MATTERS PERTINENT TO THE INDUSTRIAL COMMISSION OF VIRGINIA And WORKMEN'S COMPENSATION LAWS OF VIRGINIA

REPORT OF THE VIRGINIA ADVISORY LEGISLATIVE COUNCIL To THE GOVERNOR And THE GENERAL ASSEMBLY OF VIRGINIA

COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
Richmond
1969

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TABLE OF CONTENTS

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REPORT OF
THE VIRGINIA ADVISORY LEGISLATIVE COUNCIL

Richmond, Virginia
December 1969

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

and

THE GENERAL ASSEMBLY OF VIRGINIA

I. INTRODUCTION

The Workmen's Compensation System and the Industrial Commission of Virginia were created by an act of the 1918 General Assembly. The Act has not been comprehensively studied or reviewed since then despite the enactment of federal laws which might affect it, despite the growth in population which could have multiplied the work of the Commission, and despite the fact that some provisions may be unfair, unnecessary or unworkable in actual practice. The 1966 General Assembly felt it appropriate to study the operations of the Industrial Commission and the Workmen's Compensation Act to ascertain what revisions in the Act should be made.

Accordingly, the 1966 General Assembly by Senate Joint Resolution No. 61 directed the Virginia Advisory Legislative Council to study and report on matters pertinent to the Industrial Commission of Virginia and the Workmen's compensation Laws of Virginia.

SENATE JOINT RESOLUTION NO. 61

Directing the Virginia Advisory Legislative Council to study and report on matters pertinent to the Industrial Commission of Virginia and Workmen's Compensation Laws of Virginia

Whereas, the Industrial Commission of Virginia, and the Virginia Workmen's Compensation Act were created by an Act of the General Assembly of Virginia at an Extra Session of the General Assembly of 1917, and which became effective in 1918; and

Whereas, the Industrial Commission has discharged its functions under the Virginia Workmen's Compensation Act, and subsequent amendments thereto, since 1918, without recent legislative study or review; and

Whereas, the United States Congress has amended the Health, Education and Welfare Act to enlarge Social Security benefits to include medical and hospital bills to all citizens of a certain age; and

Whereas, the Commonwealth has enjoyed through the years, and particularly in recent times, a growth of population which has inevitably multiplied the work of the Commission; and

Whereas, the time is propitious to make a study and review to determine what changes, if any, may be needed in the Virginia Workmen's Compensa-

tion Act, and the Act establishing the Industrial Commission; now, therefore, be it

Resolved, by the Senate of Virginia, the House of Delegates concurring, That the Virginia Advisory Legislative Council is hereby directed to make a study of the operations of the Industrial Commission and the Virginia Workmen's Compensation laws, and to consider any proposals for changes, and, after due and careful consideration to prepare and present its findings and conclusions, with recommendations for such legislative changes, if any, which the Council may deem desirable and proper, to the Governor and General Assembly not later than October one, nineteen hundred sixty-seven. All agencies of the State shall assist the Council in its study.

Selected by the Council to serve on the Committee to prepare an initial report were: Delegate John H. Daniel; Senator Fred W. Bateman; John B. Boatwright, Jr., Chairman, Virginia Railway Association, Richmond; John E. Donaldson, Jr., Attorney at Law, Arlington; Delegate Walther B. Fidler; Delegate George H. Hill; James N. Hunter, Vice-President, Natural Bridge of Virginia, Inc., Natural Bridge; Brewster Snow, Secretary-Treasurer, Virginia State AFL-CIO, Richmond; Delegate Robert W. Spessard; Beecher E. Stallard, Attorney at Law and former Member of the House of Delegates, Richmond; Senator William F. Stone; Charles H. Taylor, Executive Vice-President, Virginia Manufacturers Association, Richmond; Charles F. Unruh, former Member of the House of Delegates, Kinsale. Delegate John H. Daniel was elected Chairman of the Committee.

The Committee began its work by acquainting itself with the present organization and operation of the Industrial Commission. It conducted a public hearing and elicited recommendations from groups representing workmen, the insurance industry, employers, the general public, and the Commissioners of the Industrial Commission.

Based upon the recommendations presented at the public hearing, the Committee determined to engage the services of consultants to gather data in the following areas: a managerial analysis of the operation of the Industrial Commission; a cost analysis of the Virginia Workmen's Compensation Laws as compared with other states of like geographical, industrial and population composition; a cost analysis of states operating under an exclusive state monopoly fund; the impact of 1965 Social Security amendments and the proposed 1967 amendments; and projected cost analyses for various increased levels of benefits. Accordingly, the actuarial firm of Woodward and Fondiller, Inc. of New York and the Institute for Business and Community Development of Richmond were engaged to gather the factual information the Committee desired.

Because of the complexity of the assignment undertaken by the two consultant firms and because the final 1967 amendments to the federal Social Security Act were not available, the Committee and Council were of the opinion that additional review of the material presented by the consultant and of the federal law would be necessary for the formulation of sound recommendations and accordingly requested that the study be continued.

Thus the 1968 Session of the General Assembly of Virginia, by House Joint Resolution No. 38, directed the Virginia Advisory Legislative Council to continue its study of the Industrial Commission and the Workmen's Compensation Act. The Resolution is as follows:

HOUSE JOINT RESOLUTION NO. 38

Directing the Virginia Advisory Legislative Council to continue its study concerning matters pertinent to the Industrial Commission of Virginia and Workmen's Compensation Laws of Virginia.

Whereas, the Virginia Advisory Legislative Council inaugurated a study of the Industrial Commission of Virginia and Workmen's Compensation Laws of Virginia; and

Whereas, because of time limitations and the complexity of the matters involved in concluding the study, the Council was unable to complete its study and submit recommendations to the General Assembly; now, therefore, be it

Resolved by the House of Delegates, the Senate of Virginia concurring, That the Virginia Advisory Legislative Council is hereby directed to continue its study of matters pertaining to the Industrial Commission of Virginia and Workmen's Compensation Laws of Virginia. The Council shall complete its study and make its report to the Governor and the General Assembly not later than October one, nineteen hundred and sixty-nine.

The Council initially selected John H. Daniel, Charlotte Court House, member of the House of Delegates and member of Council, to be Chairman of the Committee to continue this study and report to the Council. Selected to serve with Mr. Daniel were: Edgar Bacon, Jonesville, member of the House of Delegates; John B. Boatwright, Jr., Richmond, Chairman of the Virginia Railway Association; John E. Donaldson, Jr., Arlington, Attorney at Law; George Hedgepeth, Franklin, Assistant Manager of the St. Regis Paper Company; James N. Hunter, Natural Bridge, Vice-President of Natural Bridge of Virginia, Inc.; Flournoy L. Largent, Jr., Winchester, member of the House of Delegates; Brewster Snow, Richmond, Secretary-Treasurer of the Virginia State AFL-CIO; Beecher E. Stallard, Richmond, former member of the House of Delegates; William F. Stone, Martinsville, member of the Senate; Charles H. Taylor, Richmond, Executive Vice-President of the Virginia Manufacturers' Association, Inc.

Upon the resignation of Mr. Daniel from the Council, it selected Edward E. Lane, Richmond, member of the House of Delegates and member of Council, to be Chairman of the Committee.

The actuarial firm of Woodward and Fondiller, Inc., provided a comparative analysis of workmen's compensation benefit financing which indicated how insurance rates are developed in Virginia for each of the job classifications based on experience and risk exposure.

The Institute for Business and Community Development of the University of Richmond provided its findings related to the administrative functions of the Industrial Commission, the growing development of a system of federal disability benefit payments under the Social Security Act, and a comparative analysis of State monopoly fund financing of workmen's compensation benefits versus the present system of financing through private insurance carriers and self-insurance.

From these reports and interrogations of the consultants, we observed that:

(1) Some improvements could be made in the administration of the Workmen's Compensation Act of Virginia.

(2) Some improvements should be made in the statutory provisions of the Virginia Act.

(3) There would be no apparent advantages in changing the present system of financing workmen's compensation benefits.

(4) The development of a system of federal disability payments, either through the Social Security Act or through federal workmen's compensation legislation establishing federal disability benefit payments, can have substantial implications for the future role of state workmen's compensation disability benefit payments.

We make the following specific recommendations:

II. SUMMARY OF RECOMMENDATIONS

A. *The Administration of the Workmen's Compensation Act*

Recommendation: That there be an advisory committee to the Industrial Commission, composed of six members, one each representing employees, employers, the medical profession, the Bar, insurers and the general public, appointed by the Industrial Commission, which shall meet at least once a year.

Recommendation: That legislation be enacted requiring insurers writing workmen's compensation policies in this State to meet minimum standards of service and providing penalties for failure to meet the standards.

Recommendation: That legislation be enacted repealing §§ 65.1-83 and 65.1-84, relating to substitute systems of compensation.

B. *Disability Coverage*

Recommendation: That legislation be enacted repealing the schedule of occupational diseases and the election to be bound thereby, deleting all references to it, and amending § 65.1-46 to include infectious or contagious diseases contracted in the course of employment in or in immediate connection with a public health laboratory.

Recommendation: That legislation be enacted amending § 65.1-57, relating to compensation for hernia, by deleting the details now set forth as required to be proved.

C. *Disability Benefits*

(i) *Amount*

Recommendation: That legislation be enacted increasing the maximum compensation allowable from fifty-one dollars a week to fifty-eight dollars a week and all other maxima a proportionate amount.

Recommendation: That the pneumoconioses, including but not limited to silicosis, asbestosis, coal miner's pneumoconiosis, and byssinosis, be compensated consistently and by stages so that each stage shall be deemed an incapacity continuing for the number of weeks specified.

(ii) *Duration*

Recommendation: That legislation be enacted extending the duration of compensation for partial incapacity up to five hundred weeks.

D. *Medical Attention*

Recommendation: That legislation be enacted providing medical attention for a period of up to three years without the necessity of a hearing and providing no limitation on the duration of medical attention in the case of brain or spinal cord injuries.

Recommendation: That legislation be enacted providing that the injured employee may select a physician from a panel of at least three doctors designated by the employer and preserving the employee's right to request a change of doctors.

Recommendation: That legislation be enacted requiring the physician attend-

ing an injured employee to furnish to the injured employee, employer or insurer a copy of any medical report upon request.

E. *Procedures*

Recommendation: That legislation be enacted permitting the use of interrogatories in proceedings under the Act.

Recommendation: That legislation be enacted raising the penalty for failure to insure to a fine of one dollar for each employee but not less than ten dollars nor more than two hundred fifty dollars for each day, and raising the penalty for failure to make any required report to a fine of two hundred fifty dollars for each such failure.

Recommendation: That legislation be enacted amending § 65.1-51 to permit the employee sixty days to give notice of an occupational disease 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 is not prejudiced thereby.

Recommendation: That legislation be enacted amending § 65.1-105 to permit an insurer to cancel a policy as of the effective date of a succeeding insurer's policy as well as after thirty days' notice.

Recommendation: That legislation be enacted providing that the clerk of any court of record may issue subpoenas for witnesses in proceedings under the Act.

III. DISCUSSION OF RECOMMENDATIONS

A. *The Administration of the Workmen's Compensation Laws*

Recommendation: That there be an advisory committee to the Industrial Commission, composed of six members, one each representing employees, employers, the medical profession, the Bar, insurers and the general public, appointed by the Industrial Commission, which shall meet at least once a year.

We were favorably impressed with the administration of the Workmen's Compensation Act by the Industrial Commission. Its willingness to provide information to anyone with a legitimate inquiry, its cooperation with other agencies and with individuals, and its receptiveness to suggestions were apparent. However, an established body could coordinate and channel all complaints and suggestions into a more organized presentation to the Commission. Furthermore, however receptive the present Commission may be, the inevitable change in personnel may result in a breakdown in communications between the Commission and those for whom it administers the law. A rule implementing this recommendation has been adopted by the Industrial Commission. See Appendix II.

Recommendation: That legislation be enacted requiring insurers writing workmen's compensation policies in this State to meet minimum standards of service and providing penalties for failure to meet the standards.

At present, the only supervision of insurers writing workmen's compensation policies in this State is that the State Corporation Commission will require proof of financial ability before it will issue a permit to do business in the State. There is no other check upon insurers except upon complaint. Some guidelines or standards are necessary to insure that these insurance companies pay benefits promptly, establish offices in the State, provide sufficient field services, make safety inspections, and so on. Minimum standards should be established by the State Corpora-

tion Commission in cooperation with the Industrial Commission to insure quality of service and effective sanctions should be provided.

Recommendation: That legislation be enacted repealing §§ 65.1-83 and 65.1-84, relating to substitute systems of compensation.

The provisions of §§ 65.1-83 and 65.1-84 have been invoked only once since they were enacted. That request was denied because the substitute system was completely unworkable. Moreover, these provisions are incompatible with the provisions relating to insurance and self insurance. Since the sections are unused and unworkable, they should be repealed.

B. *Disability Coverage*

Recommendation: That legislation be enacted repealing the schedule of occupational diseases and the election to be bound thereby, deleting all references to it, and amending § 65.1-46 to include infectious or contagious diseases contracted in the course of employment in or in immediate connection with a public health laboratory.

The schedule of occupational diseases as set out in § 65.1-47 attempts to be all-inclusive. However, the only possible effect the schedule can have is to eliminate a disease which may in fact be an occupational disease. The employee who contracts such a disease while working for an employer who has elected to be bound only by the schedule of occupational diseases receives no compensation. On the other hand, if an employee contracts a disease enumerated in the schedule, he must still prove it to be an occupational disease as defined in § 65.1-46. The elimination of the schedule insures the most comprehensive coverage of occupational diseases; yet the employer is not prejudiced because the disease must in fact be an occupational disease, arising out of and in the course of employment.

If the schedule is repealed, the election to be bound thereby should be repealed and all references to the schedule deleted.

Both § 65.1-46 and § 65.1-47 contain the language "infectious or contagious disease contracted in the course of employment in a hospital or sanitarium"; however, § 65.1-47 also adds "or public health laboratory." In order to preserve this language, § 65.1-46 should be amended by adding these words.

Recommendation: That legislation be enacted amending § 65.1-57, relating to compensation for hernia, by deleting the details now set forth as required to be proved.

The decision of the Supreme Court of Appeals in *Derby v. Swift,* 188 Virginia 336, 49 S.E. 2d 417 (1948), and subsequent decisions of the Industrial Commission have rendered unnecessary the language in § 65.1-57 stating what must be proved in claims for compensation for hernia. This language should be deleted. However, remaining provisions of the section are peculiar to hernia and must be retained.

C. *Disability Benefits*

(i) *Amount*

Recommendation: That legislation be enacted increasing the maximum compensation allowable from fifty-one dollars a week to fifty-eight dollars a week and all other maxima a proportionate amount.

The recommended increase of seven dollars represents the approximate amount necessary to overcome inflation at the rate of six per cent a year since the amounts were last amended. Whatever maximum compensation provisions are provided, they should be amended in accordance with this increase.

Recommendation: That the pneumoconioses, including but not limited to silicosis, asbestosis, coal miner's pneumoconiosis and byssinosis, be compensated consistently and by stages so that each stage shall be deemed an incapacity continuing for the number of weeks specified.

At present, silicosis and asbestosis are compensated entirely differently from coal miner's pneumoconiosis and byssinosis although all are lung diseases having the same effects and, in fact, often cannot be distinguished by physicians. Furthermore, the first and second stages of silicosis and asbestosis are compensated by specific amounts whereas the third stage is compensated by loss of wages. In order to eliminate these inconsistencies and to be fair to the diseased employee who has no loss of wages, either because of continued employment or retirement, all three stages of the diseases should be compensated by specific amounts as the first two stages of asbestosis and silicosis are now. Furthermore, so that all similar diseases are treated consistently, language encompassing all the pneumoconioses should be used. We have recommended the language "the pneumoconioses, including but not limited to silicosis, asbestosis, coal miner's pneumoconiosis and byssinosis." Illustrative of the need for a comprehensive term is the addition of "byssinosis", a new and increasingly frequent lung disease which is not now mentioned in the Act but which is a pneumonconiosis similar to silicosis, asbestosis and coal miner's pneumoconiosis.

Recommendation: That legislation be enacted extending the duration of compensation for partial incapacity up to five hundred weeks.

As the law stands at present, a totally disabled employee receives sixty per cent of his average weekly wages for a period of five hundred weeks. A partially incapacitated employee receives sixty per cent of the difference between his average weekly wages before and after his injury for a period of only three hundred weeks. And when partial incapacity follows a period of total incapacity, the period of total incapacity is deducted from the three-hundred week period allowed for partial incapacity even though the partially incapacitated employee may continue to be partially disabled for many more weeks or may be unable to find employment with his diminished capacity. If total incapacity continues for three hundred weeks, the employee receives, in effect, no compensation for partial incapacity. Most disabled employees return to full employment within a year, but to alleviate any difficulty, compensation for partial disability should continue for a period of up to five hundred weeks from the date of the accident.

D. *Medical Attention*

Recommendation: That legislation be enacted providing medical attention for a period of up to three years without the necessity of a hearing and removing all limitations on the duration of medical attention in the case of brain or spinal cord injuries.

At present, § 65.1-88 provides that the employer shall furnish medical attention to the injured employee for ninety days. If the injured employee needs further medical attention, he must apply for a hearing before the Industrial Commission unless the employer voluntarily continues providing treatment. By eliminating the ninety-day limit, the employee will be able to receive medical attention for as long as necessary up to three years without having to obtain a hearing.

In most cases three years will provide more than adequate time to cure injuries. However, when injuries linger on for over three years requiring continued medical attention, the employee can ill afford the necessary medical attention. Lingering injuries are, in almost all cases, injuries to the brain or spinal cord. In

order to provide for the employee in these circumstances, the employer should be required to provide medical attention for as long as necessary after three years in cases of brain and spinal cord injuries.

Recommendation: That legislation be enacted providing that the injured employee may select a physician from a panel of at least three doctors designated by the employer and preserving the employee's right to request a change of doctors.

One of the most personal of relationships is that between doctor and patient. Yet an injured employee must accept treatment by a physician, not of his own choice, but of his employer's choice. A doctor in such a case may be biased in favor of an employer from whom he may receive many patients. On the other hand, if an employee were permitted to choose his own physician, he may choose one specialist when he should see another. Also, bias, this time in favor of the employee, may become a problem. If the employee could select from a panel of at least three doctors designated by the employer and his right to change doctors, with the approval of the Industrial Commission, were preserved, an employee would be adequately protected from unfair or unsatisfactory treatment.

Recommendation: That legislation be enacted requiring the physician attending an injured employee to furnish to the injured employee, employer or insurer a copy of any medical report upon request.

Under the present law, an injured employee being treated by a physician provided by his employer has no way of obtaining his medical report from the doctor. He must be satisfied with whatever the doctor may wish to tell him, or he may, if he is aware of the fact, obtain a copy from the Industrial Commission. He should be able to obtain it directly from the physician. In some instances, however, it may be inadvisable for the employee to see his report. Probably every doctor, on occasion, has patients in whom he discovers a malady which he does not immediately disclose. For this reason, a request should be necessary. If the employee is given the right to obtain the report directly from the physician on request, the employer and insurer should also have the right.

E. *Procedures*

Recommendation: That legislation be enacted permitting the use of interrogatories in proceedings under the Act.

The taking of oral depositions can be an expensive and time-consuming procedure. This is the only means of discovery now stated in the Act. Allowing the use of written interrogatories would provide a simpler and less expensive means of making discovery.

Recommendation: That legislation be enacted raising the penalty for failure to insure to a fine of one dollar for each employee but not less than ten dollars nor more than two hundred fifty dollars for each day, and raising the penalty for failure to make any required report to a fine of two hundred fifty dollars for each such failure.

The penalties for failure to insure and failure to make a required report were enacted in 1918. An amount which might have been an effective sanction in 1918 is not effective in 1969. In order to have an effective sanction, these penalties should be raised to reflect 1969 dollars.

Recommendation: That legislation be enacted amending § 65.1-51 to permit the employee sixty days to give notice of an occupational disease 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 is not prejudiced thereby.

Section 65.1-51 now requires that an employee give notice of an occupational disease within thirty days of the date when the diagnosis is first communicated to him. On the other hand, § 65.1-85 provides that notice of an accident must be given within thirty days after the occurence of the accident *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." Because an employer does not need to make an immediate investigation in the case of disease as he does in the case of an accident, an employee suffering from an occupational disease should be permitted sixty days to give notice. Furthermore, he should have the same right as an injured employee to extend this time if he has a reasonable excuse and the employer is not prejudiced.

Recommendation: That legislation be enacted amending § 65.1-105 to permit an insurer to cancel a policy as of the effective date of a succeeding insurer's policy as well as after thirty days' notice.

At the present time an insurer may not cancel a policy except after thirty days' notice to the insured employer even though the employer may have obtained other insurance. The cancelling insurer should not have to bear the risk of loss and should be permitted to cancel when another insurer has assumed the risk.

Recommendation: That legislation be enacted providing that the clerk of any court of record may issue subpoenas for witnesses in proceedings under the Act.

At present, in addition to the Industrial Commission, only the clerks of the circuit court of counties or of the hustings or corporation courts may issue subpoenas for and enforce the attendance at proceedings of any witnesses whose testimony is sought, although there are other courts of record and clerks. In order to provide the quickest and easiest access to subpoenas, clerks of all courts of record should be permitted to issue subpoenas for the attendance of witnesses at proceedings under the Act.

IV. OTHER PROPOSALS CONSIDERED

An examination was made of the impact of the 1965 and 1967 amendments to the Social Security Act dealing with disability benefit payments. A schedule of federal disability benefit payments under the Social Security Act is included in Appendix I for historical reference. The Virginia General Assembly should be made aware of the significance of any federal legislation in the future dealing with expanded disability benefit payments under the Social Security Act or through federal workmen's compensation legislation, which could have a substantial bearing upon the role or existence of state workmen's compensation.

Many other proposals were considered and are presented below. Reasons are given for the decision to take no action on the proposals where important. Many of the proposals are covered by implication within the recommendations discussed above.

A. *Administration of the Workmen's Compensation Laws*

(i) *Financing*

Establish a State monopoly fund to finance the Workmen's Compensation Law.

A study of the cost and advisability of this proposal failed to reveal that there is any demonstrable advantage to this system of financing workmen's compensation.

(ii) *Operation of the Industrial Commission*

(a) *Administrative changes which have already been implemented in response to proposals*

The Industrial Commission should maintain appropriate records of cases referred to the Department of Vocational Rehabilitation.

The Industrial Commission should employ a vocational rehabilitation specialist. (A member of the Department of Vocational Rehabilitation now has an office in and works with the Commission.)

Safety Inspectors of the Department of Labor should be used by the Commission as compliance officers to check employer compliance with provisions of the Act.

Forms required by the Commission should be revised and consolidated.

Commission should publish instructions on the forms to be used in reporting and adjusting of accident claims.

The Division of Statistics and Insurance should take action to improve their record keeping and statistical information.

(b) *Other*

Appoint three additional Deputy Commissioners in order to establish a new and separate Hearings Division in the Industrial Commission and permit Commissioners to concentrate on administration of the Commission, hearing appeals upon application, and promoting better understanding of Workmen's Compensation.

There are not sufficient appeals to warrant these changes. Furthermore, when these changes are necessary, they may be accomplished administratively.

Appoint a full time medical director and Medical Advisory Committee.

Neither of these actions is necessary. A part-time medical director can perform all the necessary duties. Furthermore, appointment of a full time medical director is unfeasible because the salary which could be offered would not attract a sufficiently competent and experienced doctor. The salary which can be paid to a doctor for part of his time is adequate to attract a qualified doctor.

An intergovernmental committee to coordinate more closely safety, compensation and rehabilitation activities should be established.

Because there is no problem of cooperation and coordination, another committee is unnecessary.

The Industrial Commission in cooperation with the Virginia Employment Commission should establish information centers in local offices operated by the latter.

While this suggestion seems attractive at first, lay interpretation of the complicated laws is inadvisable. The Industrial Commission will readily answer requests for information and this method insures that accurate information is obtained.

Regional hearings sites should be established.

This suggestion presents a complicated line-drawing problem. Furthermore, inconvenient locations can easily be moved by agreement of the parties under the present law.

The Industrial Commission should undertake appropriate studies on a regular basis to determine if the insurance carriers and self-insurers are providing quality service to claimants and insurers should be penalized if benefits are not paid promptly.

We are recommending legislation establishing standards of service and providing penalties for failure to meet the standards.

The Industrial Commission should review the entire statistical program to determine what additional information is necessary for evaluation and effectiveness.

Improvements have been made in this area. Moreover, the infrequent use of such statistics does not justify the expense of gathering the information.

Qualifications of Commissioners and Deputy Commissioners should be the same.

Deputy Commissioners are required to be lawyers but Commissioners are not. However, the original intent of the Act was to have one Commissioner representative of employees, one representative of employers, and one neutral. If Commissioners were required to be attorneys, this intent may or may not be met. Presently all the Commissioners are attorneys.

Salaries of professional staff should be raised especially in view of the need to recruit new staff.

This suggestion involves the entire State salary scale. Furthermore, the present salaries are considered adequate.

Raise the tax rate on premiums to finance these suggestions.

When necessary, this action may be taken by the Industrial Commission without legislation.

B. *Disability Coverage.*

Reduce the exemption from coverage to employers with less than four employees rather than seven.

The financial burden on small businesses of obtaining insurance was felt to be too great, particularly in view of the fact that employers with less than seven employees can elect to come under this Act.

Eliminate the exemption of farm labor from coverage under the Act.

Prohibit waivers of compensation for any aggravation of an occupational disease.

The problem which this proposal seeks to combat is that of an employer requiring an employee who is not yet affected by or susceptible to an occupational disease to sign a waiver of compensation. However, the Industrial Commission requires a medical report stating that the employee is affected by or susceptible to a specific occupational disease before it will approve a waiver. Thus the problem has been solved satisfactorily. Moreover, if waivers were entirely prohibited, a diseased person who could work would be unable to find employment.

Amend § 65.1-56 to provide specific compensation for general bodily disability as well as for the loss of specific members.

This proposal would result in delay of awards due to the necessity for an investigation and determination. Furthermore, in its general application the employee would not be benefitted by receiving a specific amount of compensation rather than compensation for loss of wages. *See e.g. Foust Coal Co.* v. *Messer,* 195 Va. 762, 80 S.E. 2d 533 (1954).

Allow compensation even though an injury or death resulted from the ployee's willful misconduct or intoxication.

C. *Disability Benefits*

(i) *Amount*

Raise benefits to sixty-six and two-thirds per cent of average weekly wages.

Workmen's compensation is intentionally less than the employee's former pay in order to provide incentive for the employee to return to work. Because compensation paid pursuant to workmen's compensation laws is not taxable, a higher percentage of wages paid in compensation would more closely approximate the injured employee's former "take-home" pay. Therefore, compensation should not be raised to sixty-six and two-thirds per cent.

Tie the maximum weekly benefits payable to a floating wage scale such as the average weekly wage in manufacturing.

Because of the complications and problems involved in this proposal, it would be more appropriately dealt with as a separate study.

Differentiate between the average weekly wages paid claimants with dependents and those without.

Improve the provisions for successive injuries.

One method of improving the provisions would be to establish a second injury fund. This would be a more expensive way to provide the same compensation in almost all cases as the present method does. Another method of improving these sections would be to provide that in all cases, the employer shall pay for the entire incapacity after the second injury rather than just the amount of incapacity attributable to the second injury alone. But a partially incapacitated employee would not be able to find employment if this were the case. Neither alternative is satisfactory.

(ii) *Duration*

Eliminate the limitations on the duration of medical benefits and on the durations of disability benefits.

We are recommending that the limitation on the duration of medical benefits be removed in the case of injury to the brain or spinal cord. In other cases, three years is usually ample time for recovery. We are also recommending that the limitation on the duration of benefits for partial incapacity be extended from three hundred weeks to five hundred weeks.

Permit compensation in all cases for the first week of disability.

Continue compensation to the dependent widow of a deceased employee during widowhood or until social security benefits are received, and continue compensation to a dependent child until he is eighteen years of age.

Provide either that a hearing be held immediately upon application for a hearing on ground of change in condition or that an employer be prohibited from terminating compensation upon filing an application for a hearing.

When an employer files an application for a hearing, compensation ceases. This proposal is designed to protect an employee from having his compensation terminated arbitrarily by an employer using this device. However, if the employer does in fact file an application for a hearing arbitrarily the Industrial Commission can penalize him by assessing the employee's attorney's fee against him. Furthermore, there are only two ways to terminate compensation, by agreement and by applying for a hearing. Most cases are brought because an employee who has returned to work and is no longer entitled to compensation refuses to sign the agreement terminating compensation because of misunderstanding or ignorance. If compensation did not terminate upon application for a hearing, the employer would most likely have to continue compensating an employee who is not entitled to it.

Permit increased compensation as a form of penalty where the employer fails to furnish the proper safety equipment.

Provide for a period of temporary total disability payments and, upon expiration of that period, for permanent total disability payments for as long as the employee cannot return to work.

D. *Medical Attention*

Permit the injured employee to select and be treated by a physician of his own choice.

E. *Attorneys*

Pay attorneys' fees out of a fund established for that purpose by the Industrial Commission.

Assess attorneys' fees in all cases against the employer or carrier.

Tax attorneys' fees as a cost of the proceeding.

Remove the control over attorneys' fees from the Industrial Commission.

F. *Procedures*

Prorate disability benefits for the pneumoconioses between the former carrier or insurer and the current carrier or insurer.

This proposal would place a difficult burden of proof on the diseased employee.

Extend the statutes of limitation in all cases from one to two years.

It is a rare case that an injury would not be apparent within one year. Nor is there any reason a claim based on an occupational disease cannot be filed within one year after the diagnosis is first communicated to the employee. Furthermore, the one year statute of limitations is in line with the majority of jurisdictions.

Provide for an exception to the fifteen-day limit for appeals where there is a mutual or unilateral mistake of fact in the agreed statement of facts so that a one year statute of limitation would apply.

The statutes of limitation should run from the date the employee had notice of any injury rather than from the date of the accident.

A definite and ascertainable date is preferable.

Allow sixty days to appeal to the Supreme Court of Appeals.

The award is not final and therefore no compensation is payable until the time for appeal has expired. This proposal would, therefore, be detrimental to the employee.

Permit an injured employee to sue third parties who are not "strangers to the employment", e.g. subcontractors.

When an employer violates safety standards, allow an employee to sue the employer and deny the employer his common law defenses.

This proposal would leave the employer with absolutely no defense. In many cases, this result would be grossly unfair.

Provide that the Supreme Court of Appeals review awards of the Industrial Commission as appeals in equity from courts of record.

This proposal contemplates that the Commission's findings of fact would not be conclusive and binding on the Supreme Court of Appeals. The result would be an increase in the length of time that an award which is appealed would not be final. An employee would not be entitled to receive any compensation during this

time. This detriment to the employee outweighs any possible advantage in the proposal.

Amend § 65.1-101 to expressly place the cost of proceedings on the Commission except when a proceeding is brought or defended by an employer without reasonable grounds.

Respectfully submitted,

C. W. Cleaton, Chairman

J. C. Hutcheson, Vice-Chairman

Robert C. Fitzgerald

J. D. Hagood

Garnett S. Moore

Sam E. Pope

Arthur H. Richardson

William F. Stone

Edward E. Willey

DISSENTING STATEMENT

By coming under workmen's compensation laws, the employer gives up any defense he has to a compensable claim, but pays a relatively small premium. Likewise, the employee gives up his right to bring action against his employer in exchange for a schedule of awards which is usually substantially less than he might recover if he was successful in a common law action. The present law requires anyone employing seven or more persons to come under this coverage, but allows employers employing less than seven to come under the coverage at the employer's election only. The employee has no election.

Statistics taken from the 1969 edition of "Analysis of Workmen's Compensation Laws" prepared by the Chamber of Commerce of the United States indicate the following:

> "Compensation laws are compulsory or elective. Under an elective law, the employer may accept or reject the act, but if he rejects it he loses the three common law defenses—assumption of risk, negligence of fellow employees and contributory negligence. Practically, this means that all the laws in effect, are 'compulsory'. A compulsory law requires each employer within its scope to accept its provisions and provide for benefits specified—as shown in Charts I and II."

Of 51 jurisdictions (the 50 states and the District of Columbia) 23 have so-called elective laws and 28, including Virginia, have compulsory laws.

Of the 28 jurisdictions having compulsory laws, coverage is compulsory if an employer has as many as the following number of employees:

Alaska	1	Hawaii	1	
Arizona	3	Idaho	1	
Arkansas	5	Illinois	1	
California	1	Kentucky	3	(hazardous)
Connecticut	1	Maryland	1	(extra-hazardous)
Delaware	3	Mass.	4	
Dist. of Col.	1	Michigan	3	

Minnesota	1		Oklahoma	2	(hazardous)
Mississippi	8		Oregon	1	
Nevada	2		Utah	1	
New Hampshire	1		Virginia	7	
New York	1		Washington	1	(hazardous)
North Dakota	1	(hazardous)	Wisconsin	1	
Ohio	3		Wyoming	1	(extra-hazardous)

Of the 22 jurisdictions having compulsory laws (eliminating the 6 that require the employment to be "hazardous" or "extrahazardous") the average number of employees for compensation coverage is 2.3. Only one state, Mississippi, requires more employees than does Virginia.

The Unemployment Compensation laws of Virginia apply to all employers, with certain exceptions, with four or more employees.

The Committee appointed by the Council to conduct a study on this matter, which consisted of representatives from industry and labor, after much discussion recommended that this requirement be reduced from seven to four. The recommendation included a provision that this not be made effective until July 1, 1971, in order to allow sufficient time for the public to be made aware of the change and for the Industrial Commission to prepare for the additional work load.

We concur in the report as adopted by the VALC, except for the recommendation that the requisite coverage be left at seven, and agree with the Study Committee's recommendation that the requisite number of employees for compulsory coverage be reduced to four.

Respectfully,

Edward E. Lane

Russell M. Carneal

Lewis A. McMurran, Jr.

James M. Thomson

APPENDIX I

SCHEDULE OF FEDERAL DISABILITY PAYMENTS

Disability and Death Payments Under Social Security Act, as amended through February, 1968

Disabled and Deceased Worker and Dependents
(Average Yearly Earnings $5400*)

	Maximum Monthly Benefits
Disabled Worker	$165.00
Disabled Worker and Wife	226.90
Disabled Worker, Wife and Child	330.00
Disabled Worker, Wife and Two Children (Family Maximum)	354.40
Deceased	
Widow @ Age 62	136.20
Widow @ Age 60 (No Child)	118.10

*This figure most closely approximates the average yearly earnings of production workers on manufacturing payrolls in Virginia.

Deceased Worker and Dependents	*Maximum Monthly Benefits*
Widow @ Age 62, One Child	$247.60
Widow @ Age 62, Two Children	354.40
Widow @ Age 50, Disabled, No Child	82.70
Children—One	123.80
Children—Two	247.60
Other Dependents	
One Parent (@ 82% of basic benefit)	135.30
Two Parents (@ 75% of basic benefit ea.)	247.50

Source: HEW, Dept. of Social Security

APPENDIX II

Rule adopted by the Industrial Commission to implement the recommendations relating to an advisory committee.

Rule 16. Advisory Committee.

An advisory committee to the Industrial Commission is hereby established. The committee shall consist of six members, appointed by the Commission, for terms of three years each. The membership of the committee shall be composed of a representative of: employees, employers, the medical profession, the legal profession, the insurance industry, and the public. The committee shall elect its chairman, and it shall meet at least once each calendar year. A quorum of the committee shall be four members.

APPENDIX III

A BILL To amend and reenact §§ 65.1-21, 65.1-46, 65.1-51, 65.1-52, 65.1-54, 65.1-55, 65.1-56, 65.1-57, 65.1-65, 65.1-71, 65.1-88, 65.1-95, 65.1-105, 65.1-106, 65.1-118 and 65.1-127, *as severally amended, of the Code of Virginia, relating to means of enforcing attendance of witnesses, occupational diseases, compensation, medical attention, depositions, insurance and penalties under the Workmen's Compensation Laws; to amend the Code of Virginia by adding new sections numbered 65.1-88.1 and 65.1-117.1 relating to medical reports and standards of service for workmen's compensation insurers; and to repeal §§ 65.1-47, as amended, 65.1-48, 65.1-83 and 65.1-84, of the Code of Virginia, relating to the schedule of occupational diseases, the election to be bound thereby, and substitute systems of compensation.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 65.1-21, 65.1-46, 65.1-51, 65.1-52, 65.1-54, 65.1-55, 65.1-56, 65.1-57, 65.1-65, 65.1-71, 65.1-88, 65.1-95, 65.1-105, 65.1-106, 65.1-118 and 65.1-127, as severally amended, of the Code of Virginia be amended and reenacted, and to amend the Code of Virginia by adding sections numbered 65.1-88.1 and 65.1-117.1, as follows:

§ **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~~ *any court of record* shall, upon the application of ~~the Commission or any member or deputy thereof, or~~ any party in interest *to a proceeding pending under this act,* issue subpoenas for ~~and enforce~~ the attendance at such proceeding of any witnesses whose testimony is sought. *The return of any subpoena so issued shall be made to the Commission, which shall enforce the attendance of any such witnesses at such proceeding.*

§ **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 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 *or public health laboratory*.

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.

§ **65.1-51. Notice to be given.**—Within ~~thirty~~ *sixty* 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, *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.*

§ **65.1-52. Limitation upon claim; "injurious 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)~~ *(1)* Cataract of the eyes due to exposure to the heat and glare of molten glass or to radiant rays such as infrared;

~~(8)~~ *(2)* 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)~~ *(3)* Radium disability or disability due to exposure to radioactive substances and X ray;

~~(16)~~ *(4)* 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.

§ **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 fifty ~~one~~ *eight* 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 twenty-*three* thousand ~~four~~ *two* hundred dollars.

§ **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 fifty ~~one~~ *eight* dollars a week. In no case shall the period covered by such compensation be greater than ~~three~~ *five* 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.

§ **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 times 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 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 twenty-five weeks.

(15) For the loss of a leg sixty per centum of average weekly wages during one hundred 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 parmanent 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 and asbestosis 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 and asbestosis 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 and asbestosis medically determined to be in the third stage, compensation shall be according to the provisions of §§ 65.1 54 and 65.1 55.~~

(20) *For the pneumoconioses, including but not limited to silicosis, asbestosis, coal miner's pneumoconiosis and byssinosis, medically determined to be in the:*

(*a*) *First stage, sixty per centum of the average weekly wages during fifty weeks.*

(*b*) *Second stage, sixty per centum of the average weekly wages during one hundred weeks.*

(*c*) *Third stage, sixty per centum of the average weekly wages during three hundred weeks.*

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.

§ 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.

§ **65.1-65. Compensation to dependents of employee killed.**—If death results from the accident within ~~six~~ *eight* 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 fifty ~~one~~ *eight* dollars nor less than fourteen dollars a week for a period of three hundred weeks, but in no case to exceed ~~fifteen~~ *seventeen* thousand ~~three~~ *four* 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 fifty ~~one~~ *eight* 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 twenty-*three* thousand ~~four~~ *two* hundred 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, 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.

§ **65.1-71. Limitation upon total compensation.**—The total compensation payable under this Act shall in no case exceed twenty-*three* thousand ~~four~~ *two* hundred dollars.

§ **65.1-88. Duty to furnish medical attention; effect of refusal of employee to accept.**—For a period not exceeding ~~ninety days~~ *three years* after an accident the employer shall furnish or cause to be furnished free of charge to the injured employee, *a physician chosen by the injured employee from a panel of at least three physicians selected by the employer and* such *other* 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, and in addition thereto training in the use thereof not to exceed ninety days, 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 employee's injury was to the brain or spinal cord, the employer shall furnish free of charge to the injured employee medical attention of unlimited duration.*

The employer shall repair, if repairable, or replace dentures, artificial limbs or other prosthetic devices damaged in an accident otherwise compensable under workmen's compensation, and furnish proper fitting thereof, the total cost not to exceed one thousand dollars.

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 *or* 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.

§ *65.1-88.1. Any physician attending an injured employee shall, upon request of the injured employee, employer or insurer, furnish a copy of any medical report to the injured employee, employer or insurer.*

§ **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, *serve interrogatories or* 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.

§ **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 the employer has obtained other insurance and the Commission is notified of that fact by the insurer assuming the risk, or*

unless said cancellation is for nonpayment of premiums; then ten days' notice shall be given the employer and Commission.

§ **65.1-106. Penalty for violation of preceding section.**—If such employer refuses and neglects to comply with the provisions of the preceding section (§ 65.1-105) he shall be punished by a fine of ~~ten cents~~ *one dollar* for each employee at the time of the insurance becoming due, but not less than ~~one dollar~~ *ten dollars* nor more than *two hundred* 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.

§ *65.1-117.1. The State Corporation Commission in cooperation with the Industrial Commission shall establish minimum standards of service for insurers writing workmen's compensation policies in this State, including but not limited to the servicing of such policies, the establishment of offices within the State, and the payment of compensation.*

§ **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~~ *65.1-117.1,* inclusive, or of chapter 10 (§§ 65.1-129 et seq.) of this title, obligatory upon such person or persons, or who shall willfully 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.

§ **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~~ *two hundred fifty* 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 willfully neglecting or failing to transmit the report shall be liable for the penalty.

2. That §§ 65.1-47, as amended, 65.1-48, 65.1-83 and 65.1-84 of the Code of Virginia are repealed.