten weeks.

(10) The loss of the first phalange of any toe shall be considered to be equal to the loss of one half of such toe and the compensation shall be for one half of the periods of time above specified.

(11) The loss of more than one phalange shall be considered as the loss of the entire toe.

(12) For the loss of a hand sixty per centum of the average weekly wages during one hundred and fifty weeks.

(13) For the loss of an arm sixty per centum of the average weekly wages during two hundred weeks.

(14) For the loss of a foot sixty per centum of average weekly wages during one hundred and twenty-five weeks.

(15) For the loss of a leg sixty per centum of average weekly wages during one hundred and seventy-five weeks.

(16) For the permanent total loss of the vision of an eye sixty per centum of the average weekly wages during one hundred weeks; and for the permanent partial loss of the vision of an eye the percentage of one hundred weeks equivalent to the percentage of the vision so permanently lost.

(17) For the permanent total loss of the hearing of an ear sixty per centum of the average weekly wages during fifty weeks; and for the permanent partial loss of the hearing of an ear the percentage of fifty weeks equivalent to the percentage of the hearing so permanently lost.

(18) The loss of both hands, both arms, both feet, both legs or both eyes, or any two thereof, in the same accident, shall constitute total and permanent incapacity, to be compensated according to the provisions of § 65.1-54.

(19) For marked disfigurement of the head or face, hands, arms or legs resulting from an injury not above mentioned in this section which will impair the future usefulness or occupational opportunities of the injured employee sixty per centum of the average weekly wages not exceeding sixty weeks.

(20) (a) For silicosis medically determined to be in the first stage, whether or not physical capacity for work is impaired, or in the second stage where physical capacity for work is not impaired, sixty per centum of the average weekly wages during twenty-six weeks.

(b) For silicosis medically determined to be in the second stage, and physical capacity for work is impaired, sixty per centum of the average weekly wages during seventy-eight weeks.

(c) For silicosis medically determined to be in the third stage, compensation shall be according to the provisions of §§ 65.1-54 and 65.1-55.

In construing this section the permanent loss of the use of a member shall be held equivalent to the loss of such member and for the permanent partial loss or loss of use of a member compensation may be proportionately awarded.

The weekly compensation payments referred to in this section shall all be subject to the same limitations as to maxima and minima as set out in § 65.1-54.

Source: § 65-53.

Note: Internal section references have been conformed.

§ 65.1-57. Compensation for hernia; when allowed.—In all claims for compensation for hernia resulting from injury by accident arising out of and in the course of the employee's employment, it must be definitely proved to the satisfaction of the Industrial Commission:

- (1) That there was an injury resulting in hernia;
- (2) That the hernia appeared suddenly;
- (3) That it was accompanied by pain;
- (4) That the hernia immediately followed an accident; and
- (5) That the hernia did not exist prior to the accident for which compensation is claimed.

All hernia, inguinal, femoral or otherwise, so proven to be the result of an injury by accident arising out of and in course of the employment shall be treated in a surgical manner by radical operation. The Industrial Commission is authorized to enter an award under the provisions of § 65.1-88, covering the cost of hospital and medical attention incident to said operation without regard to the date when the same was rendered. If death results from such operation, the death shall be considered as a result of the injury and compensation paid in accordance with the provisions of § 65.1-65. In nonfatal cases time lost only shall be paid, unless it is shown by special examination, as provided in § 65.1-91, that the injured employee has a permanent partial disability resulting after the operation. If so, compensation shall be paid in accordance with the provisions of § 65.1-55 with reference to partial disability.

In case the injured employee refuses to undergo the radical operation for the cure of the hernia, no compensation will be allowed during the time the refusal continues. If, however, it is shown that the employee has some chronic disease, or is otherwise in such physical condition that the Commission considers it unsafe for the employee to undergo the operation, the employee shall be paid as provided in § 65.1-55.

Source: § 65-54.

Note: Internal section references have been conformed.

§ 65.1-58. Successive injuries in different employments; injury to employee with disability.—If an employee has a permanent disability or has sustained a permanent injury in service in the Armed Forces of the United States or in another employment other than that in which he receives a subsequent permanent injury by accident, such as specified in § 65.1-56, he shall be entitled to compensation only for the degree of incapacity which would have resulted from the later accident if the earlier disability or injury had not existed.

Source: § 65-55.

Note: The words "Armed Forces" have been substituted for "Army or Navy" in order to include all military employees. Internal section reference has been conformed.

§ 65.1-59. Compensation after second injury in same employment.—If an employee receives an injury for which compensation is payable while he is still receiving or entitled to compensation for a previous injury in the same employment, he shall not at the same time be entitled to compensation for both injuries, but if he is, at the time of the second injury, receiving compensation under the provisions of § 65.1-56, payments of compensation thereunder shall be suspended during the period compensation is paid on account of the second injury, and after the termination of payments of compensation for the second injury payments on account of the first injury shall be resumed and continued until the entire amount originally awarded has been paid. But if, at the time of the second injury, he is receiving compensation under the provisions of § 65.1-55, then no compensation shall be payable on account of the first injury during the period he receives compensation for the second injury.

Source: § 65-56.

Note: No change.

§ 65.1-60. Same; when both injuries permanent; when total disability results.—If an employee receives a permanent injury as specified in § 65.1-56, after having sustained another permanent injury in the same employment, he shall be entitled to compensation for both injuries, but the total compensation shall be paid by extending the period and not by increasing the amount of weekly compensation, and in no case exceeding five hundred weeks.

When the previous and subsequent permanent injuries received in the same employment result in total disability, compensation shall be payable for permanent total disability, but payments made for the previous injury shall be deducted from the total payment of compensation due.

Source: § 65-57.

Note: Internal section reference has been conformed.

§ 65.1-61. Foreign Injuries.—When an accident happens while the employee is employed elsewhere than in this State which would entitle him or his dependents to compensation if it had happened in this State, the employee or his dependents shall be entitled to compensation, if:

- (1) The contract of employment was made in this State;
- (2) the employer's place of business is in this State; and
- (3) the residence of the employee is in this State;

Provided the contract of employment was not expressly for service exclusively outside of the State.

But if an employee shall receive compensation or damages under the laws of any other state, nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided for in this Act.

Source: § 65-58.

Note: No change.

§ 65.1-62. Commencement of compensation.—No compensation shall be allowed for the first seven calendar days of incapacity resulting from an injury except the benefits provided for in § 65.1-88; but if incapacity extends beyond that period compensation shall commence with the eighth day of disability. If, however, such incapacity shall continue for a period of more than six weeks, then compensation shall be allowed from the first day of such incapacity.

Source: § 65-59.

Note: Internal section reference has been conformed.

§ 65.1-63. Refusal of employment.—If an injured employee refuses employment procured for him suitable to his capacity, he shall not be entitled to any compensation at any time during the continuance of such refusal, unless in the opinion of the Industrial Commission such refusal was justified.

Source: 65-60.

Note: No change.

§ 65.1-64. Compensation to employee's distributees upon his death from any other cause.—When an employee receives or is entitled to compensation under this Act for an injury covered by § 65.1-56 and dies from any other cause than the injury for which he was entitled to compensation, payment of the unpaid balance of compensation shall be made to his statutory distributees, dependent upon him for support, in lieu of the compensation the employee would have been entitled to had he lived. But if the death is due to a cause that is compensable under this Act and the dependents of such employee are awarded compensation therefor, all right to unpaid compensation provided by this section shall cease and determine.

Source: § 65-61.

Note: No change.

§ 65.1-65. Compensation to dependents of employee killed.—If death results from the accident within six years, the employer shall pay or cause to be paid, subject, however, to the provisions of the other sections of this Act, in one of the methods hereinafter provided, to the dependents of the employee wholly dependent upon his earnings for support at the time of

the accident a weekly payment equal to sixty per centum of his average weekly wages, but not more than forty-five dollars nor less than fourteen dollars a week for a period of three hundred weeks, but in no case to exceed thirteen thousand five hundred dollars from the date of the injury, except, however, those dependents specified in § 65.1-66 (1) and (3) shall be paid a weekly payment equal to sixty per centum of the employee's average weekly wages, but not more than forty-five dollars nor less than fourteen dollars a week for a period of four hundred weeks from the date of the injury, but in no case to exceed eighteen thousand dollars, and burial expenses not exceeding three hundred dollars. If the employee leaves dependents only partly dependent upon his earnings for support at the time of the injury, the weekly compensation to be paid as aforesaid, shall equal the same proportion of the weekly payments for the benefit of persons wholly dependent as the extent of partial dependency bears to total dependency. When weekly payments have been made to an injured employee before his death the compensation to dependents shall begin from the date of the last of such payments but shall not continue more than three hundred weeks from the date of the injury except to those dependents specified in § 65.1-66 (1) and (3) to whom compensation shall not continue more than four hundred weeks from the date of the injury. If the employee does not leave dependents, citizens of and residing at the time of the accident in the United States or Dominion of Canada, the amount of compensation shall not in any case exceed one thousand dollars.

Source: § 65-62.

Note: Internal section references have been conformed.

§ 65.1-66. Persons conclusively presumed to be wholly dependent.—The following persons shall be conclusively presumed to be next of kin wholly dependent for support upon the deceased employee:

(1) A wife upon a husband whom she had not voluntarily deserted or abandoned at the time of the accident.

(2) A husband upon a wife with whom he lived at the time of her accident if he is then incapable of self-support and actually dependent upon her.

(3) A child under the age of eighteen upon a parent and a child over such age if physically or mentally incapacitated from earning a livelihood.

(4) Parents in destitute circumstances, provided there be no total dependents pursuant to other provisions of this section.

As used in this section, the term "*child*" shall include a stepchild, a legally adopted child, a posthumous child, and an acknowledged illegitimate child, but shall not include a married child; and the term "*parent*" shall include step-parents and parents by adoption.

Source: § 65-63.

Note: No change.

§ 65.1-67. Other cases of dependency.—In all other cases questions of dependency in whole or in part shall be determined in accordance with the facts as the facts are at the time of the accident; but no allowance shall be made for any payment made in lieu of board and lodging or services and no compensation shall be allowed unless the dependency existed for a period of three months or more prior to the accident.

Source: § 65-64.

Note: No change.

§ 65.1-68. Division when more than one dependent.—If there is more than one person wholly dependent, the death benefit shall be divided among them; and persons partly dependent, if any, shall receive no part thereof. If there is no one wholly dependent and more than one person partially dependent, the death benefit shall be divided among them according to the relative extent of their dependency.

Source: § 65-65.

Note: No change.

§ 65.1-69. Termination of dependency.—For the purpose of this Act, the dependence of a widow or widower of a deceased employee shall terminate with remarriage, and the amount to be received by him or her shall be divided among the children or other dependents in the proportion of which they are receiving compensation, and the dependence of a child or any minor dependent, except a child or minor dependent physically or mentally incapacitated from earning a livelihood, shall terminate with the attainment of eighteen years of age, or upon earlier marriage of a female child.

Source: § 65-66.

Note: The words “legal or common-law” previously preceding the word “remarriage” have been deleted as surplusage.

§ 65.1-70. Burial expenses when no dependents.—If the deceased employee leaves no dependents, the employer shall pay the burial expenses of the deceased, not to exceed three hundred dollars.

Source: § 65-67.

Note: No change.

§ 65.1-71. Limitation upon total compensation.—The total compensation payable under this Act shall in no case exceed eighteen thousand dollars.

Source: § 65-68.

Note: No change.

§ 65.1-72. Voluntary payment by employer.—Any payments made by the employer to the injured employee during the period of his disability, or to his dependents, which by the terms of this Act were not due and payable when made, may, subject to the approval of the Industrial Commission, be deducted from the amount to be paid as compensation; provided, that in the case of disability such deductions shall be made by shortening the period during which compensation must be paid and not by reducing the amount of the weekly payment.

Source: § 65-69.

Note: No change.

§ 65.1-73. Time of payment.—The Industrial Commission, upon application of either party, may, in its discretion, having regard to the welfare of the employee and the convenience of the employer, authorize compensation to be paid monthly or quarterly instead of weekly.

Source: § 65-70.

Note: No change.

§ 65.1-74. Lump-sum payments.—Whenever any weekly payment has been continued for not less than six weeks, the liability therefor may, in unusual cases, when the parties agree and the Industrial Commission

deems it to be to the best interests of the employee or his dependents, or when it will prevent undue hardships on the employer, or his insurance carrier, without prejudicing the interests of the employee or his dependents, be redeemed, in whole or in part, by the payment by the employer of a lump sum which shall be fixed by the Commission, but in no case to exceed the commutable value of the future installments which may be due under this Act. The Commission, however, in its discretion, may at any time in the case of a minor who has received permanently disabling injuries, either partial or total, provide that he be compensated in whole or in part by the payment of a lump sum, the amount of which shall be fixed by the Commission, but in no case to exceed the commutable value of the future installments which may be due under this Act.

Source: § 65-71.

Note: No change.

§ 65.1-75. Such payments to trustees.—Whenever the Industrial Commission deems it expedient, any lump sum subject to the provisions of the foregoing section shall be paid by the employer to some suitable person or corporation appointed by the circuit or corporation court in the county or city wherein the accident occurred, or by such other circuit or corporation court as may be designated by the Industrial Commission as more compatible with the interests and convenience of the beneficiaries, as trustee or guardian, to administer the same for the benefit of the person entitled hereto in the manner provided by the Commission. The receipt of such trustee for the amount as paid shall discharge the employer or any one else who is liable therefor.

Source: § 65-72.

Note: Provision has been made for appointment of guardian or trustee to administer lump sum payment by the employer.

§ 65.1-76. Who may receive payment and receipt therefor.—Whenever payment of compensation is made to a widow or widower for her or his use, or for her or his use and the use of the child or children, the written receipt thereof of such widow or widower shall acquit the employer.

Whenever payment is made to any person eighteen years of age or over, the written receipt of such person shall acquit the employer. In case an infant or minor under the age of eighteen years shall be entitled to receive a sum amounting to not more than three hundred dollars as compensation for injuries, or as a distributive share by virtue of this Act, the father, mother or natural guardian upon whom such infant or minor shall be dependent for support shall be authorized and empowered to receive and receipt for such moneys to the same extent as a guardian of the person and property of such infant or minor duly appointed by proper court and the release or discharge of such father, mother or natural guardian shall be a full and complete discharge of all claims or demands of such infant or minor thereunder.

Whenever any payment of over three hundred dollars is made to a minor under eighteen years of age or to a dependent child over the age of eighteen years the same shall be made to some suitable person or corporation appointed by the circuit or corporation court or the judge thereof in vacation as a trustee, and the receipt of such trustee shall acquit the employer.

Source: § 65-73.

Note: No change.

§ 65.1-77. Payment to junior dependents in good faith.—Payment of death benefits by an employer in good faith to a dependent subsequent in right to another or other dependents shall protect and discharge the employer unless and until such dependent or dependents prior in right shall have given him notice of his or their claim. In case the employer is in doubt as to the respective rights of rival claimants he may apply to the Industrial Commission to decide between them.

Source: § 65-74.

Note: No change.

§ 65.1-78. When employee's rights exercised by guardian, trustee or committee.—If an injured employee is mentally incompetent or is under eighteen years of age at the time when any right or privilege accrues to him under this Act, his guardian, trustee or committee may in his behalf claim and exercise such right or privilege.

Source: § 65-75.

Note: No change.

§ 65.1-79. Time limitations on persons under disability.—No limitation of time provided in this Act for the giving of notice or making claim under this Act shall run against any person who is mentally incompetent or a minor dependent, so long as he has no guardian, trustee or committee.

Source: § 65-76.

Note: No change.

§ 65.1-80. Joint service.—Whenever any employee for whose injury or death compensation is payable under this Act shall at the time of the injury be in the joint service of two or more employers subject to this Act, such employers shall contribute to the payment of such compensation in proportion to their wage liability to such employee; provided, however, that nothing in this section shall prevent any reasonable arrangement between such employers for a different distribution as between themselves of the ultimate burden of compensation.

Source: § 65-77.

Note: No change.

§ 65.1-81. Preferences and priorities.—All rights of compensation granted by this Act shall have the same preference or priority for the whole thereof against the assets of the employer as is allowed by law for any unpaid wages for labor.

Source: § 65-78.

Note: No change.

§ 65.1-82. Assignments of compensation; exemption.—No claim for compensation under this Act shall be assignable, and all compensation and claims therefor shall be exempt from all claims of creditors.

Source: § 65-79.

Note: No change.

§ 65.1-83. Substitute system of compensation.—Subject to the approval of the Industrial Commission, any employer may enter into or continue any agreement with his employees to provide a system of compensation, benefit or insurance in lieu of the compensation and insurance provided by this Act. No such substitute system shall be approved unless it confers benefits upon injured employees at least equivalent to the benefits

provided by this Act, nor if it requires contributions from the employees unless it confers benefits in addition to those provided under this Act at least commensurate with such contributions.

Source: § 65-80.

Note: No change.

§ 65.1-84. Termination of substitute system.—Such substitute system may be terminated by the Industrial Commission on reasonable notice and hearing to the interested parties if it shall appear that the same is not fairly administered or if its operation shall disclose defects threatening its solvency, or if for any substantial reason it fails to accomplish the purpose of this Act. In any such case the Commission shall determine upon the proper distribution of all remaining assets, if any, subject to the right of any party at interest to take an appeal to the circuit or corporation court of the county or city wherein the principal office or chief place of business of the employer is located.

Source: § 65-81.

Note: No change.

CHAPTER 6.

NOTICE OF ACCIDENT; FILING CLAIMS; MEDICAL ATTENTION AND EXAMINATION.

§ 65.1-85. Notice of accident.—Every injured employee or his representative shall immediately on the occurrence of an accident or as soon thereafter as practicable give or cause to be given to the employer a written notice of the accident, and the employee shall not be entitled to physician's fees nor to any compensation which may have accrued under the terms of this Act prior to the giving of such notice, unless it can be shown that the employer, his agent or representative, had knowledge of the accident or that the party required to give such notice had been prevented from doing so by reason of physical or mental incapacity or the fraud or deceit of some third person. But no compensation shall be payable unless such written notice is given within thirty days after the occurrence of the accident or death, unless reasonable excuse is made to the satisfaction of the Industrial Commission for not giving such notice and the Commission is satisfied that the employer has not been prejudiced thereby.

Source: § 65-82.

Note: No change.

§ 65.1-86. Nature of notice; service.—The notice provided in the preceding section shall state in ordinary language the name and address of the employee and the time, place, nature and cause of the accident and of the resulting injury or death. It shall be signed by the employee or by a person on his behalf or in the event of his death by any one or more of his dependents or by a person in their behalf.

No defect or inaccuracy in the notice shall be a bar to compensation unless the employer shall prove that his interest was prejudiced thereby and then only to such extent as the prejudice.

Such notice shall be given personally to the employer or any of his agents upon whom a summons in civil action may be served under the laws

of the State or may be sent by registered letter addressed to the employer at his last known residence or place of business.

Source: § 65-83.

Note: No change.

§ 65.1-87. Time for filing claim.—The right to compensation under this Act shall be forever barred, unless a claim be filed with the Industrial Commission within one year after the accident, and, if death results from the accident, unless a claim therefor be filed with the Commission within one year thereafter.

Source: § 65-84.

Note: No change.

§ 65.1-88. Duty to furnish medical attention; effect of refusal of employee to accept.—For a period not exceeding ninety days after an accident the employer shall furnish or cause to be furnished, free of charge to the injured employee, such necessary medical attention, and where such accident results in the amputation of an arm, hand, leg or foot or the enucleation of an eye or the loss of any natural teeth, the employer shall furnish the initial prosthetic appliance and shall furnish proper fitting thereof, the total cost not to exceed one thousand dollars, as the nature of the accident may require, and the employee shall accept, and during the whole or any part of the remainder of his disability resulting from the injury, the employer may, at his own option, continue to furnish or cause to be furnished, free of charge to the employee, and the employee shall accept, an attending physician, unless otherwise ordered by the Industrial Commission, and in addition, such surgical and hospital service and supplies as may be deemed necessary by the attending physician or the Industrial Commission. When, in the judgment of the Industrial Commission, or a member thereof, the facts require a reasonable extension of such medical care beyond such period of ninety days, the Commission, or a member thereof, may, in its or his discretion, require the employer to furnish free of charge to the injured employee such medical attention for a reasonable time after the termination of the ninety-day period but not in excess of three years including such period of ninety days.

The refusal of the employee to accept such service when provided by the employer shall bar the employee from further compensation until such refusal ceases and no compensation shall at any time be paid for the period of suspension unless, in the opinion of the Industrial Commission, the circumstances justified the refusal. In any such case the Industrial Commission may order a change in the medical or hospital service.

If in an emergency on account of the employer's failure to provide the medical care during the period herein specified, or for other good reasons, a physician other than provided by the employer is called to treat the injured employee, during said period, the reasonable cost of such service shall be paid by the employer if ordered so to do by the Industrial Commission.

Source: § 65-85.

Note: No change.

§ 65.1-89. Liability of employer for medical services ordered by Commission; malpractice.—The pecuniary liability of the employer for medical, surgical and hospital service herein required when ordered by the Commission shall be limited to such charges as prevail in the same community for similar treatment of injured persons of a like standard

of living when such treatment is paid for by the injured person and the employer shall not be liable in damages for malpractice by a physician or surgeon furnished by him pursuant to the provisions of the preceding section, but the consequences of any such malpractice shall be deemed part of the injury resulting from the accident and shall be compensated for as such.

Source: § 65-86.

Note: No change.

§ 65.1-90. Physicians for medical examination.—The Commission or any member thereof may, upon the application of either party or upon its own motion, appoint a disinterested and duly qualified physician or surgeon to make any necessary medical examination and to testify in respect thereto. Such physician or surgeon shall be allowed traveling expenses and a reasonable fee to be fixed by the Commission.

The fees and expenses of such physician or surgeon shall be paid by the State.

Source: § 65-87.

Note: No change.

§ 65.1-91. Medical examination; autopsy.—After an injury and so long as he claims compensation, the employee, if so requested by his employer or ordered by the Industrial Commission, shall submit himself to examination, at reasonable times and places, by a duly qualified physician or surgeon designated and paid by the employer or the Industrial Commission. The employee shall have the right to have present at such examination any duly qualified physician or surgeon provided and paid by him. No fact communicated to, or otherwise learned by, any physician or surgeon who may have attended or examined the employee, or who may have been present at any examination, shall be privileged, either in hearings provided for by this Act, or any action at law brought to recover damages against any employer subject to the provisions of this Act. If the employee refuses to submit himself to or in any way obstructs such examination requested by and provided for by the employer, his right to compensation and his right to take or prosecute any proceedings under this Act shall be suspended until such refusal or objection ceases and no compensation shall at any time be payable for the period of suspension unless in the opinion of the Industrial Commission the circumstances justify the refusal or obstruction. The employer or the Industrial Commission may in any case of death require an autopsy at the expense of the party requesting the same. Such autopsy shall be performed upon order of the Commission, and anyone obstructing or interfering with such autopsy shall be punished for contempt.

Source: § 65-88.

Note: The wording in the next to the last sentence is changed from "shall have the right in any case of death to require" to read "may in any case of death require". The last sentence is new, providing for enforcement of right for autopsy.

CHAPTER 7.

PROCEDURE IN CONNECTION WITH AWARDS.

§ 65.1-92. Jurisdiction of Commission.—All questions arising under this Act, if not settled by agreements of the parties interested therein

with the approval of the Commission, shall be determined by the Commission, except as otherwise herein provided.

Source: § 65-89.

Note: No change.

§ 65.1-93. **Agreement as to compensation.**—If after injury or death, the employer and the injured employee or his dependents reach an agreement in regard to compensation or in compromise of a claim for compensation under this Act, a memorandum of the agreement in the form prescribed by the Industrial Commission shall be filed with the Commission for approval, and if approved, the same shall be binding, and an award of compensation entered upon such agreement shall be for all purposes enforceable by the court's decree as elsewhere provided in this Act, and if not approved, the same shall be void. Such agreement may be approved only when the Commission, or any member thereof, is clearly of the opinion that the best interests of the employee or his dependents will be served thereby; and approval of such agreement shall bind infant or incompetent dependents affected thereby. Any agreement entered into during the pendency of an appeal to the Supreme Court of Appeals shall be effective only with the approval of the Commission as herein provided.

Source: § 65-90.

Note: The restriction on reaching agreement formerly appearing in first sentence has been deleted in order to encourage agreements irrespective of time elapse after injury.

§ 65.1-94. **Disagreement on compensation.**—If the employer and the injured employee or his dependents fail to reach an agreement in regard to compensation under this Act, or if they have reached such an agreement which has been signed and filed with the Commission and compensation has been paid or is due in accordance therewith and the parties thereto then disagree as to the continuance of any weekly payment under such agreement, either party may make application to the Industrial Commission for a hearing in regard to the matters at issue and for a ruling thereon.

Immediately after such application has been received the Commission shall set the date for a hearing, which shall be held as soon as practicable, and shall notify the parties at issue of the time and place of such hearing. The hearing shall be held in the city or county where the injury occurred, unless otherwise agreed to by the parties and authorized by the Industrial Commission.

Source: § 65-91.

Note: No change.

§ 65.1-95. **Depositions.**—Any party to a proceeding under this Act may, upon application to the Commission setting forth the materiality of the evidence to be given, cause the depositions of witnesses residing within or without the State to be taken, the costs to be taxed as other costs by the Commission. Such depositions shall be taken after giving the notice and in the manner prescribed by law for depositions in actions at law, except that they shall be directed to the Commission, the Commissioner or the Deputy Commissioner before whom the proceedings may be pending.

Source: § 65-91.1.

Note: No change.

§ 65.1-96. Hearing and award by Commission.—The Commission or any of its members or deputies shall hear the parties at issue and their representatives and witnesses and shall decide the issues in a summary manner, and shall make an award carrying out the decision, and a copy thereof shall be immediately sent to the parties at issue.

Source: § 65-92.

Note: No change.

§ 65.1-97. Rehearing on award.—If an application for review is made to the Commission within fifteen days from the date of the award, the full Commission, if the first hearing was not held before the full Commission, shall review the evidence or, if deemed advisable, as soon as practicable, hear the parties at issue, their representatives and witnesses and shall make an award which, together with a statement of the findings of fact, rulings of law and other matters pertinent to the questions at issue, shall be filed with the record of the proceedings and a copy of the award shall be immediately sent to the parties at issue.

Source: § 65-93.

Note: No change.

§ 65.1-98. Conclusiveness of award; appeal; certification of questions of law; supersedeas.—The award of the Commission, as provided in § 65.1-96, if not reviewed in due time, or an award of the Commission upon such review, as provided in § 65.1-97, shall be conclusive and binding as to all questions of fact. No appeal shall be taken from the decision of one Commissioner until a review of the case has been had before the full Commission, as provided in § 65.1-97, and an award entered by it. Appeals shall lie from such award to the Supreme Court of Appeals in the manner provided by law for appeals in equity cases from circuit and corporation courts; provided, however, that the petition for such appeal shall be presented to the Supreme Court of Appeals, or one of its judges if the court be not in session, within thirty days from the date of such award or within thirty days after receipt of notice to be sent by registered mail of such award. In such case the filing with the clerk of the appellate court of ten neatly typewritten copies of the record, duly certified by the Secretary of the Commission, shall be taken as a substitute for printing such record. The Secretary of the Commission shall certify to the appellate court, as a part of the record, all the findings of fact upon which the action appealed from was based. Cases so appealed shall be placed upon the privileged docket of the court and be heard at the next ensuing term thereof wherever held. The Commission, of its own motion, may certify questions of law to the Supreme Court of Appeals for decision and determination by the court. In case of an appeal from the decision of the Commission, or of a certification by the Commission of questions of law, to the Supreme Court of Appeals, the appeal or certification shall operate as a supersedeas and no employer shall be required to make payment of the award involved in the appeal or certification until the questions at issue therein shall have been fully determined in accordance with the provisions of this Act.

Source: § 65-94.

Note: Internal section references have been conformed.

§ 65.1-99. Review of award on change of condition.—Upon its own motion or upon the application of any party in interest, on the ground of a change in condition, the Industrial Commission may review any award and on such review may make an award ending, diminishing or increas-

ing the compensation previously awarded, subject to the maximum or minimum provided in this Act, and shall immediately send to the parties a copy of the award. No such review shall affect such award as regards any moneys paid but no such review shall be made after twelve months from the last day for which compensation was paid, pursuant to an award under this Act.

Source: § 65-95.

Note: No change.

§ 65.1-100. Judgment on agreement or award; enforcement of certain fines and decisions.—Any party in interest may file in the circuit or corporation court of the county or city in which the injury occurred, or if it be in the city of Richmond then in the circuit or law and equity court of such city, a certified copy of a memorandum of agreement approved by the Commission, or of an order or decision of the Commission, or of an award of the Commission unappealed from, or of an award of the Commission affirmed upon appeal, whereupon the court, or the judge thereof in vacation, shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though such judgment had been rendered in a suit duly heard and determined by the court. The fines imposed and decisions rendered under §§ 65.1-106, 65.1-107 and 65.1-127, shall be enforceable as provided herein for the enforcement of other decisions, orders or awards of the Commission. If such injury occurred outside the State, then such certified copy of the memorandum of agreement, order, decision or award may be filed in the circuit or corporation court of the county or city wherein the same might be brought as an action at law or suit in equity.

Source: § 65-96.

Note: Internal section references have been conformed.

§ 65.1-101. Costs.—If the Industrial Commission or any court before whom any proceedings are brought or defended by the employer under this Act shall determine that such proceedings have been brought, prosecuted or defended without reasonable grounds, it may assess against the employer who has so brought, prosecuted or defended them the whole cost of the proceedings, including a reasonable attorney fee, to be fixed by the Commission.

Source: § 65-97.

Note: No change.

§ 65.1-102. Fees of attorneys and physicians and hospital charges.—Fees of attorneys and physicians and charges of hospitals for services, whether employed by employer, employee or insurance carrier under this Act, shall be subject to the approval and award of the Commission; but no physician shall be entitled to collect fees from an employer or insurance carrier until he has made the reports required by the Industrial Commission in connection with the case.

Source: § 65-98.

Note: No change.

CHAPTER 8.
INSURANCE AND SELF-INSURANCE.

ARTICLE 1.
INSURANCE AND SELF-INSURANCE.

§ 65.1-103. Duty to insure payment of compensation; effect of insurance.—Every employer subject to the compensation provisions of this Act shall insure the payment of compensation to his employees in the manner hereinafter provided. While such insurance remains in force he or those conducting his business shall only be liable to an employee for personal injury or death by accident to the extent and in the manner herein specified.

Source: § 65-99.

Note: No change.

§ 65.1-104. Insurance or proof of financial ability to pay required.—Every employer subject to this Act shall insure and keep insured his liability thereunder in some corporation, association or organization or State insurance fund authorized to transact the business of workmen's compensation insurance in this State or in some mutual insurance association formed by a group of employers so authorized, or shall furnish to the Industrial Commission satisfactory proof of his financial ability to pay direct the compensation in the amount and manner and when due as provided for in this Act. In the latter case the Commission may in its discretion require the deposit of an acceptable security, indemnity or bond to secure the payment of compensation liabilities as they are incurred. The State Treasurer shall be the custodian of the securities deposited by the employers under the requirements of this section, and for such services he shall receive a compensation of one-twentieth of one per centum per annum of the amount of securities deposited with him, payable by the employer.

It shall be satisfactory proof of the employer's financial ability to pay direct the compensation in the amount and manner when due, as provided for in this Act, and acceptable security, indemnity or bond to secure the payment of compensation liabilities as they are incurred, if the employer shall show to the Industrial Commission that he is a member of an association or group of employers and as such is exchanging contracts of insurance with the employers of this and other states, through a medium as specified and located in their agreements between each other, and shall further file with the Industrial Commission a certificate of authority issued by the insurance department of any state to such group of employers or association, together with a sworn financial statement showing the group of employers or association to be in solvent condition. But this paragraph shall in no wise restrict or qualify the right of self insurance as hereinbefore authorized.

Source: § 65-100.

Note: No change.

§ 65.1-105. Evidence of compliance with Act; notices of cancellation of insurance.—Every employer subject to this Act shall file with the Commission, in form prescribed by it, annually or as often as may be necessary, evidence of his compliance with the provisions of § 65.1-104 and all others relating thereto. Every employer who has complied with the foregoing provision and has subsequently cancelled his insurance shall immediately notify the Industrial Commission of such cancellation, the date thereof

and the reasons therefor; and every insurance carrier shall in like manner notify the Commission immediately upon the cancellation of any policy issued by it under the provisions of this Act, except that a carrier need not set forth its reasons for cancellation unless requested by the Industrial Commission.

No policy of insurance hereafter issued under the provisions of this Act shall be cancelled by the insurer issuing such policy except on thirty days' notice to the employer and the Commission, unless said cancellation is for nonpayment of premiums; then ten days' notice shall be given the employer and Commission.

Source: § 65-101.

Note: No change.

§ 65.1-106. Penalty for violation of preceding section.—If such employer refuses and neglects to comply with the provisions of the preceding section he shall be punished by a fine of ten cents for each employee at the time of the insurance becoming due, but not less than one dollar nor more than fifty dollars for each day of such refusal or neglect, and until the same ceases, and he shall be liable during continuance of such refusal or neglect to an employee either for compensation under this Act or at law in a suit instituted by the employee against such employer to recover damages for personal injury or death by accident, and in any such suit such employer shall not be permitted to defend upon any of the following grounds:

- (1) That the employee was negligent;
- (2) That the injury was caused by the negligence of a fellow employee; or
- (3) That the employee had assumed the risk of the injury.

The fine herein provided may be assessed by the Commission in an open hearing with the right of review and appeal as in other cases.

Source: § 65-102.

Note: No change.

§ 65.1-107. Cost of insurance may not be deducted from wages.—It shall not be lawful for any employer to deduct from the wages of any of his employees any part of the cost of insurance as provided for in § 65.1-104 to insure liability, or to require or permit any of his employees to contribute in any manner toward such cost of insurance. For any violation of the provisions of this section an employer shall be subject to a fine of not exceeding one hundred dollars for each offense and shall refund to the individual employee the amount or amounts deducted or contributed. The fine herein provided may be assessed and the refund ordered by the Industrial Commission in an open hearing with the right of review and appeal as in other cases.

Source: § 65-103.

Note: No change.

§ 65.1-108. Self-insurance certificate.—Whenever an employer has complied with the provisions of § 65.1-104, relating to self-insurance, the Industrial Commission shall issue to such employer a certificate which shall remain in force for a period fixed by the Commission. But the Commission may upon at least sixty days' notice and hearing to the employer revoke the certificate upon satisfactory evidence for such revocation hav-

ing been presented. At any time after such revocation the Commission may grant a new certificate to the employer upon his petition.

Source: § 65-104.

Note: No change.

§ 65.1-109. Constructive notice to, jurisdiction of, and awards, etc., binding upon insurer.—All policies insuring the payment of compensation under this Act must contain clauses to the effect that as between the employer and the insurer notice to or knowledge of the occurrence of the injury on the part of the insured employer shall be deemed notice or knowledge, as the case may be, on the part of the insurer, that jurisdiction of the insured for the purposes of this Act shall be jurisdiction of the insurer, and that the insurer shall in all things be bound by and subject to the awards, judgments or decrees rendered against such insured employer.

Source: § 65-105.

Note: No change.

§ 65.1-110. How formal notice may be given.—Whenever by this Act or the terms of any policy contract any officer is required to give any notice to any insurance carrier, the same may be given by delivery or by mailing by registered letter properly addressed and stamped to the principal office or chief agent of such insurance carrier within this State or to its home office, or to the secretary, general agent or chief officer thereof in the United States.

Source: § 65-106.

Note: No change.

§ 65.1-111. Liability of insurer.—No policy of insurance against liability arising under this Act shall be issued unless it contains the agreement of the insurer that it will promptly pay the person entitled to the same all benefits conferred by this Act and all installments of the compensation that may be awarded or agreed upon and that the obligation shall not be affected by any default of the insured after the injury or by any default in giving notice required by such policy or otherwise. Such agreement shall be construed to be a direct promise by the insurer to the person entitled to compensation, enforceable in his name.

Source: § 65-107.

Note: No change.

§ 65.1-112. Subrogation of insurance carrier to employer's rights; compromise.—When any employer is insured against liability for compensation with any insurance carrier, and such insurance carrier shall have paid any compensation for which the employer is liable or shall have assumed the liability of the employer therefor, it shall be subrogated to all the rights and duties of the employer and may enforce any such rights in its own name or in the name of the injured employee or his or her personal representative; provided, however, nothing herein shall be construed as conferring upon the insurance carriers any other or further rights than those existing in the employer at the time of the injury to his employee, anything in the policy of insurance to the contrary notwithstanding. No compromise settlement shall be made by the insurance carrier in the exercise of such right of subrogation without the approval of the Industrial Commission and the injured employee or the personal representative or dependents of the deceased employee being first had and obtained.

Source: § 65-108.

Note: No change.

§ 65.1-113. Insurance deemed subject to Act; approval of forms.—Every policy for the insurance of the compensation herein provided or against liability therefor shall be deemed to be made subject to the provisions of this Act. No corporation, association or organization shall enter into any such policy of insurance unless its form shall have been approved by the Industrial Commission.

Source: § 65-109.

Note: No change.

§ 65.1-114. Act not applicable to boiler, etc., insurance.—This Act shall not apply to policies of insurance against loss from explosion of boilers or fly wheels or other similar single catastrophe hazards.

Source: § 65-110.

Note: No change.

§ 65.1-115. Permit of insurer to do business.—No insurer, whether stock, mutual, reciprocal, or inter-insurer, or other type or form of organization, shall do any business in this State without a permit from the State Corporation Commission. Such permit shall be given upon application therefor, to any such company upon the said Commission being satisfied of the solvency of such company and its ability to perform all its undertakings; provided, if it be a foreign corporation, it has complied with the provisions of § 13-8.

The State Corporation Commission shall have the right to revoke any permit issued to any such company, for violation of any provision of this Act.

Source: § 65-111.

Note: No change.

§ 65.1-116. Reports and other information required to determine solvency.—Each such insurance carrier shall report to the State Corporation Commission, in accordance with such reasonable rules as the Commission may at any time prescribe, for the purpose of determining the solvency of the carrier, and for such purpose the said Commission may inspect the books and records of such insurance carrier, and examine its agents, officers and directors under oath.

Source: § 65-112.

Note: No change.

§ 65.1-117. Rates; co-operation between Corporation Commission and Industrial Commission.—Authority is hereby conferred upon the State Corporation Commission to make such arrangements with the Industrial Commission as may be agreeable to the Industrial Commission, for collecting, compiling, preserving and publishing statistical and other data in connection with the work of regulating workmen's compensation insurance rates and for the division of the expenses thereof, to the end that duplication of work and expenditures may be avoided. Whenever it deems proper, with the consent of the Industrial Commission, the State Corporation Commission may appoint members of the Industrial Commission, or its employees, as special agents of the State Corporation Commission to take testimony and make reports with reference to any matter involving questions of workmen's compensation insurance rates.

Source: § 65-113.

Note: No change.

§ 65.1-118. Penalty for violation of certain provisions.—Any person or persons who shall in this State act or assume to act as agent for any such insurance carrier whose authority to do business in this State has been suspended, while such suspension remains in force, or shall neglect or refuse to comply with any of the provisions of §§ 65.1-115 to 65.1-117, inclusive, or of chapter 10 of this title, obligatory upon such person or persons, or who shall wilfully make a false or fraudulent statement of the business or condition of any such insurance carrier, or a false or fraudulent return as therein provided, shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than one hundred nor more than one thousand dollars or by imprisonment for not less than ten nor more than ninety days, or both such fine and imprisonment, in the discretion of the court or jury trying the case.

Source: § 65-114.

Note: Internal section references have been conformed.

ARTICLE 2.

ASSIGNMENT OF RISKS TO INSURANCE CARRIERS.

§ 65.1-119. Application to Corporation Commission for assignment or risk; insurer assigned risk to issue policy.—Every employer subject to the provisions of this article who has been unable to obtain a workmen's compensation insurance policy shall have the right to apply to the State Corporation Commission to have his risk assigned to an insurance carrier licensed to write and writing workmen's compensation insurance in this State. The insurance carrier, whether stock, mutual, reciprocal or inter-insurer or other type or form of organization, to whom any such risk is assigned shall issue a policy of workmen's compensation insurance which will enable such employer to meet the requirements of this article.

Source: § 65-114.1.

Note: No change.

§ 65.1-120. Commission to make rules and regulations, and establish rating schedules and rates.—The State Corporation Commission may make reasonable rules and regulations for the assignment of risks to insurance carriers.

It shall establish such rate classifications, rating schedules, rates, rules and regulations to be used by insurance carriers issuing assigned risk workmen's compensation policies in accordance with this chapter as appear to it to be proper.

In the establishment of rate classifications, rating schedules, rates, rules and regulations, it shall be guided by such principles and practices as have been established under its statutory authority to regulate workmen's compensation insurance rates and it may act in conformity with its statutory discretionary authority in such matters.

Source: § 65-114.2.

Note: No change.

§ 65.1-121. Action by Commission upon application.—The Commission may, if in its judgment it deems such action to be justified after reviewing all information pertaining to the applicant or policyholder available from its records, the records of the Industrial Commission or from other sources:

- (1) Refuse to assign an application;
- (2) Approve the rejection of an application by an insurance carrier;
- (3) Approve the cancellation of a workmen's compensation policy by an insurance carrier; or
- (4) Refuse to approve the renewal or the reassignment of an expiring policy.

Source: § 65-114.3.

Note: No change.

§ 65.1-122. Information filed with Commission by insurance carrier to be confidential.—Any and all information filed with the State Corporation Commission by an insurance carrier in connection with an assigned risk shall be confidential and solely for the information of the State Corporation Commission and its staff and shall not be disclosed to any person, including an applicant, policyholder and any other insurance carrier.

Source: § 65-114.4.

Note: No change.

§ 65.1-123. Disclosures not required of Commission; liability for acts or omissions.—The State Corporation Commission shall not be required to disclose to any person, including the applicant or policyholder, its reasons for:

- (1) Refusing to assign an application;
- (2) Approving the rejection of an application by an insurance carrier;
- (3) Approving the cancellation of a workmen's compensation policy by an insurance carrier; or
- (4) Refusing to approve the renewal or the reassignment of an expiring policy.

The Commission shall not nor shall anyone acting for it be held liable for any act or omission in connection with the administration of the duties imposed upon it by the provisions of this chapter, except upon proof of actual malfeasance.

CHAPTER 9.

REPORTS AND RECORDS.

§ 65.1-124. Records and reports of accidents.—Every employer shall hereafter keep a record of all injuries, fatal or otherwise received by his employees in the course of their employment on blanks approved by the Commission. Within ten days after the occurrence and knowledge thereof as provided in § 65.1-85, of an injury to an employee, a report thereof shall be made in triplicate in writing and mailed to the Industrial Commission and two copies turned over to the Department of Labor and Industry on blanks to be procured from the Commission for this purpose.

The accident reports shall contain the name, nature and location of the business of the employer and the name, age, sex and wages and occupation of the injured employee, and shall state the date and hour of the accident causing the injury and the nature and cause of the injury, together with the medical cost and such other information as may be required by the Commission.

Source: § 65-115.

Note: No change.

§ 65.1-125. Reports of termination or extension beyond sixty days of disability.—Upon the termination of the disability of the employee, or if the disability extends beyond a period of sixty days then also at the expiration of such period, the employer shall make a supplementary report to the Commission on blanks to be procured from the Commission for the purpose.

Source: § 65-116.

Note: No change.

§ 65.1-126. Report of number of employees, hours of work, etc.—Every employer shall upon request of the Commission report the number of its employees, hours of their labor and number of days of operation of business.

Source: § 65-117.

Note: No change.

§ 65.1-127. Failure to make required reports.—Any employer who refuses or neglects to make any report required by this chapter shall be liable for a penalty of not more than twenty-five dollars for each refusal or neglect. The fine herein provided may be assessed by the Commission in an open hearing with the right of review and appeal as in other cases. In the event the employer has transmitted the report to the insurance carrier for transmission by such insurance carrier to the Industrial Commission, the insurance carrier wilfully neglecting or failing to transmit the report shall be liable for the penalty.

Source: § 65-118.

Note: No change.

§ 65.1-128. Records not public.—The records of the Commission, insofar as they refer to accidents, injuries and settlements, shall not be open to the public but only to the parties satisfying the Commission of their interest in such records and their right to inspect them.

Source: § 65-119.

Note: No change.

CHAPTER 10.

ADMINISTRATIVE FUND AND TAX THEREFOR.

§ 65.1-129. Tax for administrative fund.—For the purpose of paying the salaries and necessary expenses of the Industrial Commission and its assistants and employees in administering and carrying out the provisions of this Act, an administrative fund shall be created and maintained in the following manner:

Every person, partnership, association, corporation, whether organized under the laws of this or any other state or country, company, mutual company or association, the parties to any inter-indemnity contract

or reciprocal plan or scheme, and every other insurance carrier, insuring employers in this State against liability for personal injuries to their employees or death caused thereby, under the provisions of this Act, shall, as hereinafter provided, pay a tax upon the premiums received, whether in cash or notes, in this State or on account of business done in this State, for such insurance in this State, at the rate of two and one-half per centum of the amount of such premiums. Such tax shall be in lieu of all other taxes on such premiums and shall be assessed and collected as hereinafter provided. But such insurance carriers shall be credited with all cancelled or returned premiums, actually refunded during the year on such insurance, and with premiums on reinsurance assumed.

Source: § 65-120.

Note: No change.

§ 65.1-130. Returns.—Every such insurance carrier shall, for the twelve months ending December thirty-first, of each year, make a return verified by the affidavits of its president and secretary, or other chief officers or agents, to the Industrial Commission stating the amount of such premiums and credits during the period covered by such return.

The State Corporation Commission shall have access at all times to the records so filed with the Industrial Commission by such insurance carriers and may require such additional information as the said State Corporation Commission deems necessary for the performance of the duties herein conferred upon it.

Source: § 65-121.

Note: No change.

§ 65.1-131. Payment of tax.—Every insurance carrier required to make such return shall file the same with the Industrial Commission within thirty days after the close of the period covered thereby and shall at the same time pay into the State treasury a tax of two and one-half dollars on each one hundred dollars of such premiums ascertained as provided in § 65.1-129, less returned premiums and reinsurance assumed.

Source: § 65-122.

Note: No change.

§ 65.1-132. Failure to file return.—If any such insurance carrier shall fail or refuse to make the return required by this Act, the State Corporation Commission shall assess the tax against such insurance carrier at the rate herein provided for, on such amount of premiums as it may deem just, and the proceedings thereon shall be the same as if the return had been made.

Source: § 65-123.

Note: No change.

§ 65.1-133. Withdrawal from business or failure to pay tax.—If any such insurance carrier shall withdraw from business in this State before the tax shall fall due, as herein provided, or shall fail or neglect to pay such tax, the Comptroller shall at once proceed to collect the same and may employ such legal process as may be necessary for that purpose, and when so collected he shall pay the same into the State treasury. The suit may be brought by the Comptroller, in his official capacity, in any court of this State having jurisdiction. A reasonable attorney's fee may be taxed as costs therein and process may issue to any county of the State and may be served as in civil actions, or in the case of an unincorporated

association, partnership, inter-indemnity contract or other plan or scheme, upon any agent of the parties thereto upon whom process may be served under the laws of this State.

Source: § 65-124.

Note: No change.

§ 65.1-134. Tax exclusive of other taxes.—Any insurance carrier liable to pay a tax upon premiums under this Act shall not be liable to pay any other or further tax upon such premiums, or on account thereof, under any other law of this State.

Source: § 65-125.

Note: No change.

§ 65.1-135. Pay roll reports of self-insurers and tax thereon.—Every employer carrying his own risk under the provisions of § 65.1-104 shall, under oath, report to the Industrial Commission his pay roll subject to the provisions of this Act. Such report shall be made in form prescribed by the Commission and at the time herein provided for premium reports by an insurer. The Commission shall assess against such pay roll a maintenance fund tax computed by taking two and one-half per centum of the basic premiums chargeable against the same or most similar industry or business, taken from the manual insurance rate for compensation then in force in this State, or, in its discretion, of such premiums modified in accordance with an experience rating determined by the records of the Commission. Such tax shall be paid as provided in § 65.1-104.4 and, if not so paid, the same shall be collected by the Comptroller in the manner provided in § 65.1-133.

The State Corporation Commission shall at all times have access to the reports herein required to be made to the Industrial Commission by self-insurers for the purpose of performing the duties imposed upon the said State Corporation Commission under this Act.

Source: § 65-126.

Note: Internal section references have been conformed.

§ 65.1-136. Disposition of fund.—Upon receiving the payments required by § 65.1-131, the Comptroller shall place the whole thereof to the credit of the fund for the administration of this Act. Such fund shall not be used for any other purpose, except as hereinafter expressly provided. The Industrial Commission shall administer the fund to carry out the provisions of this Act and shall disburse the same as hereinafter directed. If the receipts shall exceed the expenditures for any year and a surplus accrue in the fund, the Commission may authorize a credit for the ensuing years as provided by § 65.1-137. No portion of the fund or any surplus accruing therein shall be paid into the general fund of the State treasury, nor shall the fund be administered, handled or disbursed except as provided in this section. All claims for salaries or expenses, when approved by resolution of the Commission and countersigned by its chairman, shall be presented to the Comptroller and audited by him under the provisions of chapter 14 of Title 2, and he shall draw his disbursement warrants therefor on the State Treasurer. All such claims shall show to whom and for what service, material or other things or reason such amounts are to be paid and shall be accompanied by voucher, checks or receipts covering the same, except as to items of less than one dollar.

Appropriations under chapter 11 of this title may be annually paid from any existing surplus in such administrative fund.

Source: § 65-127.

Note: Internal section references have been conformed.

§ 65.1-137. When fund in excess of requirement.—If it be ascertained that the tax collected exceeds the total chargeable against the maintenance fund under the provisions of this Act, the Industrial Commission may authorize a corresponding credit upon the collection for any year or make refunds of taxes collected.

Source: § 65-128.

Note: No change.

3. All acts and parts of acts inconsistent with the provisions of this act are repealed to the extent of such inconsistency.

4. The repeal of Title 65 effective as of October one, nineteen hundred sixty-eight, shall not affect any act or offense done or committed, or any penalty or forfeiture incurred, or any right established, accrued or accruing on or before such date, or any prosecution, suit or action pending on that date. Except as in this act otherwise provided, neither the repeal of Title 65 of the Code of Virginia nor the enactment of Title 65.1 shall apply to offenses committed prior to October one, nineteen hundred sixty-eight, and prosecutions for such offenses shall be governed by the prior law, which is continued in effect for that purpose. For the purposes of this act, an offense was committed prior to October one, nineteen hundred sixty-eight, if any of the essential elements of the offense occurred prior thereto.

5. Whenever in Title 65.1 any of the conditions, requirements, provisions or contents of any section, article or chapter of Title 65, as such title existed prior to October one, nineteen hundred sixty-eight, are transferred in the same or in modified form to a new section, article or chapter of Title 65.1, and whenever any such former section, article or chapter of Title 65 is given a new number in Title 65.1, all references to any such former section, article or chapter of Title 65 appearing elsewhere in the Code of Virginia than in Title 65.1 shall be construed to apply to the new or renumbered section, article or chapter containing such conditions, requirements, provisions or contents or portions thereof.

6. It is the intention of the General Assembly that this act shall be liberally construed to effect the purposes set out herein, and if any clause, sentence, paragraph or section of this act shall ever be declared unconstitutional, it shall be deemed severable, and the remainder of this act shall continue in full force and effect.

7. This act shall become effective on October one, nineteen hundred sixty-eight.

