

**WORKMEN'S COMPENSATION ACT OF VIRGINIA**

**REPORT OF THE  
VIRGINIA ADVISORY LEGISLATIVE COUNCIL**

**To**

**THE GOVERNOR**

**And**

**THE GENERAL ASSEMBLY OF VIRGINIA**



**Senate Document No. 14**

COMMONWEALTH OF VIRGINIA  
Department of Purchases and Supply  
Richmond  
1974



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WORKMEN'S COMPENSATION ACT OF VIRGINIA

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REPORT OF THE  
VIRGINIA ADVISORY LEGISLATIVE COUNCIL

To

THE GOVERNOR

And

THE GENERAL ASSEMBLY OF VIRGINIA

Richmond, Virginia

January , 1974

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

and

THE GENERAL ASSEMBLY OF VIRGINIA

I. INTRODUCTION

This report is a result of the study directive contained in Senate Joint Resolution No. 100 which passed the 1973 session of the General Assembly as follows:

SENATE JOINT RESOLUTION NO. 100

Directing the Virginia Advisory Legislative Council to study and report on matters pertinent to public disability income protection and public disability medical protection under the Workmen's Compensation Act of Virginia and under federal statutes.

Whereas, the United States Congress has through the Federal Social Security Act and the Coal Mine Safety Act provided substantial public disability income benefits and medical benefits for workers and their dependents; and

Whereas, the United States Congress has under consideration a report on disability income protection and disability medical protection for workers and their dependents by a National Commission study ordered by the Congress; and

Whereas, there is the urgent necessity for the Virginia General Assembly to examine the extent of federal preemption in the field of disability income protection and medical protection for workers and their dependents, and the remaining role of state government; and

Whereas, the problems of coordination and administration pose critical decisions for both the state and federal levels of government; 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 public disability income protection and medical protection for workers and their dependents provided under existing federal statutes and Virginia statutes, including proposals under consideration by the United States Congress, and, after due and careful consideration, 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 the General Assembly not later than November one, nineteen hundred seventy-three. All agencies of the State shall assist the Council in its study.

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Pursuant to the study directive, the Virginia Advisory Legislative Council named Senator Edward E. Willey, Richmond, to the Chairmanship of the study committee. The Council appointed the following to the membership of the Committee: Senator George S. Aldhizer, III, Broadway; Senator George F. Barnes, Tazewell; Delegate Walther B. Fidler, Warsaw; Mr. Robert R. Fohl, Richmond; Delegate Edward E. Lane, Richmond; Delegate Frank E. Mann, Alexandria; Mr. Harry W. Meador, Jr., Big Stone Gap; Mr. William A. Patton, Clinchco; Delegate Donald G. Pendleton, Amherst; Mr. William S. Proctor, Jr., Richmond; Senator H. Selwyn Smith, Manassas; Mr. Brewster Snow, Richmond and Mr. C. H. Taylor, Richmond. Mr. R. E. Farmer, Manager, Workmen's Compensation Inspection Rating Bureau of Virginia, Richmond areas named an ex officio member of the Committee.

The Division of Legislative Services made staff and facilities available to carry out the study, L. Willis Robertson, Jr. and Mrs. Janet C. Baker being assigned to assist the members of the Committee.

At its first meeting the Committee heard testimony from Honorable Thomas P. Harwood, Commissioner, State Corporation Commission and Honorable M. E. Evans, Commissioner, Industrial Commission, who gave the Committee valuable information concerning Virginia's attempt to meet proposed federal standards in the field of Workmen's Compensation.

Members of the Committee attended a public hearing at the Industrial Commission on proposed regulations to bring the Virginia Workmen's Compensation Act into compliance with the federal Coal Mine Health and Safety Act. Testimony concerning the problem of dual administrative costs involved in administration of benefits for coal miners pneumoconiosis by both State and federal agencies was presented at this hearing.

After this hearing, it was the feeling of the Committee that a public hearing should be held in the coal mining area of the State to determine the public sentiment regarding federal preemption in the field of disability income protection and medical protection for workers suffering from coal worker's pneumoconiosis and the remaining role of State government in this field. The testimony presented at this Lebanon public hearing showed overwhelmingly that the miners in Southwest Virginia favor State administration of pneumoconiosis benefits rather than federal control of the administration of these benefits.

Realizing the complexity of the issues presented by the Study resolution, the Committee felt that expert testimony would be helpful to the Committee in its deliberations. Therefore, the Committee invited to Richmond and heard testimony from the following experts in the field of Workmen's Compensation: Mr. Edward L. Binder, Technical Advisor, Bureau of Disability Insurance, Department of Health, Education and Welfare; Mr. Harry W. Dahl, Executive Director, International Association of Industrial Accident Boards and Commissions; Mr. Daniel T. Doherty, Chairman, Maryland Workmen's

Compensation Commission and Mr. Ronald C. Jaynes, Deputy Director of the Colorado Division of Labor.

After consideration of all the evidence and recommendations received from the Committee the Council makes its recommendation.

## II. COUNCIL RECOMMENDATIONS

1. THAT THE PRESENT DISABILITY BENEFIT FORMULA FOR WORKMEN'S COMPENSATION OF  $66 \frac{2}{3}$  PERCENTUM OF THE EMPLOYEE'S AVERAGE WEEKLY WAGE WITH A MINIMUM OF \$25 AND A MAXIMUM OF \$80 PER WEEK BE CHANGED TO  $66 \frac{2}{3}$  PERCENTUM OF THE EMPLOYEES AVERAGE WEEKLY WAGE WITH A MINIMUM OF NOT LESS THAN 20% AND A MAXIMUM OF NOT MORE THAN 100% OF THE AVERAGE WEEKLY WAGE OF THE STATE. SEE PROPOSED LEGISLATION IN APPENDIX I OF THIS REPORT.

2. THAT § 65.1-94 OF THE CODE OF VIRGINIA RELATING TO DISAGREEMENT ON COMPENSATION BE AMENDED AND REENACTED TO PROVIDE FOR HEARINGS IN CITIES OR COUNTIES CONTIGUOUS TO THE CITY OR COUNTY WHERE THE INJURY OCCURRED. SEE PROPOSED LEGISLATION CONTAINED IN APPENDIX II OF THIS REPORT.

3. THAT § 65.1-56 OF THE CODE OF VIRGINIA RELATING TO COMPENSATION FOR MARKED DISFIGUREMENT BE AMENDED AND REENACTED TO DELETE LANGUAGE CURRENTLY LIMITING THE TERM "MARKED DISFIGUREMENT" AS USED IN THE SECTION. SEE PROPOSED LEGISLATION CONTAINED IN APPENDIX III OF THIS REPORT.

4. THAT § 65.1-106 OF THE CODE OF VIRGINIA RELATING TO FINES IMPOSED ON EMPLOYERS WHO FAIL TO CARRY REQUIRED WORKMEN'S COMPENSATION INSURANCE BE AMENDED AND REENACTED TO PROVIDE FOR A FINE OF NOT LESS THAN FIFTY DOLLARS NOR MORE THAN ONE THOUSAND DOLLARS. SEE PROPOSED LEGISLATION CONTAINED IN APPENDIX IV OF THIS REPORT.

5. THAT THE GENERAL ASSEMBLY CREATE A COMMISSION TO MAKE AN IN DEPTH STUDY OF THE PROBLEMS OF COORDINATION, OVERLAP AND DUAL ADMINISTRATIVE COSTS INVOLVED IN FEDERAL AND STATE PROGRAMS OF PUBLIC DISABILITY INCOME PROTECTION AND PUBLIC DISABILITY MEDICAL PROTECTION. SEE PROPOSED LEGISLATION CONTAINED IN APPENDIX V OF THIS REPORT.

## III. REASONS FOR COUNCIL RECOMMENDATIONS

1. THAT THE PRESENT DISABILITY BENEFIT FORMULA FOR WORKMEN'S COMPENSATION OF  $66 \frac{2}{3}$  PERCENTUM OF THE EMPLOYEE'S AVERAGE WEEKLY WAGE WITH A MINIMUM OF \$25 AND A MAXIMUM OF \$80 PER WEEK BE CHANGED TO  $66 \frac{2}{3}$  PERCENTUM OF THE EMPLOYEES AVERAGE WEEKLY WAGE WITH A MINIMUM OF NOT LESS THAN 20% AND A MAXIMUM OF NOT MORE THAN 100% OF THE AVERAGE WEEKLY WAGE OF THE STATE. SEE PROPOSED LEGISLATION IN APPENDIX I OF THIS REPORT.

The Council feels that the present Virginia disability benefits are too low for the majority of employees in the Commonwealth. A maximum of \$80 per week was not thought to be realistic in light of the high salaries enjoyed by most

workers in the Commonwealth and the tendency of many people today to live just within their economic means.

The Council feels that its recommendation is a more equitable solution to the problem of where to set the minimum and maximum weekly benefits than the present flat rate system. Under the present system, workers making high wages would receive a smaller proportion of their lost earnings than low wage workers because of the limit set by the flat maximum weekly benefit. The Council's recommendation would make the minimum and maximum weekly benefits directly related to the average weekly wage of all workers in the State. This type formula, if adopted, would give all workers in the State a greater proportion of their normal wage than the present system which has a flat maximum limit of \$80 per week. It should be noted that this recommended benefit formula was prepared by the Council of State Governments to meet one of the recommendations contained in "The Report of the National Commission on State Workmen's Compensation Laws." The National Commission found that in most states the maximum weekly benefit under Workmen's Compensation is less than the poverty level of income for a family of four.

2. THAT § 65.1-94 OF THE CODE OF VIRGINIA RELATING TO DISAGREEMENT ON COMPENSATION BE AMENDED AND REENACTED TO PROVIDE FOR HEARINGS IN CITIES OR COUNTIES CONTIGUOUS TO THE CITY OR COUNTY WHERE THE INJURY OCCURRED. SEE PROPOSED LEGISLATION CONTAINED IN APPENDIX II OF THIS REPORT.

This recommendation was adopted by the Council at the suggestion of the Industrial Commission. Section 65.1-94 of the Code of Virginia presently provides that hearings on disagreements as to compensation shall be held in the county or city where the injury occurred. The Commission and the Council feels that the venue for such hearings should be broadened to include cities and counties contiguous to the city or county where the injury occurred as a matter of convenience to both the Industrial Commission and the parties involved in the hearing. It was felt that limiting the venue solely to the county or city where the injury occurred was unjustified and not practical.

3. THAT § 65.1-56 OF THE CODE OF VIRGINIA RELATING TO COMPENSATION FOR MARKED DISFIGUREMENT BE AMENDED AND REENACTED TO DELETE LANGUAGE CURRENTLY LIMITING THE TERM "MARKED DISFIGUREMENT" AS USED IN THE SECTION. SEE PROPOSED LEGISLATION CONTAINED IN APPENDIX III OF THIS REPORT.

This recommendation was adopted by the Council at the suggestion of the Industrial Commission. Section 65.1-56 of the Code of Virginia presently provides for compensation for marked disfigurement of the head or face, hands, arms or legs which will impair the future usefulness or occupational opportunities of the injured employee. This language requires an employee who has suffered marked disfigurement of head, face, hands, arms or legs to prove that such disfigurement will impair his future usefulness or occupational opportunities prior to becoming entitled to workmen's compensation benefits. The Commission feels that requiring an employee to prove that his disfigurement will impair his future usefulness or occupational opportunities placed an undue burden upon the injured employee and should not be a condition precedent to the employee's right to collect workmen's compensation benefits for his disfigurement. The Council feels that an employee should be compensated for his marked disfigurement and whether the injury impairs his future usefulness or occupational opportunities should not be considered in compensating such an employee. See proposed legislation in Appendix III of this report.



4. THAT § 65.1-106 OF THE CODE OF VIRGINIA RELATING TO FINES IMPOSED ON EMPLOYERS WHO FAIL TO CARRY REQUIRED WORKMEN'S COMPENSATION INSURANCE BE AMENDED AND REENACTED TO PROVIDE FOR A FINE NOT LESS THAN FIFTY DOLLARS NOR MORE THAN ONE THOUSAND DOLLARS. SEE PROPOSED LEGISLATION CONTAINED IN APPENDIX IV OF THIS REPORT.

The Council also adopted this recommendation at the suggestion of the Industrial Commission of Virginia. Section 65.1-106 of the Code of Virginia presently provides that employers who fail to carry required workmen's compensation insurance shall be punished by a fine of one dollar for each employee at the time of the insurance becoming due, but not less than ten dollars nor more than two hundred fifty dollars for each day of such refusal or neglect and until the same ceases. Under this penalty formula the employer's fine cannot be less than \$10.00 per day for each day between the date the employee is injured and the date the employer secures insurance.

The present formula allows employer fines to reach outrageous figures very quickly and violations are usually some months old before they come to the attention of the Commission. The Council received evidence that many of these large fines resulted in putting small employers completely out of business. Therefore, the Council recommends that the penalty formula be amended to provide for a fine of not less than fifty dollars nor more than one thousand dollars. This type penalty formula will make the amount of the fine discretionary within the minimum and maximum limits and will not result in putting small employers out of business. See proposed legislation contained in Appendix IV of this report.

5. THAT THE GENERAL ASSEMBLY CREATE A COMMISSION TO MAKE AN IN DEPTH STUDY OF THE PROBLEMS OF COORDINATION, OVERLAP AND DUAL ADMINISTRATIVE COSTS INVOLVED IN FEDERAL AND STATE PROGRAMS OF PUBLIC DISABILITY INCOME PROTECTION AND PUBLIC DISABILITY MEDICAL PROTECTION. SEE PROPOSED LEGISLATION CONTAINED IN APPENDIX V OF THIS REPORT.

The Council feels that an in depth study should be made of certain problem areas of the existing federal and State programs of public disability income protection and public disability medical protection which the Committee was not able to adequately explore during the course of its study. The Council feels that special study is needed in the areas of coordination of benefits, benefit overlap and dual administrative costs involved in existing disability programs. The Council feels that the Study Commission should be given an appropriation large enough to hire staff assistance necessary to explore the problem areas noted by the Council.

#### IV. CONCLUSION

During the course of its study, the members of the Committee studied the recommendations contained in the Report of the National Commission on State Workmen's Compensation Laws. The report of the National Commission described state workmen's compensation laws as generally "neither adequate nor equitable". The committee noted that the recommendations of the National Commission are only recommendations to Congress and have no force as law. The National Commission recommended that the States continue to administer Workmen's Compensation laws unless the states have not complied with their essential recommendations by 1975. However, federal legislation setting national standards which must be met in order to maintain State control of workmen's compensation, has been introduced in Congress.

The members of the Council feel that Workmen's Compensation should continue to be administered by the states rather than the federal government. Additionally, they feel that Virginia has in the past few years gradually upgraded its system of workmen's compensation to a position of substantial compliance with the majority of the National Commission recommendations. In testimony given the Committee, Mr. Harry W. Dahl, Executive Director, International Association of Industrial Accident Boards and Commissions, noted that Virginia had recently improved its workmen's compensation laws and that only four areas of Virginia law needed upgrading to comply with the nineteen essential recommendations of the National Commission. The four areas he noted were: (1) increasing disability benefits to 66 2/3 percent of the State average weekly wage; (2) extending survivorship benefits of children to age eighteen and to widows and widowers for life or until remarriage; (3) permanent total disability benefits for life instead of 500 weeks; and coverage of farm employees.

Recommendation number one of the Council if enacted will solve one of the problems noted by Mr. Dahl and comply with the recommendations of the National Commission. As to the other problem areas, the Council feels that Virginia should continue its policy of a gradual upgrading of our workmen's compensation laws and that the Council make no further recommendations for legislative change at the present time. However, the Council feels that certain problem areas brought to the attention of the Council during the study warranted further study and possibly the aid of expert advisors. Therefore, the Council recommends that an adequately financed Study Commission be created to study these problem areas and make any additional recommendations the Commission may feel are warranted in light of further developments in the field of workmen's compensation.

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Respectfully submitted,

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Russell M. Carneal

Joseph V. Gartlan, Jr.

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Stanley A. Owens

William V. Rawlings

D. French Slaughter, Jr.

James M. Thomson

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Edward E. Willey

## APPENDIX I

A BILL to amend and reenact §§ 65.1-54, 65.1-55 and 65.1-56.1, as amended, of the Code of Virginia, relating to compensation for total and partial incapacity and disability compensation for pneumoconiosis.

Be it enacted by the General Assembly of Virginia:

1. That §§ 65.1-54, 65.1-55 and 65.1-56.1, as amended, of the Code of Virginia are amended and reenacted as follows:

§ 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-six and two-thirds per centum of his average weekly wages, ~~but not more than eighty dollars nor less than twenty five dollars a week; and with a minimum of not less than twenty per centum and a maximum of not more than one hundred per centum of the average weekly wage of the Commonwealth as defined herein. In any event, income benefits shall not exceed the average weekly wage of the injured employee.~~

*For the purpose of this section the average weekly wage in the Commonwealth shall be determined by the Industrial Commission as follows: On or before August one of each year, the total wages reported on contribution reports to the Virginia Employment Commission for the preceding calendar year shall be divided by the average monthly number of insured workers (determined by dividing the total insured workers reported for the preceding year by twelve). The average annual wage thus obtained shall be divided by fifty-two and the average weekly wage thus determined rounded to the nearest cent. The average weekly wage as so determined shall be applicable for the full period during which income benefits are payable, when the date of occurrence of injury or of disablement in the case of disease falls within the calendar year commencing January one following the August one determination.*

*The minimum or the maximum weekly income benefits shall not be changed for any calendar year unless the computation herein provided results in an increase or decrease of two dollars or more, raised to the next even dollar in the level of the minimum or the maximum weekly income benefits.*

*In ~~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 forty thousand dollars, except that weekly compensation on account of total and permanent incapacity as defined by § 65.1-56 (18) shall continue for the lifetime of the injured employee without limit as to total amount.*

§ 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-six and two-thirds 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 eighty dollars a week one hundred per centum of the average weekly wage of the State as defined in § 65.1-54.~~ In no case shall the period covered by such compensation be greater than 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.

§ 65.1-56.1. Compensation for disability from coal worker's pneumoconiosis; insurance of coal operator.—Notwithstanding any other provisions in this Act, on and after July one, nineteen hundred seventy-three or

any extended date allowed for State workmen's compensation laws to comply with the standards imposed by the United States Department of Labor acting under the provisions of Title 4, part C, section 421 (a) of Public Law 91-173 (the 1969 Federal Coal Mine Health and Safety Act) and any subsequent amendments thereto, any employee having a claim for coal worker's pneumoconiosis benefits shall be compensated according to the following schedule:

(1) For coal worker's pneumoconiosis medically determined to be in the first category where there is no present impairment for work, sixty-six and two-thirds per centum of the average weekly wage during the three years prior to the filing date, for fifty weeks, up to ~~eighty dollars per week~~ *one hundred per centum of the average weekly wage of the State as defined in § 65.1-54.*

(2) For coal worker's pneumoconiosis medically determined to be in the second category where there is no present impairment for work sixty-six and two-thirds per centum of the average weekly wages during the three years prior to filing date, for ninety weeks, up to ~~eighty dollars per week~~ *one hundred per centum of the average weekly wage of the State as defined in § 65.1-54.*

(3) For coal worker's pneumoconiosis medically determined to be in the third category and involving progressive massive fibrosis or medically classified as being A, B or C under the Unione Internationale Contra Cancer or Internal Labor Organization (hereafter referred to as U.I.C.C. or I.L.O.) classifications but where there is no apparent impairment for work, sixty-six and two-thirds per centum of the average weekly wages during the three years to filing date, for two hundred weeks, up to ~~eighty dollars per week~~ *one hundred per centum of the average weekly wage of the State as defined in § 65.1-54.*

(4) For coal worker's pneumoconiosis medically determined to be A, B or C under the U.I.C.C. or I.L.O. classifications or which involves progressive massive fibrosis, or for any category of coal worker's pneumoconiosis when it is accompanied by sufficient pulmonary function loss as shown by approved medical tests and standards to render an employee totally unable to do manual labor in a dusty environment, and the employee is instructed by competent medical authority not to attempt to do work in any mine or dusty environment and if he is in fact not working, it shall be deemed that he has a permanent disability and he shall receive sixty-six and two-thirds per centum of his average weekly wages during the three years prior to the date of filing of the claim, up to ~~eighty dollars per week~~ *one hundred per centum of the average weekly wage of the State as defined in § 65.1-54* for his lifetime without limit as to the total amount.

In any case where partial disability as mentioned above later results in total disability, the employer shall receive credit on any permanent disability payments by being allowed to deduct twenty-five per centum of each weekly payment until payments for partial disability hereunder have been fully accounted for.

In any case where there is a question of whether a claimant with pneumoconiosis is suffering from coal worker's pneumoconiosis or from some other type of pneumoconiosis such as silicosis it shall be conclusively presumed that he is suffering from coal worker's pneumoconiosis if he has had injurious exposure to coal dust.

In the event that any coal operator wishes to insure himself under standard workman's compensation insurance rather than be self-insured against the risks and liabilities imposed by this section, or by § 65.1-65.1, any such insurance issued in this Commonwealth covering such risks shall be rated separately for premium purposes and shall not affect workmen's compensation rates for any other employers not exposed to such risks.

## APPENDIX II

A BILL to amend and reenact § 65.1-94, as amended, of the Code of Virginia, relating to disagreement on workmen's compensation awards.

Be it enacted by the General Assembly of Virginia:

1. That § 65.1-94, as amended, of the Code of Virginia is amended and reenacted as follows:

§ 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, *or in a contiguous city or county*, unless otherwise agreed to by the parties and authorized by the Industrial Commission.

### APPENDIX III

A BILL to amend and reenact § 65.1-56, as amended, of the Code of Virginia, relating to workmen's compensation cases in which incapacity shall be deemed to continue for periods specified and compensation therefor.

Be it enacted by the General Assembly of Virginia:

1. That § 65.1-56, as amended, of the Code of Virginia is amended and reenacted as follows:

§ 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-six and two-thirds per centum of the average weekly wages during sixty weeks.

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

(3) For the loss of the second finger sixty-six and two-thirds per centum of average weekly wages during thirty weeks.

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

(5) For the loss of a fourth finger, commonly called the little finger, sixty-six and two-thirds 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-six and two-thirds 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-six and two-thirds 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-six and two-thirds per centum of the average weekly wages during one hundred fifty weeks.

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

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

(15) For the loss of a leg sixty-six and two-thirds 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-six and two-thirds 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-six and two-thirds 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, or an injury for all practical purposes resulting in total paralysis as determined by the Commission based on medical evidence, or an injury to the brain resulting in incurable imbecility or insanity, 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-six and two-thirds per centum of the average weekly wages not exceeding sixty weeks.

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

(a) First stage, sixty-six and two-thirds per centum of the average weekly wages during fifty weeks.

(b) Second stage, sixty-six and two-thirds per centum of the average weekly wages during one hundred weeks.

(c) Third stage, sixty-six and two-thirds 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.

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## APPENDIX IV

A BILL to amend and reenact § 65.1-106, as amended, of the Code of Virginia, relating to penalties for failing to carry required workmen's compensation insurance.

Be it enacted by the General Assembly of Virginia:

1. That § 65.1-106, as amended, of the Code of Virginia is amended and reenacted as follows:

§ 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 ~~one dollar for each employee at the time of the insurance becoming due, but not less than ten dollars nor more than two hundred fifty dollars for each day of such refusal or neglect, and until the same ceases~~ *not less than fifty dollars nor more than one thousand dollars*, 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.

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## APPENDIX V

### SENATE JOINT RESOLUTION NO.....

#### Creating the Workmen's Compensation Study Commission.

Whereas, pursuant to Senate Joint Resolution No. 100 of the 1973 Session of the General Assembly, the Virginia Advisory Legislative Council appointed a committee to make a study of public disability income protection and medical protection for workers and their dependents provided under existing federal and Virginia law; and

Whereas, as a result of the study directed by Senate Joint Resolution No. 100, the Virginia Advisory Legislative Council has recommended that a more in depth study of certain problem areas is necessary; now, therefore, be it

Resolved by the Senate of Virginia, the House of Delegates concurring, That a study commission is hereby created, to be called the Workmen's Compensation Study Commission, to consist of twelve members: three to be appointed from the membership of the Senate by the Privileges and Elections Committee thereof; five to be appointed from the House of Delegates by the Speaker thereof; and four to be appointed by the Governor all of whom shall have a background in Workmen's Compensation. The members of the Study Commission shall elect from its membership a chairman and vice-chairman. The Study Commission shall make a study of public disability income protection and medical protection for workers and their dependents provided under existing federal and State law including proposed standards of the National Commission on State Workmen's Compensation Laws and the problems of coordination of benefits among federal and State agencies, benefit overlaps and dual administrative costs involved in existing programs and make recommendations for such legislative changes, if any, which the Commission deems necessary and proper.

The Industrial Commission and all other agencies of the State shall cooperate with and assist the Study Commission on request.

The members of the Study Commission shall receive no compensation for their services, but shall receive reimbursement for their reasonable expenses in attending to the business of the Study Commission, for which and for such other assistance as may be necessary, there is hereby appropriated from the contingent fund of the General Assembly the sum of fifteen thousand dollars.

The Study Commission shall complete its work and make its report to the Governor and the General Assembly no later than November one, nineteen hundred seventy-four.

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