

State of Arkansas
76th General Assembly
Regular Session, 1987
By: Representative Mahony

HOUSE BILL 1925

"AN ACT TO AMEND VARIOUS SECTIONS OF THE WORKMEN'S
COMPENSATION LAW; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Section 1 of Initiated Measure No. 4 of 1948, the same being Arkansas Statutes Section 81-1301, is hereby amended to read as follows:

"This Act may be cited as the Workers' Compensation Law."

SECTION 2. Paragraph (1) of Subsection (c) of Section 2 of Initiated Measure No. 4 of 1948, the same being Arkansas Statutes Section 81-1302(c) (2), is hereby amended to read as follows:

"(1) Every employment carried on in the State in which three or more employees are regularly employed by the same employer in the course of business or businesses, except domestic service, agricultural farm labor, institutions maintained and operated wholly as public charities, the State of Arkansas and each of the political subdivisions thereof (except as provided by Act 462 of 1949; Act 223 of 1971; Act 469 of 1973 and Act 470 of 1973) any person engaged in the vending, selling, or offering for sale or delivery directly to the general public, any newspapers, magazines or periodicals, or acting as sales agent or distributor as an independent contractor of or for any such newspaper, magazine, or periodical."

SECTION 3. Section 5 of Initiated Measure No. 4 of 1948, the same being Arkansas Statutes Section 81-1305, is hereby amended to read as follows:

"Liability for Compensation. Every employer should secure compensation to his employees and pay or provide compensation for their disability or death from injury arising out of and in the course of employment, without regard to fault as a cause of such injury; provided, that there shall be no liability

for compensation under this Act where the injury or death from injury was substantially occasioned by intoxication of the injured employee or by willful intention of the injured employee to bring about the injury or death of himself or another. The primary obligation to pay compensation is upon the employer and the procurement of a policy of insurance by an employer to cover the obligation in respect to this Act shall not relieve him of such obligation."

SECTION 4. Subsections (a) and (b) of Section 10 of Initiated Measure No. 4 of 1948, as amended, the same being Arkansas Statutes Section 81-1310(a) and 81-1310(b), is hereby amended to read as follows:

"(a) Disability. Compensation to the injured employee shall not be allowed for the first seven (7) days' disability resulting from injury, excluding the day of injury. If a disability extends beyond that period, compensation shall commence with the ninth (9th) day of disability. If a disability extends for a period of two (2) weeks, compensation shall be allowed beginning the first day of disability, excluding the day of injury.

Compensation payable to an injured employee for disability, other than permanent partial disability as specified in subsection (a)(3) below, and compensation payable to surviving dependents of a deceased employee (the "total disability rate") shall not exceed sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the employee's average weekly wage with a Twenty Dollar (\$20.00) per week minimum, subject to the following maximums:

(1)(A) For disability or death due to an injury occurring on and after July 1, 1986, through June 30, 1987, the maximum weekly benefits payable shall be One Hundred Seventy-five Dollars (\$175.00).

(B) For disability or death due to an injury occurring on and after July 1, 1987, through December 31, 1988, the maximum weekly benefits payable shall be One Hundred Eighty-nine Dollars (\$189.00).

(C) For disability or death due to an injury occurring on and after January 1, 1989, through December 31, 1989, the maximum weekly benefits payable shall be sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the state average weekly wage.

(D) For a disability or death which results from an injury occurring during a calendar year beginning on or after January 1, 1990, the maximum weekly benefit payable shall be seventy percent (70%) of the state average

weekly wage.

(2) Upon request of the respondent or carrier the Commission shall review the claim and determine the necessity for additional temporary total benefits after forty weeks or after any thirteen week interval thereafter and may, if warranted by the preponderance of the evidence on the basis of the record as a whole, extend the period of payment for temporary total disability; any weekly benefit payments made after the Commission has terminated temporary total benefits shall be classified as warranted by the facts in the case and as otherwise provided for in this Act.

(3) Compensation payable to an injured employee for permanent partial disability, including scheduled permanent injuries, (the "permanent partial disability rate") which results from an injury occurring on or after July 1, 1986, shall not exceed sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage, with a Twenty Dollar (\$20.00) per week minimum, subject to a maximum of One Hundred Fifty-four Dollars (\$154.00); provided, however, that if the employee's total disability rate for the injury would be Two Hundred Five Dollars and thirty-five cents (\$205.35) per week or greater, then the maximum permanent partial disability rate shall be seventy-five percent (75%) of the employee's total disability rate.

(b) Death. Compensation payable to the dependent(s) of a deceased employee shall be in addition to the funeral allowance and those benefits which were paid or to which the injured employee was entitled in his lifetime under Section 11 and Section 13 hereof."

SECTION 5. Subsection (d) of Section 10 of Initiated Act No. 4 of 1948, the same being Arkansas Statutes Section 81-1310(d), is hereby amended to read as follows:

"(d) Violation of safety provisions. Where established by clear and convincing evidence that an injury or death is caused in substantial part by the failure of an employer to comply with any Arkansas statute or official regulation pertaining to the health or safety of employees, compensation provided for by subsection (a) of this Section shall be increased by twenty-five percent (25%)."

SECTION 6. Subsection (e) of Section 10 of Initiated Measure No. 4 of 1948, the same being Arkansas Statutes Section 81-1310(e), is hereby amended

to read as follows:

"(e) Minor illegally employed. Where an injury or death is sustained by a minor employed in violation of federal or state statutes pertaining to minimum ages for employment of minors, compensation or death benefits provided for by this Act shall be doubled. Provided, however, the penalty shall not apply when the minor misrepresents his age, in writing, to the employer."

SECTION 7. Subsection (f) of Section 10 of Initiated Measure No. 4 of 1948, as amended, the same being Arkansas Statutes Section 81-1310(f), is hereby amended to read as follows:

"(f) Rehabilitation. In addition to benefits otherwise provided for by this Act, an employee who is entitled to receive compensation benefits for permanent disability shall be paid reasonable expenses of travel and maintenance and other necessary costs of a program of vocational rehabilitation, if the Commission finds that such program is reasonable in relation to the disability sustained by such employee. The employer's responsibility for said additional payments shall not exceed 60 weeks, regardless of the length of the program requested. The employee shall not be required to enter any program of vocational rehabilitation against his consent. A request for such program, if elected by the claimant, must be filed with the Commission prior to a determination of the amount of permanent disability benefits payable to such employee. Provided, in addition to the benefits previously enumerated in this subsection, an employee, if not working or receiving other weekly benefits under this Act, shall be entitled to payment of his regular weekly benefit rate commencing on the date a request for a rehabilitation program is received by the Commission, carrier or employer, and continuing during the period the parties are exploring rehabilitation potential, said period not to exceed six (6) weeks.

SECTION 8. Subsection (a), (b), and (c) of Section 13 of Initiated Measure No. 4 of 1948, as amended, the same being Arkansas Statutes Section 81-1313(a), 81-1313(b), and 81-1313(c), are hereby amended to read as follows:

"(a) Total Disability. In case of total disability there shall be paid to the injured employee during the continuance of such total disability sixty-six and two-thirds percent (66-2/3%) of his average weekly wage. Loss of both hands, or both arms, or both legs, or both eyes, or of any two thereof shall,

in the absence of clear and convincing proof to the contrary, constitute permanent total disability. In all other cases, permanent total disability shall be determined in accordance with the facts.

(b) Temporary Partial Disability. In case of temporary partial disability resulting in the decrease of the injured employee's average weekly wage, there shall be paid to the employee sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the difference between the employee's average weekly wage prior to the accident and his wage earning capacity after the injury.

(c) Scheduled permanent injuries. An employee who sustains a permanent injury scheduled in this subsection shall receive, in addition to compensation for the healing period, weekly benefits in the amount of the permanent partial disability rate attributable to the injury, for that period of time set out in the following schedule:

(1) Arm amputated at the elbow, or between the elbow and shoulder, two hundred ten (210) weeks;

(2) Arm amputated between the elbow and wrist, one hundred fifty-eight (158) weeks;

(3) Leg amputated at the knee, or between the knee and the hip, one hundred eighty-four (184) weeks;

(4) Leg amputated between the knee and the ankle, one hundred thirty-one (131) weeks;

(5) Hand amputated, one hundred fifty-eight (158) weeks;

(6) Thumb amputated, sixty-three (63) weeks;

(7) First finger amputated, thirty-seven (37) weeks;

(8) Second finger amputated, thirty-two (32) weeks;

(9) Third finger amputated, twenty-one (21) weeks;

(10) Fourth finger amputated, sixteen (16) weeks;

(11) Foot amputated, one hundred thirty-one (131) weeks;

(12) Great toe amputated, thirty-two (32) weeks;

(13) Toe other than great toe amputated, eleven (11) weeks;

(14) Eye enucleated, in which there was useful vision, one hundred five (105) weeks;

(15) Loss of hearing of one ear, forty-two (42) weeks;

(16) Loss of hearing of both ears, one hundred fifty-eight (158) weeks;

(17) Loss of one testicle, fifty-three (53) weeks; loss of both testicles, one hundred fifty-eight (158) weeks;

(18) Phalanges: Compensation for amputation of the first phalange shall be one-half of the compensation for the amputation of the entire digit. Compensation for amputation of more than one phalange of a digit shall be the same as for amputation of the entire digit.

(19) Loss of per centum of vision: Compensation for the permanent loss of eighty per centum (80%) or more of the vision of an eye shall be the same as for the loss of an eye. In all cases of permanent loss of vision, the use of corrective lens may be taken into consideration in evaluating the extent of loss of vision;

(20) Two or more digits: Compensation for amputation or loss of use of two or more digits or one or more phalanges of two or more digits of a hand or a foot, may be proportioned to the total loss of use of the hand or the foot occasioned thereby, but shall not exceed the compensation for total loss of a hand or a foot;

(21) Total loss of use: Compensation for permanent total loss of use of a member shall be the same as for amputation of the member;

(22) Partial loss or partial loss of use: Compensation for permanent partial loss or loss of use of a member shall be for the proportionate loss or loss of use of the member.

SECTION 9. Paragraph (1) of Subsection (f) of Section 13 of Initiated Measure No. 4 of 1948, as amended, the same being Arkansas Statutes Section 81-1313(f)(I), is hereby amended to read as follows:

"(1) If an employee receives a permanent injury after having previously sustained another permanent injury in the employ of the same employer, for which he is receiving compensation, compensation for the subsequent injury shall be paid for the healing period and permanent disability by extending the period and not by increasing the weekly amount. When the previous and subsequent injuries received result in permanent total disability, compensation shall be payable for permanent total disability as provided in Section 10(a) of this Act.

In determining when Fifty Thousand Dollars (\$50,000.00) in weekly benefits has been paid for permanent total disability awarded under Section 10(a) of this Act, the weekly benefits paid for the prior injury shall be added to the weekly benefits paid for the subsequent injury."

SECTION 10. Subparagraph iii of Paragraph (2) of Subsection (f) of Section 13 of Initiated Measure No. 4 of 1948, as amended, the same being Arkansas Statutes Section 81-1313(f)(2) iii, is hereby amended to read as follows:

"iii. If an employee who had previously incurred permanent partial disability through the loss of one hand, one arm, one foot, one leg, or one eye, incurs permanent total disability through the total loss of another member, enumerated in this sentence, he shall be paid, in addition to the compensation for permanent partial disability provided in Section 13(c) (subsection (c) of this section), additional compensation during the continuance of such total disability at the rate prescribed in Section 10 of this Act applied at the time of the accident which produced the total permanent disability.

In case an employee who has been awarded additional compensation under this subsection subsequently establishes an earning capacity by employment, he shall be paid during the period of such employment, instead of the compensation above provided, sixty-six and two-thirds percent (66-2/3%) of the difference between his average weekly wages at the time of the accident which produced total disability and his wage earning capacity as determined by his actual earnings in such employment. The sum total of compensation payable for all disabilities herein shall be governed by Section 10 of this Act as a disability other than permanent total. Compensation provided for in this subsection shall be paid out of a special fund created for such purpose in the following manner. The employer, or if insured, his carrier, shall pay the sum of Five Hundred Dollars (\$500.00) into such special fund for every case of injury causing death in which there are no persons entitled to compensation. The State Treasurer shall be the custodian of this special fund, to be known as Second Injury Fund, and the Commission shall direct the distribution thereof."

SECTION 11. Section 14 of Initiated Act No. 4 of 1948, as amended, the same being Arkansas Statutes Section 81-1314, is hereby amended to read as follows:

"Section 14. Occupational diseases: (a) General provisions: (1) Where an employee suffers from an occupational disease, as hereinafter defined, and is thereby disabled or dies as a result of such disease, and the disease was due to the nature of the occupation or process in which he was employed within the period previous to his disablement as limited in subdivision (7) of this

subsection, the employee, or in case of death, his dependents, shall be entitled to compensation as if such disablement or death were caused by injury, except as hereinafter otherwise provided.

(2) No compensation shall be payable for an occupational disease if the employee, at the time of entering into the employment of the employer by whom the compensation would otherwise be payable, falsely represented himself in writing as not having previously been disabled, laid off, or compensated in damages or otherwise, because of such disease.

(3) Where an occupational disease is aggravated by any other disease or infirmity, not itself compensable, or where disability or death from any other cause, not itself compensable, is aggravated, prolonged, accelerated or in any wise contributed to by an occupational disease, the compensation payable shall be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death as such occupational disease, as a causative factor, bears to all the causes of such disability or death, such reduction in compensation to be effected by reducing the number of weekly or monthly payments or the amounts of such payments, as under the circumstances of the particular case may be for the best interest of the claimant or claimants.

(4) No compensation for death from an occupational disease shall be payable to any person whose relationship to the deceased, which, under the provisions of this Act would give right to compensation, arose subsequent to the beginning of the first compensable disability save only to afterborn children of a marriage existing at the beginning of such disability.

(5) (i) 'Occupational disease' as used in this Act means any disease that results in disability or death and arises out of and in the course of the occupation or employment of the employee, or naturally follows or unavoidably results from an injury as that term is defined in this Act. Provided, a causal connection between the occupation or employment and the occupational disease must be established by clear and convincing evidence.

(ii) No compensation shall be payable for any contagious or infectious disease, unless contracted in the course of employment in, or immediate connection with, a hospital or sanitorium in which persons suffering from such disease are cared for or treated.

(iii) No compensation shall be payable for any ordinary disease of life to which the general public is exposed.

(6) Where compensation is payable for an occupational disease, the employer in whose employment the employee was last injuriously exposed to the hazards of such disease, and the carrier, if any, on the risk when such employee was last injuriously exposed under such employer, shall be liable therefor; the amount of the compensation shall be based upon the average weekly wage of the employee when last injuriously exposed under such employer; and the notice of injury and claim for compensation, as hereinafter required, shall be given and made to such employer.

(7) An employer shall not be liable for any compensation for an occupational disease unless such disease shall be due to the nature of an employment in which the hazards of such disease actually exist, and are characteristic thereof and peculiar to the trade, occupation, process, or employment, and is actually incurred in his employment and includes any disease due to or attributable to exposure to or contact with any radioactive material by an employee in the course of his employment, unless disablement or death results within three (3) years in case of silicosis or asbestosis, or one (1) year in case of any other occupational disease (except a diseased condition caused by exposure to X-Rays, radioactive substances, or ionizing radiation), after the last injurious exposure to such disease in such employment, or in case of death, unless death follows continuous disability from such disease, commencing within the period above limited, for which compensation has been paid or awarded or timely claim made as provided in this Section, and results within seven (7) years after such last exposure; provided however, that in case of a diseased condition caused by exposure to X-Rays, radioactive substances, or ionizing radiation only, the limitations expressed hereinabove in this subsection do not apply.

(b) Special Provisions Relating to Particular Diseases. (1) 'Silicosis' means the characteristic fibrotic condition of the lungs caused by the inhalation of silica dust; and 'asbestos' shall mean the characteristic fibrotic condition of the lungs caused by the inhalation of asbestos dust.

(2) In the absence of the conclusive evidence in favor of the claim, disability or death from silicosis or asbestosis shall be presumed not to be due to the nature of any occupation within the provision of this Section, unless during the ten (10) years immediately preceding the date of disablement the employee has been exposed to the inhalation of silica dust or asbestos dust over a period of not less than five (5) years, two (2) years of which

shall have been in this State, under a contract of employment existing in this State; provided, however, that if the employee shall have been employed by the same employer during the whole of such five-year period, his right to compensation against such employer shall not be affected by the fact that he had been employed during any part of such period outside of this State.

(3) Except as in this Section otherwise provided, compensation for disability from uncomplicated silicosis or asbestosis shall be payable in accordance with the provisions of Section 13 of this Act; provided, however, that no compensation shall be payable for disability from silicosis or asbestosis of less than thirty-three and one-third percent ($33\frac{1}{3}\%$) of the total disability.

(4) In case of disability or death from silicosis or asbestosis complicated with tuberculosis of the lungs, compensation shall be payable as for uncomplicated silicosis or asbestosis, provided however, that the silicosis or asbestosis was an essential factor in the causing of such disability or death. In case of disability or death from silicosis or asbestosis complicated with any other disease, or from any other disease complicated with silicosis or asbestosis, the compensation shall be reduced as provided in Subdivision (3) of Subsection (a) of this Section.

(5) Where an employee, though not actually disabled, is found by the Commission to be affected by silicosis or asbestosis to such a degree as to make it unduly hazardous for him to continue in an employment involving exposure to the hazards of such disease, the Commission may order that he be removed from his employment, in which case or in case he has already been discharged from such an employment and is unemployed, he shall be entitled to compensation until he can obtain steady employment in some other suitable occupation in which there are no hazards of such disease; provided however, that such compensation shall in no case be payable for longer than 26 weeks immediately following the date of removal or discharge and unless application therefor be made within such period. In case the employee obtains other suitable employment at reduced wages, the payments of compensation during such part of the 26 weeks' period as he is so employed shall be at the rate prescribed in subsection (b) of Section 13 of this Act. When in any such case the forced change of employment shall, in the opinion of the Commission, require that the employee be given special training in order to fit him for another occupation, the employer liable for compensation shall pay for such

training and incidental traveling expenses an additional sum, in no case, however, to exceed Four Hundred Dollars (\$400.00), such payment to be made for the benefit of the employee to such person or persons as the Commission shall direct. No such payment, however, shall be made unless the employee accepts the special training directed by the Commission, nor shall payment be made for a longer period than the employee submits to such training. If an employee has been compensated, whether specially trained or not, and thereafter engages in any occupation which exposes him to hazards of silicosis or asbestosis without first having obtained the written approval of the Commission, neither he, his dependents, personal representative nor any other person shall be entitled to compensation or damages for his disablement or death from either of such diseases. But neither a claim for nor receipt of compensation or benefits under the preceding provisions of this Section shall bar the employee from any right to compensation for actual disability from silicosis or asbestosis if such disability results not later and within the time limited in Subdivision (7) of Subsection (a) of this Section.

(c) Practice and Procedure. (1) Except as herein otherwise provided procedure with respect to notice of disability or death, as to the filing of claims and determination of claims shall be the same as in cases of accidental injury or death. Written notice shall be given to the employer of an occupational disease by the employee, or someone in his behalf, within ninety (90) days after the first distinct manifestation thereof, and in the case of death from such an occupational disease, written notice of death shall also be given to the employer within ninety (90) days thereafter.

(2) An award or denial of award of compensation for an occupational disease may be reviewed and compensation increased, reduced or terminated where previously awarded, or awarded where previously denied, only upon proof of fraud or undue influence or of change of condition, and then only upon application by a party in interest made not later than one (1) year after the denial of award or, where compensation has been awarded, after the award or the date when the last payment was made under the award, except that in cases of silicosis or asbestosis where the time limit shall be two (2) years."

SECTION 12. Subsection (c) of Section 15 of Initiated Measure No. 4 of 1948, as amended, the same being Arkansas Statutes Section 81-1315(c) is hereby amended to read as follows:

"(c) Subject to the limitations as set out in Section 10 of this Act, compensation for the death of an employee shall be paid to those persons who were wholly and actually dependent upon the deceased employee in the following percentage of the average weekly wage of the employee, and in the following order of preference.

First. To the widow if there is no child, thirty-five percent (35%), and such compensation shall be paid until her death or remarriage. Provided, however, the widow shall establish, in fact, some dependency upon the deceased employee before she will be entitled to benefits as provided herein.

To the widower if there is no child, thirty-five percent (35%), and such compensation shall be paid until his death or remarriage. Provided, however, the widower shall establish, in fact, some dependency upon the deceased employee before he will be entitled to benefits as provided herein.

Second. To the widow or widower if there is a child, the compensation payable under First above and fifteen percent (15%) on account of each child.

Third. To one child if there is no widow or widower, fifteen percent (15%) for each child, and in addition thereto, thirty-five percent (35%) to the children as a class, to be divided equally among them.

Fourth. To the parents, twenty-five percent (25%) each.

Fifth. To brothers, sisters, grandchildren and grandparents, fifteen percent (15%) each."

SECTION 13. Subsection (d) of Section 15 of Initiated Measure No. 4 of 1948, as amended, the same being Arkansas Statutes Section 81-1315(d), is hereby amended to read as follows:

"(d) In the event the widow remarries before full and complete payment to her of the benefits provided in Subsection (c), there shall be paid to her a lump sum equal to compensation for one hundred four (104) weeks, subject to the limitation set out in Section 10 of this Act. A physically or mentally incapacitated child, grandchild, brother or sister shall be entitled to compensation as a dependent of the deceased employee without regard to age or marital status, but if physically or mentally capacitated to earn a livelihood, dependency shall terminate with the attainment of eighteen (18) years of age or upon marriage. Provided, such benefits to an otherwise eligible child shall not terminate at the age of eighteen (18) years provided such child is a full time student who has not attained the age of twenty-five (25) years."

SECTION 14. Section 17 of Initiated Measure No. 4 of 1948, the same being Arkansas Statutes Section 81-1317, is hereby amended to read as follows:

"Section 17. (a) Unless an injury either renders the employee physically or mentally unable to do so, or is made known to the employer immediately after it occurs, the employee shall report the injury to the employer on a form prescribed or approved by the Commission and to a person or at a place specified by the employer, and the employer shall not be responsible for disability, medical, or other benefits prior to receipt of the employee's report of injury. All reporting procedures specified by the employer must be reasonable and shall afford each employee reasonable notice of the reporting requirements. The foregoing shall not apply when an employee requires emergency medical treatment outside the employer's normal business hours; however, in that event, the employee shall cause a report of the injury to be made to the employer on the employer's next regular business day.

(b) Failure to give such notice shall not bar any claim (1) if the employer had knowledge of the injury or death, (2) if the employee had no knowledge that the condition or disease arose out of and in the course of the employment, or (3) if the Commission excuses such failure on the grounds that for some satisfactory reason such notice could not be given. Objection to failure to give notice must be made at or before the first hearing on the claim.

SECTION 15. Subsection (b) of Section 25 of Initiated Measure No. 4 of 1948, as amended, the same being Arkansas Statutes Section 81-1325(b), is hereby amended to read as follows:

"(b) A compensation order or award of the Workers' Compensation Commission shall become final unless a party to the dispute shall, within thirty (30) days from receipt by him of the order or award, file notice of appeal to the Court of Appeals, which is hereby designated as the forum for judicial review of such orders and awards. Such appeal to the Court of Appeals may be taken by filing in the office of the Commission, within thirty (30) days from the date of the receipt of the order or award of the Commission, a notice of appeal, whereupon the Commission under its certificate shall send to the Court all pertinent documents and papers, together with a transcript of evidence and the findings and orders, which shall become the record of the cause.

Any other party to the dispute may cross appeal by filing in the office of the Commission a notice of cross appeal to the Court of Appeals within fifteen (15) days after the notice of appeal is filed, except that in no event shall a cross appellant have less than thirty (30) days from his receipt of the order or award of the Commission within which to file a notice of cross appeal. Appeals from the Commission to the Court of Appeals shall be allowed as in other civil actions and shall take precedence over all other civil cases appealed to said Court. Upon appeal to the Court of Appeals no additional evidence shall be heard and, in the absence of fraud, the findings of fact made by the Commission, within its power, shall be conclusive and binding upon said Court and shall be given the same force and effect as in cases heretofore decided by the Supreme Court of Arkansas, except subject to review as hereinafter set forth. The Court shall review only questions of law and may modify, reverse, remand for rehearing, or set aside the order or award, upon any of the following grounds, and no other:

- (1) That the Commission acted without or in excess of its powers.
- (2) That the order or award was procured by fraud.
- (3) That the facts found by the Commission do not support the order or award.
- (4) That the order or award was not supported by substantial evidence of record.

In all appeals the cost thereof shall be assessed as provided by law in civil cases. The Commission may require a bond from either party, if it deems necessary, in cases appealed to the Court of Appeals.

SECTION 16. Section 32 of Initiated Measure No. 4 of 1948, as amended, the same being Arkansas Statutes Section 81-1332, is hereby amended to read as follows:

"Section 32. (a) Fees for legal services rendered in respect of a claim shall not be valid unless approved by the Commission, and such fees shall not exceed thirty percent (30%) of the first One Thousand Dollars (\$1,000.00) of compensation, or part thereof, twenty percent (20%) of all sums in excess of One Thousand Dollars (\$1,000.00), but less than Three Thousand Dollars (\$3,000.00) of compensation, and ten percent (10%) of all sums in excess of Three Thousand Dollars (\$3,000.00) of compensation. Whenever the Commission finds that a claim against the State Treasurer, as custodian of the Second

Injury Fund, has been controverted, in whole or in part, the Commission shall direct that fees for legal services be paid from said Fund, in addition to compensation awarded, and such fees shall be allowed only on the amount of compensation controverted and awarded from said Fund. In all other cases, whenever the Commission finds that a claim has been controverted, in whole or in part, the Commission shall direct that fees for legal services be paid to the attorney for the claimant as follows: One-half (1/2) by the employer or carrier in addition to compensation awarded; and one-half (1/2) by the injured employee or dependents of a deceased employee out of compensation payable to them. Such fees shall be allowed only on the amount of compensation controverted and awarded, provided however the Commission shall not find a claim has been controverted if the claimant or his representative has withheld from the respondent during the period of time allotted for the respondent to determine its position any medical information in his possession which substantiates the claim. Whenever the Commission finds a claim has not been controverted, but further finds that bona fide legal services have been rendered in respect to the claim, then the Commission shall direct the payment of such fees out of the compensation awarded. In any case where attorney's fees are allowed by the Commission, the limitations expressed in the first sentence herein shall apply. In determining the amount of fees, the Commission shall take into consideration the nature, length and complexity of the services performed, and the benefits resulting therefrom to the compensation beneficiaries.

(b) In addition to the fees herein provided, if the claimant prevails on appeal, the attorney for the claimant shall be entitled to an additional fee at the Full Commission and Appellate Court levels, such additional fee to be paid equally by the employer or carrier and by the injured employee or dependents of a deceased employee, as provided above, such fee to be set by the Commission and/or Appellate Court. The maximum fees allowable hereunder shall be the sum of Two Hundred Fifty Dollars (\$250.00) on appeals to the Full Commission from a decision of the Administrative Law Judge, and the sum of Five Hundred Dollars (\$500.00) on appeals to the Arkansas Court of Appeals or Supreme Court from a decision of the Commission. In determining the amount of fees, the Court shall take into consideration the nature, length, and complexity of the services performed, and the benefits resulting therefrom to the compensation beneficiary.

(c) The fee for legal services rendered by the claimant's attorney in

connection with a change of physician requested by the injured employee, controverted by the employer or carrier, and awarded by the Commission shall be Two Hundred Dollars (\$200.00). No additional fee shall be payable with respect to uncontroverted charges incurred in connection with treatment by the new physician.

(d) No fees for legal services rendered by the claimant's attorney with respect to the preliminary conference procedure shall be awarded by the Commission; provided, however, that the claimant's attorney or other representative may charge a reasonable fee to the claimant for representation in connection with the conference. Unless compensability of a claim is controverted by the employer or carrier, fees for legal services by the claimant's attorney with respect to disability for loss of wage earning capacity shall be payable only for amounts awarded at a contested hearing which exceed the amount, if any, which the employer or carrier agreed in writing to accept at the preliminary conference.

(e) Fees for legal services rendered by the claimant's attorney with respect to medical expenses of a repeated and continuing course of treatment controverted by the employer or carrier shall be payable only in connection with such controverted expenses incurred during a two-year period beginning with the first date on which such expenses were incurred.

(f) The amendments regarding attorney's fees contained in this Section 12 of this 1986 Act shall be effective with respect to benefits payable in connection with disability or death due to injuries occurring on or after July 1, 1986."

SECTION 17. Subsection (a) of Section 35 of Initiated Measure No. 4 of 1948, the same being Arkansas Statutes Section 81-1335(a), is hereby amended to read as follows:

"(a) Misrepresentation. Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining any benefit or payment under this Act shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not to exceed three hundred dollars (\$300.00) or by imprisonment of not to exceed one (1) year, or by both such fine and imprisonment. The preceding sentence shall be placed on all forms prescribed by the Commission for the use of injured employees claiming benefits under the Arkansas Workers' Compensation Act.

Where the Commission finds that false or misleading statements or representations were made for the purpose of obtaining benefits or payments under this Act, the Chairman of the Commission shall refer the matter to the Prosecuting Attorney of the District where the original hearing was held for appropriate action."

SECTION 18. The provisions of Section 2 of this Act shall be effective September 1, 1976.

SECTION 19. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 20. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable.

SECTION 21. It is hereby found and determined by the General Assembly that because of the case *Ricarte v. State*, CR 86-31, a question has arisen over the validity of Act 1227 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.

