WORKMEN'S COMPENSATION

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

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REPORT OF THE

VIRGINIA ADVISORY LEGISLATIVE COUNCIL

On

WORKMEN'S COMPENSATION

To

THE GOVERNOR AND GENERAL ASSEMBLY OF VIRGINIA

TO: Honorable Mills E. Godwin, Jr., Governor of Virginia

The General Assembly of Virginia

INTRODUCTION

This report is a result of the study directive contained in Senate Joint Resolution No. 9 which passed the 1974 Session of the General Assembly as follows:

SENATE JOINT RESOLUTION NO. 9

Directing the Virginia Advisory Legislative Council to study the existing laws on Workmen's Compensation.

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 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 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 Council upon request.

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

Pursuant to the study directive, the Virginia Advisory Legislative Council named Delegate George E. Allen, Jr., Richmond to the Chairmanship of the Study Committee. The Council appointed the following to the membership of the Committee: Senator Edward E. Willey, Richmond, who was elected Vice Chairman; Senator George S. Aldhizer, II, Broadway; Senator George F. Barnes,Tazewell; Dr. Thomas Beath, Richmond; Mr. John Cronly, Richmond; Delegate Ray L. Garland, Roanoke; Delegate C. Hardaway Marks, Hopewell; Mr. Harry W. Meador, Jr., Big Stone Gap; Delegate Thomas W. Moss, Jr., Norfolk; Mr. William A. Patton, Clinchco; Delegate Donald G. Pendleton, Amherst; Mr. William S. Proctor, Jr., Richmond; Mr. Gerald Rockwell, Hopewell; Senator H. Selwyn Smith, Manassas; Mr. Brewster Snow, Richmond; and Mr. C. H. Taylor, Richmond. Mr. P. C. M. Butler, District Manager, Liberty Mutual Insurance Company; Mr. R. E. Farmer, Manager, Workmen's Compensation Inspection Rating Bureau of Virginia; Mr. James Roberts, Mays, Valentine, Davenport and Moore, Richmond; and Mr. James S. Stickles, American Mutual Insurance Alliance, Chicago; Illinois were named ex officio members of the Committee.

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

At the initial meeting of the Committee the members were requested to note the recommendations contained in a letter the Chairman received from Mr. Samuel B. Horovitz, a member of the National Commission on State Workmen's Compensation Laws, concerning Virginia's compliance with federal standards. The Chairman then requested Mr. Robert P. Joyner, Commissioner, State Industrial Commission, to comment on the extent of Virginia's compliance with the prescribed standards and to explain what changes would be necessary to achieve the degree of compliance necessary to avoid federal preemption. Mr. Joyner thoroughly covered the recommendations in Mr. Horovitz's letter and explained the degree to which Virginia complied in each instance.

The Committee held several meetings and there was

considerable discussion on vocational rehabilitation. The Chairman appointed the following subcommittee to study the subject further: Ray L. Garland, Chairman, C. H. Taylor, Dr. Thomas Beath, Brewster Snow, Donald G. Pendleton, and John Cronly.

This Subcommittee held several meetings at which they were assisted in their deliberations by members of the Industrial Commission and the Department of Vocational Rehabilitation. Considerable time and research were expended on study of a second injury fund; the various methods of its implementation and its degree of success in several other states.

Also under consideration by this Subcommittee was the subject of waivers and medical and vocational rehabilitation. After consideration of the several areas relevant to vocational rehabilitation, a report containing its recommendations was submitted to the full Committee.

The Committee heard testimony from several attorneys, knowledgeable in the field of third party liability under the Virginia Workmen's Compensation Act. After some discussion of third party suits, it was decided that this subject was not within the purview of the study resolution.

Mr. Morris H. King, Chief, Disability Planning Branch, Office of Program Evaluation and Planning, Social Security Administration, appeared before the Committee. He discussed the purpose of the Social Security disability program and the incentives for rehabilitation it contains. Mr. King also discussed the Social Security offset, the rationale behind it and the 1972 changes which liberalized the offset.

The Committee also had the opportunity of hearing a presentation by Mr. Andrew Kalmykow, Counsel, American Insurance Association, who also served as a member of the National Commission on State Workmen's Compensation Laws. He discussed the increasing activity of Congress in the field of workmen's compensation, the role of the Social Security Administration and the effects of the Social Security offset.

Mr. James S. Stickles, American Mutual Insurance Alliance, also appeared and discussed Congressional action, further needs in Virginia's compliance to avoid federal preemption in Workmen's Compensation, and the relationship between Social Security and Workmen's Compensation.

The Council, after a thorough review of the Committee's work, now makes the following recommendations.

COUNCIL RECOMMENDATIONS

1. That the present disability benefit formula for workmen's compensation of 66 2/3 percentum of the employee's average weekly wage with a minimum of twenty-seven dollars and a

maximum of ninety-one dollars per week be changed to 66 2/3 percentum of the employee's average weekly wage with a minimum of not less than 25 percentum and a maximum of not more than 100 percentum of the average weekly wage in the Commonwealth. See proposed legislation in Appendix I of this report.

2. That the Code of Virginia be amended to provide for the establishment of a second injury fund in the Commonwealth. See proposed legislation in Appendix II of this report.

3. That § 65.1-88 of the Code of Virginia, relating to the duty of an employer to furnish medical attention under the Workmen's Compensation Act be amended and reenacted to provide a mandate that employers furnish reasonable and necessary vocational rehabilitation training services. See proposed legislation in Appendix III of this report.

4. That the Code of Virginia be amended by adding a section numbered 65.1-99.1 to authorize the payment of cost of living supplements to recipients of Industrial Commission awards resulting from accidents or death occurring on and after July one, nineteen hundred seventy-five for total incapacity, permanent incapacity or disability and compensation for dependents of deceased workers. See proposed legislation contained in Appendix IV of this report.

5. That § 65.1-56 of the Code of Virginia, relating to compensation for specific injuries for a specified time be amended and reenacted to allow employees who are incapable of returning to work after the time limits specified in § 65.1-56 to make application for additional compensation. See proposed legislation contained in Appendix V of this report.

6. That §§ 65.1-52 and 65.1-87 of the Code of Virginia, relating to the limitation on filing claims for workmen's compensation be amended and reenacted to authorize a claim to be filed within two years rather than the present one year limitation, with the Industrial Commission. See proposed legislation contained in Appendix VI of this report.

7. That the General Assembly direct the Virginia Advisory Legislative Council to continue its study of Workmen's Compensation. See proposed legislation contained in Appendix VII of this report.

REASONS FOR COUNCIL RECOMMENDATIONS

1. That the present disability benefit formula for workmen's compensation of 66 2/3 percentum of the employee's average weekly wage with a minimum of twenty-seven dollars and a maximum of ninety-one dollars per week be changed to 66 2/3 percentum of the employee's average weekly wage with a minimum of not less than 25 percentum and a maximum of not more than 100 percentum of the average weekly wage in the Commonwealth.

The Council feels that the present Workmen's Compensation benefits are too low for the majority of employees in the Commonwealth. A maximum of ninety-one dollars 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 based on the average weekly wage of the Commonwealth is a more equitable solution to the problem of where to set the minimum and maximum weekly benefits than the present flat fixed rate system. Under the present fixed rate system, workers making high wages would receive a smaller proportion of their earnings than lower 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. A percentage 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 ninety-one dollars per week. The benefit formula recommended by the Council 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 that the poverty level income for a family of four.

2. That the Code of Virginia be amended to provide for the establishment of a second injury fund in the Commonwealth.

Virginia is presently one of only four states which has no second or subsequent injury fund. A second injury fund within the workmen's compensation program insures that a handicapped worker who subsequently suffers another job-related injury will receive full compensation for the total impairment. In addition, such a statute encourages prospective employers to hire handicapped or previously injured employees because the second employer is charged only for the benefits necessary for the second injury and the second injury fund is charged for the additional benefits necessary to the total effect of the two injuries.

The forty-six second injury funds in the United States can be divided almost evenly into the limited and broad coverage categories. The Council heard testimony during the course of its deliberations that some broad coverage funds had gotten into financial difficulties. Therefore, the Council feels that Virginia should initially adopt a limited coverage fund which can be broadened in the future if necessary.

The legislation recommended by the Council created a second injury fund to be administered by the Industrial Commission and financed by a tax of one-quarter of one percent on premiums. The tax will be suspended whenever the fund exceeds two hundred fifty thousand dollars and not resumed until the fund amounts to less than one hundred twenty-five thousand dollars. The legislation

creates a limited second injury fund requiring two industrial accidents resulting in the permanent loss of use of certain members and rendering the claimant totally or partially disabled.

3. That § 65.1-88 of the Code of Virginia, relating to the duty of an employer to furnish medical attention under the Workmen's Compensation Act be amended and reenacted to provide a mandate that employers furnish reasonable and necessary vocational rehabilitation training services.

Like most states, Virginia's major source of vocational rehabilitation assistance is to be found in its Department of Vocational Rehabilitation. This Department is largely funded by federal money. Other sources of vocational services result from the efforts of employers and insurance carriers.

The Industrial Commission provides office space for an employee of the Department of Vocational Rehabilitation to screen cases and determine the need for vocational rehabilitation but does not engage in any other activities to assure that necessary vocational rehabilitation services are offered. The Council feels that the Workmen's Compensation program in the Commonwealth should take a more active role in assuring persons in need of vocational rehabilitation services that they will be able to obtain them.

The legislation proposed by the Council provides that, in addition to an employer's duty to supply medical attention to injured employees, employers shall also furnish all reasonable and necessary vocational rehabilitation training services to injured employees. The Council feels that this mandate within the Workmen's Compensation Act for vocational rehabilitation will result in more workers, who need such services, being able to receive them.

4. That the Code of Virginia be amended by adding a section numbered 65.1-99.1 to authorize the payment of cost of living supplements to recipients of Industrial Commission awards resulting from accidents or death occuring on and after July one, nineteen hundred seventy-five for total incapacity, permanent incapacity or disability and dependents of deceased workers.

The members of the Council feel that recipients of benefits of workmen's compensation awards, like others living on fixed incomes, are hard pressed to make ends meet in this time of spiraling inflation and therefore should be entitled to cost of living increases to supplement their incomes. The Council noted that persons retiring from State government are presently given cost of living increases to supplement their retirement awards.

In determining whether to make the cost of living supplements applicable to all existing Industrial Commission awards or just to awards arising out of accidents or deaths occurring after the effective date of the proposed legislation, the Council faced two problem areas. Making the supplements applicable to all existing awards presented both constitutional and financial problems to the

Council. Impairment of existing contractual rights was believed to be a possible constitutional objection to supplements for existing awards and a source for funding such supplements was also recognized as a problem. For these reasons, the Council believed and the proposed legislation provides that cost of living supplements should be limited to awards made by the Industrial Commission after the effective date of the enabling legislation.

In addition the members of the Council felt that the legislation should be further limited to those awards which result in the payment of benefits for long periods of time as these are the type awards which are most likely to suffer from inflation. Therefore, the proposed legislation is limited to awards for total incapacity, permanent incapacity or disability and dependents of deceased workers.

5. That § 65.1-56 of the Code of Virginia, relating to compensation for specific injuries for a specified time be amended and reenacted to allow employees who are incapable of returning to work after the time limits specified in § 65.1-56 to make application for additional compensation.

§ 65.1-56 presently provides for specific periods of compensation for specific injuries. The Council received evidence that in many cases employees suffering from the enumerated specified injuries remained incapacitated after the period of compensation, set out in § 65.1-56, for their injury had elapsed. The present Code section also provides that compensation paid pursuant to this section shall be in lieu of all other compensation.

The Council feels persons who remain incapacitated for work after the specified time should be entitled to additional compensation. Therefore, the Council recommends that § 65.1-56 be amended and reenacted to allow additional compensation in such cases.

6. That §§ 65.1-52 and 65.1-87 of the Code of Virginia, relating to the limitation on filing claims for Workmen's Compensation be amended and reenacted to authorize a claim to be filed within two years rather than the present one year limitation, with the Industrial Commission.

The Council felt that the one year statute of limitations for filing claims for occupational diseases and industrial accidents had in some instances resulted in a claimant not receiving the benefits he was entitled to under the act. The Council also noted that the statute of limitations in personal injury cases in Virginia is two years. Therefore, the Council recommends that §§ 65.1-52 and 65.1-87 of the Code of Virginia be amended and reenacted to authorize a claim to be filed within two years rather than the present one year limitation, with the Industrial Commission.

7. That the General Assembly direct the Virginia Advisory Legislative Council to continue its study of Workmen's Compensation.

The Council feels that a continuing study of the Workmen's Compensation Act is necessary in light of pending federal legislation. In addition, there are certain problem areas of existing federal and State programs of public disability income protection and public disability medical protection which the Council was not able to explore adequately during the course of its study.

CONCLUSION

During the course of the study, the members of the Council 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 Council 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 (S. 2008) 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.

The Council feels that Virginia should continue its policy of a gradual upgrading of our workmen's compensation laws and that there be 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.

Therefore, the Council recommends a continuing study to explore 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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Appendix I

A BILL to amend and reenact §§ 65.1-54, 65.1-55, 65.1-56.1, 65.1-65 65.1-65.1 and 65.1-71, as amended, of the Code of Virginia relating to compensation under the Workmen's Compensation Act for total and partial incapacity, disability from coal worker's pneumoconiosis, dependents of deceased employees and limitation upon total compensation payable pursuant to act.

Be it enacted by the General Assembly of Virginia:

1. That §§ 65.1-54, 65.1-55, 65.1-56.1, 65.1-65, 65.1-65.1 and 65.1-71, 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 ninety-one dollars nor less than twenty-seven dollars a week *with a minimum not less than twenty-five 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 wage in the Commonwealth shall be determined by the Industrial Commission as follows: On or before January one of eac year, the total wages reported on contribution reports to the Virginia Employme Commission for the twelve month period ending the preceding June thirtieth shall divided by the average monthly number of insured workers (determined by dividing the total insured workers reported for that twelve month period 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 dollar. 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 year commencing with the July one following the date of determination.

The minimum or the maximum weekly income benefits shall not be changed for any 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 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-five thousand five hundred dollars *result obtained by multiplying the average weekly wage of the Commonwealth as defin herein for the applicable year by five hundred,* except that weekl 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 wo

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 ninety-one dollars a week *one hundred per centum of the average weekly wage of the Commonwealth 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 ninety-one dollars per week *one hundred per centum of the average weekly wage of the Commonwealth 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 for ninety weeks, up to ninety-one dollars per week *one hundred per centum of the average weekly wage of the Commonwealth 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 International 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 for two hundred weeks, up to ninety-one dollars per week *one hundred per centum of the average weekly wage of the Commonwealth 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 ninety-one dollars per week *one hundred per centum of the average weekly wage of the Commonwealth 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.

§ 65.1-65. Compensation to dependents of employee killed.—If death results from the accident within nine 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 two thirds of his average weekly wages, but not more than ninety-one dollars nor less than twenty-seven dollars a week *one hundred per centum of the average weekly wage of the Commonwealth as defined in § 65.1-54 nor less than twenty-five per centum of the average weekly wage as defined therein* for a period of four hundred weeks, but in no case to exceed thirty-six thousand four hundred dollars, from the date of the injury, except, however, those dependents specified in § 65.1-66(1), (2) and (3) shall be paid, a weekly payment equal to two thirds of the employee's average weekly wages, but not more than ninety-one dollars nor less than twenty-seven dollars a week *one hundred per centum of the average weekly wage of the Commonwealth as defined in § 65.1-54 nor less than twenty-five per centum of the average weekly wage as defined therein* for a period of five hundred weeks from the date of the injury, but in no case to exceed forty-five thousand dollars, and burial expenses not exceeding eight hundred dollars. If the employee leaves dependents only partly dependent upon his earnings for support at the time of the injury, the weekly compensation to be paid, as aforesaid, shall equal the same proportion of the weekly payments for the benefit of persons wholly dependent as the extent of partial dependency bears to total dependency. When weekly payments have been made to an injured employee before his death,

the compensation to dependents shall begin from the date of the last of such payments but shall not continue more than four hundred weeks from the date of the injury except to those dependents specified in § 65.1-66(1), (2) and (3) to whom compensation shall not continue more than five hundred weeks from the date of the injury.

§ 65.1-65.1. Compensation for death from coal worker's pneumoconiosis; determining whether death was due to pneumoconiosis or any chronic occupational lung disease.—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 conform to standards imposed by the United States Department of Labor acting under provisions of Title IV, part C, section 421 (a) of Public Law 91-173 (the 1969 Federal Coal Mine Health and Safety Act) and any subsequent amendments thereto, if death results from coal worker's pneumoconiosis or if the employee was totally disabled by coal worker's pneumoconiosis at the time of his death and claim for compensation is made within three years after such death the employer shall pay or cause to be paid to the surviving spouse of the deceased employee until his death or remarriage or the minor dependents of the employee until such minor dependents reach the age of eighteen (or twenty-three, so long as they remain as fulltime students in a generally accredited institution of learning) or such other legal dependents as the deceased employee might have at the time of his death for the duration of such dependency, two thirds of the employee's average weekly wage during the last three years that he worked in the coal mines, up to ninety-one dollars per week *one hundred per centum of the average weekly wage of the Commonwealth as defined in § 65.1-54* without any specific limit as to the number of such weeks; provided, however, that any claim for compensation of an employee who was totally disabled by coal worker's pneumoconiosis at the time of his death shall be paid only to the extent required by federal law. The Commission shall, by regulation duly drawn and published after notice and hearing, prescribe standards, not inconsistent with those prescribed by the Secretary of Health, Education and Welfare under the 1969 Federal Coal Mine Health and Safety Act, as amended, for determining whether the death or total disability of an employee was due to pneumoconiosis or any chronic occupational lung disease.

In prescribing such standards the following factors shall be included:

(1) If an employee who died from a respirable (respiratory) disease was employed for ten years or more in an environment where he was injuriously exposed to such a disease there shall be a rebuttable presumption that his disease arose out of such employment, or if he became totally disabled from coal worker's pneumoconiosis or if such disease significantly contributed to his death or disability there shall be a rebuttable presumption that his death or disability was due to such disease.

(2) Where, there is clear evidence of exposure to an occupational lung disease, the Commission may make its determination whether compensation is payable to the dependents

based on the description of the employee's symptoms, X-rays, and/or other competent medical evidence, and the opinion of experts as to whether those symptoms reasonably described the symptoms of such an occupational disease.

(3) The statement as to the cause of death on a death certificate may be considered as evidence in any such cases but shall not be controlling on the Commission's findings. The Commission may also, by regulation establish standards, not inconsistent with those prescribed by the Secretary of Labor under the 1969 Federal Coal Mine Health and Safety Act as amended, for apportioning liability for benefits under this section and under § 65.1-56.1(4) among more than one operator, where such apportionment is appropriate; provided that no apportionment shall operate to deprive an employee of the full benefits due him under this Act.

§ 65.1-71. Limitation upon total compensation.—The toal compensation payable under this Act shall in no case exceed forty-five thousand five hundred dollars *the result obtained by multiplying the average weekly wage of the Commonwealth as defined in § 65.1-54 for the applicable year by five hundred*, except in cases of total permanent incapacity as defined in § 65.1-56(18) and in cases of permanent disability under § 65.1-56.1(4) and death from coal worker's pneumoconiosis under § 65.1-65.1.

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Appendix II

A BILL to amend and reenact §§ 65.1-99 as amended, 65.1-129 and 65.1-134 of the Code of Virginia; and to further amend the Code of Virginia by adding a new chapter 11, consisting of sections numbered 65.1-138 through 65.1-145, the amended and new sections relating to workmen's compensation and the establishment of a second injury fund.

Be it enacted by the General Assembly of Virginia:

1. That §§ 65.1-99 as amended, 65.1-129 and 65.1-134 of the Code of Virginia are amended and reenacted and that the Code of Virginia is further amended by adding a new chapter 11, consisting of sections numbered 65.1-138 through 65.1-145 as follows:

§ 65.1-99. Review of award on change in condition.—Upon its own motion or upon the application of any party in interest, on the ground of a change in condition, the Industrial Commission may review any award and on such review may make an award ending, diminishing or increasing the compensation previously awarded, subject to the maximum or minimum provided in this Act, and shall immediately send to the parties a copy of the award. No such review shall affect such award as regards any moneys paid but *except pursuant to §§ 65.1-143 and 65.1-144.* no *No* such review shall be made after twelve months from the last day for which compensation was paid, pursuant to an award under this Act, except thirty-six months from the last day for which compensation was paid shall be allowed for the filing of claims payable under § 65.1-56.

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

Every person, partnership, association, corporation, whether organized under the laws of this or any other state or country, company, mutual company or association, the parties to any interindemnity contract or reciprocal plan or scheme, and every other insurance carrier, insuring employers in this State against liability for personal injuries to their employees or death caused thereby, under the provisions of this Act, shall, as hereinafter provided, pay a tax upon the premiums received, whether in cash or notes, in this State or on account of business done in this State, for such insurance in this State, at the rate of two and one half per centum of the amount of such premiums. Such tax shall be in lieu of all other taxes on such premiums , *except as provided in § 65.1-139,* and shall be assessed and collected as hereinafter provided. But such insurance carriers shall be credited with all cancelled or returned premiums, actually refunded during the year on such insurance, and with premiums on reinsurance assumed.

§ 65.1-134. Tax exclusive of other taxes.—Any insurance carrier liable to pay a tax upon premiums under this Act shall not be liable

to pay any other or further tax upon such premiums, or on account thereof, under any other law of this State , *except as provided in § 65.1-139.*

Chapter 11.

Second Injury Fund.

§ 65.1-138. There is hereby created a fund to be known as the "Second Injury Fund" to be administered, maintained and disbursed by the Industrial Commission as hereinafter provided.

§ 65.1-139. Funding.—For the purpose of providing funds for compensation for total disability as hereinafter defined and medical treatment, a tax of one quarter of one per centum shall be assessed, collected and paid into the State treasury by the same persons and in the same manner as set forth in Chapter 10 of Title 65.1 of this Code.

This tax shall be in addition to the tax for the Industrial Commission administrative fund and shall be held by the Comptroller of the Commonwealth solely for the payment of awards against such fund.

In any fiscal year in which the Second Injury Fund has to its credit a sum in excess of two hundred fifty thousand dollars, the tax shall be suspended for the ensuing fiscal years and its collection not resumed until the balance in the fund is reduced below one hundred twenty-five thousand dollars.

§ 65.1-140. Disability.—For the purpose of this chapter, disability shall mean: (a) the partial or total loss of an arm, hand, leg, foot, eye, finger, toe, or any combination of two or more thereof in an industrial accident, and (b) actual incapacity for work at the claimant's most recent average weekly wage, and (c) nonentitlement to compensation under any other provision of this Act.

§ 65.1-141. Awards.—The Industrial Commission shall enter awards against the Second Injury Fund only upon a finding of the following circumstances: (a) the claimant has received a prior award from a State Industrial Commission or Accident Board for the permanent loss of use of one or more of those members set out in § 65.1-140 of not less than twenty per centum; (b) the claimant must have suffered an additional permanent loss of use in an industrial accident of no less than twenty per centum to any one of those members set out in § 65.1-140; and (c) the combination of both injuries, as set out in subsections (a) and (b) has rendered the claimant totally or partially disabled as defined in § 65.1-140.

§ 65.1-142. Compensation for disability and medical treatment.—Upon a determination by the Commission that a claimant has established eligibility for an award against the Second Injury Fund, an award shall be entered providing for compensation, medical treatment and vocational rehabilitation services, to commence upon the expiration of all other compensation otherwise provided for under this Act. Such award against the Second Injury Fund shall be in addition to all other compensation and shall be for the weekly benefit rate set forth in §§ 65.1-54 and 65.1-55 and shall continue until further order of the Commission.

§ 65.1-143. Change in condition.—The burden shall be upon the claimant to immediately notify the Industrial Commission in writing of any increase or decrease in his earnings. After ten days' notice to the claimant and the Attorney General, the Commission may, upon its own motion or upon the motion of any party in interest, modify or terminate

an award as conditions may require.

§ 65.1-144. Overpayments.—Any payment to a claimant pursuant to this chapter which is later determined by the Industrial Commission to have been procured by fraud, mistake or an unreported change in condition, shall be recovered from the claimant and credited to the Second Injury Fund.

§ 65.1-145. Claims and hearings.—Claims against the Second Injury Fund and any hearings on the merits of such claims shall be within the time limits and in the manner otherswise provided for workmen's compensation claims. All claims against the Second Injury Fund shall be defended by the Attorney General.

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Appendix III

A BILL to amend and reenact § 65.1-88, as amended, of the Code of Virgnia, relating to duty of employer to furnish medical attention under Workmen's Compensation Act.

Be it enacted by the General Assembly of Virginia:

1. That § 65.1-88, as amended, of the Code of Virginia is amended and reenacted as follows:

§ 65.1-88. Duty to furnish medical attention and vocational rehabilitation; effect of refusal of employee to accept.—As long as necessary 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 prosthetic appliances, proper fitting thereof, and training in the use thereof, as the nature of the injury may require, and the employee shall accept the 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.

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 employer shall also furnish or cause to be furnished, at the direction of the Industrial Commission, reasonable and necessary vocational rehabilitation training services.

The *unjustified* refusal of the employee to accept such *medical* service *or vocational rehabilitation training* 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 *or vocational rehabilitation training.*

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.

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Appendix IV

A BILL to amend the Code of Virginia by adding a section numbered 65.1-99.1, so as to add cost of living adjustments to workmen's compensation benefits.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 65.1-99.1 as follows:

§ 65.1-99.1. Cost of living supplements for total incapacity and dependents of deceased.—In the event that the combined disability benefit entitlement of a claimant or his dependents under the Virginia Workmen's Compensation Act and the Federal Old-Age, Survivors and Disability Insurance Act is less than eighty per centum of the average monthly earnings of the claimant before disability or death, cost of living supplements shall be payable, in addition to the other benefits payable under this act, in accordance with the provisions of this section to those recipients of awards resulting from occupational disease, accident or death occurring on or after July one, nineteen hundred seventy-five under §§ 65.1-54, 65.1-56(18), 65.1-56.1(4), 65.1-65 and 65.1-65.1.

The amounts of supplementary payments provided for herein shall be determined as a per centum of the benefit allowances supplemented hereby. Said per centum shall be determined by reference to the increase, if any, in the United States Average Consumer Price Index for all items, as published by the Bureau of Labor Statistics of the U. S. Department of Labor, from its monthly average, from one calendar year to another.

Amounts of supplementary payments shall be determined initially as of July one, ninteen hundred seventy-six based on the per centum increase, if any, of the Average Consumer Price Index for all items from the calendar year nineteen hundred seventy-four to the calendar year nineteen hundred seventy-five and successively annually thereafter. The cost of living supplement determined as of any determination date shall become effective as of October first next following such determination date and shall be in lieu of any cost of living supplements previously payable, which shall thereupon be terminated.

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Appendix V

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

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 *; provided, however, after compensation has been paid as provided herein, the employee may within one year from the date compensation was last due under this section file an application for compensation for incapacity to work, subject to the provisions of §§ 65.1-54 and 65.1-55. Such application shall be considered and determined as of the date incapacity for work actually begins or as of the date fourteen days prior to the date of filing whichever is later.*

(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 VI

A BILL to amend and reenact §§ 65.1-52 as amended, and 65.1-87 of the Code of Virginia, relating to time for filing claims under the Workmen's Compensation Act.

Be it enacted by the General Assembly of Virginia:

1. That § § 65.1-52 as amended, and 65.1-87 of the Code of Virginia are amended and reenacted as follows:

§ 65.1-52. Limitation upon claim; "filed" and "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 three years for coal worker's pneumoconiosis and one year *two years* for all other occupational diseases 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 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 three years 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, and § 65.1-87 shall not apply to pneumoconiosis.

Provided that a claim for first or second stage pneumoconiosis must be made within one year of the date of the first communication to the employee that he has first or second stage pneumoconiosis in order to make any claim for those stages.

"Filed" as used anywhere in this chapter shall mean hand delivered to the Commission's office in Richmond; sent by the telegraph; or posted at any post office of the United States Postal Service by certified or registered mail. Filing by first-class mail shall be deemed completed only when the application actually reaches the Commission's offices in Richmond.

"Injurious exposure" as used in this section and in § 65.1-50 means an exposure to the causative hazard of such disease which is reasonably calculated to bring on the disease in question. Exposure to the causative hazard of pneumoconiosis for ninety work shifts shall be conclusively presumed to constitute injurious exposure. This limitation on time of filing will cover all occupational diseases, except:

Cataract of the eyes due to exposure to the heat and glare of molten glass or to radiant rays such as infrared;

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;

Radium disability or disability due to exposure to radioactive

substances and X ray;

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;

Mesothelioma due to secondary exposure to asbestos.

In any case in which a claim is being made for benefits for a change of condition in an occupational disease (that is, advancing from one stage or category to another) the claim must be filed with the Commission within three years from the date for which compensation was last paid for an earlier stage of the disease.

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

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Appendix VII

HOUSE JOINT RESOLUTION NO.....

Directing the Virginia Advisory Legislative Council to continue its study on Workmen's Compensation.

Whereas, pursuant to Senate Joint Resolution No. 9 of the 1974 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. 9, the Virginia Advisory Legislative Council has recommended that a continuing study is necessary; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That the Virgina Advisory Legislative Council is hereby directed to continue its 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 Council upon request.

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

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