WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1945

ENROLLED

SENATE BILL No. 183

(By Mr. Vickers, Mr. President)

PASSED March 7, 1945

In Effect 90 days from Passage
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Senate Bill No. 183
(By Mr. Vickers, Mr. President)

[Passed March 7, 1945; in effect ninety days from passage.]

AN ACT to repeal article six except as hereinafter provided; to amend and reenact sections one, two, twelve and sixteen, article one; to amend and reenact sections one, three, four, eight and nine, article two; to amend and reenact section one, article three, and to amend article three by adding thereto a new section, to be designated section one-a; to amend and reenact sections one, two, three, four, six, eight, nine-b, ten, thirteen, fourteen, fifteen, fifteen-a, sixteen and twenty, article four, and to amend article four by adding thereto five new sections, to be designated sections six-a, eight-a, eight-b, eight-c, and fifteen-b; to amend and reenact sections two, three, four and five,
article five, and to amend article five by adding thereto new sections to be designated sections four-a and four-b, all of chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and all relating to workmen's compensation and its administration.

Be it enacted by the Legislature of West Virginia:

That article six, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed except as hereinafter provided; that sections one, two, twelve and sixteen, article one, be amended and reenacted; that sections one, three, four, eight and nine, article two, be amended and reenacted; that section one, article three, be amended and reenacted, and that a new section, to be designated section one-a, be added to article three; that sections one, two, three, four, six, eight, nine-b, ten, thirteen, fourteen, fifteen, fifteen-a, sixteen and twenty, article four, be amended and reenacted, and that five new sections, to be designated sections six-a, eight-a, eight-b, eight-c and fifteen-b, be added to article four; that sections two, three, four and five, article five, be amended and reenacted, and that two new sections, to be
designated sections four-a and four-b, be added to article five; all of chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and all to read as follows:


Section

1. Compensation commissioner; appointment; legal services by attorney general.
2. Expense of administration.
16. Omission to perform duty required by commissioner; perjury.

Section 1. Compensation Commissioner; Appointment;

2 Legal Services by Attorney General.—There shall be a state compensation commissioner who shall be a citizen of this state entitled to vote and shall be appointed by the governor by and with the advice and consent of the senate. The compensation commissioner in office on the date this code takes effect shall, unless sooner removed, continue to serve until his term expires and his successor has been appointed and has qualified. On or before the first day of June, one thousand nine hundred thirty-five, and on or before the first day of June of each sixth year thereafter, the governor shall appoint a compensation commissioner to serve for a term of six years commencing
on the first day of June. An appointment may be made
to fill a vacancy or otherwise when the senate is not in
session, but shall be acted upon at the next session there-
of. The person so appointed shall take the oath or af-
firmation prescribed by section five of article four of the
constitution, and such oath shall be certified by the per-
son who administers the same and shall be filed in the of-
lice of the secretary of state. He shall give bond in the
penalty of twenty-five thousand dollars conditioned for
the faithful performance of the duties of his office, which
bond shall be approved by the attorney general as to form,
and by the governor as to sufficiency. The surety of
such bond may be a bonding or surety company, in
which case the premiums shall be paid out of the appro-
priation made for the administration of this chapter. The
commissioner shall hold no position of trust or profit, or
engage in any occupation or business, interfering or in-
consistent with his duties as such commissioner. The
commissioner shall receive an annual salary of six thou-
sand dollars, payable in the same manner as the salaries
of other state officers are paid and charged to the appro-
priations which shall be made from time to time here-
after by the state for the administration of this chapter.

The commissioner shall have an official seal for the au-
thentication of his orders and proceedings, upon which
seal shall be engraved the words, "West Virginia Com-
pensation Commissioner", and such other design as the
commissioner may prescribe. The courts in this state
shall take judicial notice of the seal of the commissioner,
and in all cases copies of orders, proceedings or records
in the office of the West Virginia compensation commis-
sioner, certified by the secretary of the commissioner un-
der his seal, shall be equal to the original in evidence.

The attorney general shall perform all legal services
required by the commissioner under the provisions of
this chapter: Provided, however, That in any case in
which an application for review is prosecuted from any
final decision of the workmen’s compensation appeal
board to the supreme court of appeals, as provided by
section four, article five of this chapter, or in any court
proceeding, including a proceeding before the workmen’s
compensation appeal board, in which such representation
shall appear to the commissioner to be desirable, he may designate a regular employee of his office, qualified to practice before such court, to represent him upon such appeal or proceeding, and in no case shall the person so appearing for the commissioner before the court receive remuneration therefor other than his regular salary.

Sec. 2. Expense of Administration.—All expenses peculiar to the administration of this chapter, and, when on official business, the traveling and incidental expenses of the commissioner and salaries or other compensation, traveling and other expenses of all officers or employees of the commissioner, and all expenses for furniture, books, maps, stationery, appliances, property of all kinds and dues for membership in all organizations pertaining to workmen's compensation or safety in which the commissioner deems it advisable to maintain membership, shall be paid out of the workmen's compensation fund.

Sec. 12. Copies of Proceedings as Evidence.—A transcribed copy of the evidence and proceedings, or any specific part thereof, on any investigation or hearing, taken by a stenographer appointed by the commissioner.
and certified and sworn to by such stenographer to be a true and correct transcript of the testimony in the investigation or hearing, or of a particular witness, or of a specific part thereof, or to be a correct transcript of the proceedings had on such investigation or hearing so purporting to be taken and subscribed, may be received in evidence by the commissioner with the same effect as if such stenographer were present and testified to the facts certified. A copy of such transcript shall be furnished on demand to any party upon payment of the fee prescribed therefor in the rules and regulations of the commissioner, such fee not to exceed that prescribed for transcripts in the circuit court.

Sec. 16. Omission to Perform Duty Required by Commissioner; Perjury.—Any person, firm or corporation knowingly failing to make any report or perform any duty required by the commissioner within the time specified shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than twenty-five hundred dollars. Any person or firm, or the officer of any corporation, who knowingly makes a false report or state-
ment under oath, affidavit or certification respecting any information required by the commissioner, or who shall knowingly testify falsely in any proceeding before the commissioner, shall be deemed guilty of perjury, and, upon conviction thereof, shall be punished as provided by law.

Article 2. Employers and Employees Subject to Chapter;

Premiums.

Section 1. Employers and Employees, including state, its agencies and political subdivisions, subject to chapter.

3. Report blanks and other forms for use of employers.

4. Classification of industries; accounts by commissioner; rate of premiums.

8. Election not to pay or default in payment of premiums; defenses prohibited.

9. Election of employer to provide own system of compensation.

Section 1. Employers and Employees, Including State,

2 Its Agencies and Political Subdivisions, Subject to Chapter.—The state of West Virginia and all governmental agencies or departments created by it are hereby required to subscribe to, and pay premiums into, the workmen's compensation fund for the protection of their employees, and shall be subject to all requirements of this chapter, and all rules and regulations prescribed by the commis-
visioner with reference to rates, classifications, and pre-
miums payments.

All persons, firms, associations and corporations regu-
larly employing other persons for the purpose of carrying
on any form of industry or business in this state, includ-
ing county courts, boards of education, municipalities and
other political subdivisions of the state, are employers
within the meaning of this chapter and subject to its
provisions: Provided, however, That the provisions of
section eight, article two of this chapter shall not apply to
such county courts, boards of education, municipalities,
or other political subdivisions of the state: And provided
further, That the failure of such county courts, boards of
education, municipalities or other political subdivisions of
the state to elect to subscribe to, and to pay premiums
into, the workmen's compensation fund, shall not im-
pose any liability upon them, or either of them, other than
such liability as would exist notwithstanding the pro-
visions of this chapter. All persons in the service of em-
ployers as herein defined, and employed by them for the
purpose of carrying on the industry, business or work in
which they are engaged, including persons regularly employed in the state whose duties necessitate employment of a temporary or transitory nature by the same employer without the state, and check-weighmen employed according to law, and all members of rescue teams assisting in mine accidents with the consent of the owner who, in such case, shall be deemed the employer, or at the direction of the chief of the department of mines; are employees within the meaning of this chapter and subject to its provisions:

Provided, however, That this chapter shall not apply to employers of employees in domestic service or persons whose employment is prohibited by law, nor to employees of an employer while employed without the state, except in case of temporary employment without the state as hereinbefore provided; nor shall a member of a firm of employers, or any official of an association or of a corporation employer, including managers, or any elective or appointive official of the state, county, county court, board of education, municipality or other political subdivision of the state, whose term of office is definitely fixed by law, be deemed an employee within the meaning
of this chapter: And provided further, That employers of
not more than three employees for a period of not more
than one month, who shall be called herein "casual em-
ployers" and employers of employees in agricultural serv-
vice, may voluntarily elect to subscribe to, and pay premi-
ums into, the workmen's compensation fund for the pro-
tection of their employees, and in such case shall be sub-
ject to all requirements of this chapter and all rules and
regulations prescribed by the commissioner with reference
to rates, classifications and premiums payments; but such
casual employers and employers of employees in agricul-
tural service shall not be required to subscribe to the
workmen's compensation fund and their failure to sub-
scribe to such fund shall not impose any liability upon them
other than such liability as would exist notwithstanding
the provisions of this chapter; nor shall the provisions
of section eight of this article apply to casual employers
or to employers of employees in agricultural service.
The premium and actual expenses in connection with
governmental agencies and departments of the state of
West Virginia, shall be paid out of the state treasury
from appropriations made for such agencies and depart-
ments, in the same manner as other disbursements are
made by such agencies and departments.

County courts, boards of education, municipalities and
other political subdivisions of the state which shall elect
to become subscribers to the workmen's compensation
fund shall provide for the funds to pay their prescribed
premiums into the fund, and such premiums, and pre-
miums of state agencies and departments, shall be paid
into the fund in the same manner as herein provided for
other employers subject to this chapter.

Any employer whose employment in this state is to
be for a definite or limited period, which could not be con-
sidered "regularly employing" within the meaning of this
section, may elect to pay into the workmen's compensa-
tion fund the premiums herein provided for, and at the
time of making application to the commissioner such em-
ployer shall furnish a statement under oath showing the
probable length of time the employment will continue
in this state, the character of the work, an estimate of the
monthly payroll, and any other information which may
be required by the commissioner. At the time of making
application such employer shall deposit with the state
compensation commissioner to the credit of the work-
men's compensation fund the amount required by section
five of this article, which amount shall be returned to
such employer, if his application be rejected by the com-
missioner. Upon notice to such employer of the accept-
ance of his application by the commissioner, he shall be
an employer within the meaning of this chapter and sub-
ject to all of its provisions.

Any foreign corporation employer electing to comply
with the provisions of this chapter and to receive the
benefits hereunder, shall, at the time of making applica-
tion to the commissioner, in addition to other require-
ments of this chapter, furnish such commissioner with
a certificate from the secretary of state showing that it
has complied with all the requirements necessary to en-
able it legally to do business in this state, and no appli-
cation of such foreign corporation employer shall be ac-
cepted by the commissioner until such certificate is filed.

For the purpose of this chapter, a mine shall be ad-
judged within this state when the main opening, drift, shaft or slope is located wholly within this state. Any employee within the meaning of this chapter whose employment necessitates his temporary absence from this state in connection with such employment, and such absence is directly incidental to carrying on an industry in this state, who shall have received injury during such absence in the course of and resulting from his employment, shall not be denied the right to participate in the workmen's compensation fund.

Sec. 3. Report Blanks and Other Forms for Use of Employers.—The commissioner shall prepare report blanks for the use of, and furnish the same to, employers subject to this chapter. Every employer receiving from the commissioner any blank or blanks with direction for filling out and returning the same shall return the same, within the period fixed by the commissioner, filled out so as to answer fully and correctly all pertinent questions therein propounded, and if unable to do so, shall give good and sufficient reasons for such failure. Every employer subject to the provisions of this chapter, who may hereafter
elect to pay the premiums as provided herein, and to re-

ceive the benefits hereunder, shall make application on
the forms prescribed by the commissioner for such pur-
pose; and all employers who desire to discontinue the
payment of the premiums required under this chapter
shall so notify the commissioner on forms to be furnished
by the commissioner for the purpose.

Sec. 4. Classification of Industries; Accounts by Com-
mmissioner; Rate of Premiums.—The commissioner shall
distribute into groups or classes the industries subject to
this chapter, in accordance with the nature of the busi-
ness and the degree of hazard incident thereto. And the
commissioner shall have power, in like manner, to re-
classify such industries into groups or classes at any time,
and to create additional groups or classes. The commis-
sioner may make necessary expenditures to obtain statis-
tical and other information to establish the classes pro-
vided for in this section.

The commissioner shall keep an accurate account of all
money or moneys paid or credited to the compensation
fund, and of the liability incurred and disbursements
made against same; and an accurate account of all money or moneys received from each individual subscriber, and of the liability incurred and disbursements made on account of injuries and death of the employees of each subscriber, and of the receipts and incurred liability of each group or class.

In fatal and total permanent disability cases, the amount charged against the employer's account shall be such sum as is estimated to be the average cost of such cases to the fund; provided the commissioner decides that the injury or injuries causing death or permanent disability were received in the course of and resulted from the employee's employment.

It shall be the duty of the commissioner to fix and maintain the lowest possible rates of premiums consistent with the maintenance of a solvent workmen's compensation fund and the creation and maintenance of a reasonable surplus in each group after providing for the payment to maturity of all liability incurred by reason of injury or death to employees entitled to benefits under the provisions of this chapter. A readjustment of rates
shall be made yearly on the first day of July, or at any
time the same may be necessary. The determination of
the lowest possible rates of premiums within the mean-
ing hereof and of the existence of any surplus or deficit
in the fund, shall be predicated solely upon the experience
and statistical data compiled from the records and files
in the commissioner's office under this and prior work-
men's compensation laws of this state for the period from
the first day of June, one thousand nine hundred thirteen,
to the nearest practicable date prior to such adjustment:
Provided, however, That any expected future return, in
the nature of interest or income from invested funds shall
be predicated upon the average realization from invest-
ments to the credit of the compensation fund for the two
years next preceding. Any reserves set up for future lia-
bilities and any commutation of benefits shall likewise be
predicated solely upon prior experience under this and
preceding workmen's compensation laws and upon ex-
pected realization from investments determined by the re-
spective past periods, as aforesaid.
The commissioner may fix a rate of premiums applicable alike to all subscribers forming a group or class, and such rates shall be determined from the record of such group or class shown upon the books of the commissioner:

Provided, however, That if any group has a sufficient number of employers with considerable difference in their degrees of hazard, the commissioner may fix a rate for each subscriber of such group, such rate to be based upon the subscriber's record on the books of the commissioner for the twelve months last ending June thirtieth of the year in which the rate is to become effective; and the liability part of such record shall include such cases as have been acted upon by the commissioner during such twelve months' period, irrespective of the date the injury was received; and any subscriber in a group so rated, whose record for such twelve months' period cannot be obtained, shall be given a rate based upon his record for any part of such period as may be deemed just and equitable by the commissioner; and the commissioner shall have authority to fix a reasonable minimum and maximum for any group to which this individual
method of rating is applied, and to add to the rate determined from the subscriber's record such amount as is necessary to liquidate any deficit in the schedule or to create a reasonable surplus.

It shall be the duty of the commissioner, whenever he changes any rate, to notify every employer affected thereby of that fact and of the new rate and when the same takes effect. It shall also be his duty to furnish to each employer yearly, or oftener if requested by the employer, a statement giving the name of each of his employees who were paid for injury and the amounts so paid during the period covered by the statement.

Sec. 8. Election Not to Pay or Default in Payment of Premiums; Defenses Prohibited.—All employers subject to this chapter, except the state of West Virginia and the governmental agencies or departments created by it, who shall not have elected to pay into the workmen's compensation fund the premiums provided by this chapter and have not elected to pay individually and directly or from benefit funds compensation and expenses to injured employees or fatally injured employees' dependents un-
der the provisions of section nine of this article, or having
so elected, shall be in default in the payment of the same,
or not having otherwise fully complied with the pro-
visions of section five or section nine of this article, shall
be liable to their employees (within the meaning of this
article) for all damages suffered by reason of personal
injuries sustained in the course of employment caused
by the wrongful act, neglect or default of the employer
or any of the employer's officers, agents or employees
while acting within the scope of their employment and in
the course of their employment and also to the personal
representatives of such employees where death results
from such personal injuries, and in any action by any such
employee or personal representative thereof, such defend-
ant shall not avail himself of the following common law
defenses: The defense of the fellow-servant rule; the de-
fense of the assumption of risk; or the defense of contribu-
tory negligence; and further shall not avail himself of any
defense that the negligence in question was that of some
one whose duties are prescribed by statute: Provided,
however, That such provision depriving a defendant em-
employer of certain common law defenses under the circum-
stances therein set forth shall not apply to an action
brought against a county court, board of education,
municipality, or other political subdivision of the state or
against a casual employer or an employer of employees
in agricultural service.

Sec. 9. *Election of Employer to Provide Own System of*
Compensation.—Notwithstanding anything contained in
this chapter, employers subject to this chapter who are of
sufficient financial responsibility to insure the payment of
compensation to injured employees and the dependents
of fatally injured employees, whether in the form of
pecuniary compensation or medical attention, funeral ex-
penses or otherwise as herein provided, of the value at
least equal to the compensation provided in this chapter,
or employers of such financial responsibility who main-
tain their own benefit funds, or system of compensation,
to which their employees are not required or permitted to
contribute, or such employers as shall furnish bond or
other security to insure such payments, may, upon a find-
ing of such facts by the compensation commissioner, elect
to pay individually and directly, or from such benefit funds, department or association, such compensation and expenses to injured employees or fatally injured employees' dependents. The compensation commissioner shall require security or bond from such employer, to be approved by him, and of such amount as is by him considered adequate and sufficient to compel or secure to such employees, or their dependents, payment of the compensation and expenses herein provided for, which shall in no event be less than the compensation paid or furnished out of the state workmen's compensation fund in similar cases to injured employees or the dependents of fatally injured employees whose employers contribute to such fund. Any employer electing under this section shall on or before the twenty-fifth day of each month, for the preceding month, file with the commissioner a sworn statement of the total earnings of all his employees subject to this chapter for such preceding month, and shall pay into the workmen's compensation fund a sum sufficient to pay his proper proportion of the expenses of the administration of this chapter, as may be determined
by the commissioner. The commissioner shall make and
publish rules and regulations governing the mode and
manner of making application, and the nature and ex-
tent of the proof required to justify the finding of facts
by the commissioner, to consider and pass upon such elec-
tion by employers subject to this chapter, which rules and
regulations shall be general in their application. Any
employer subject to this chapter who shall elect to carry
his own risk and who has complied with the requirements
of this section and the rules of the compensation commis-
sioner shall not be liable to respond in damages at com-
mon law or by statute for the injury or death of any em-
ployee, however occurring, after such election and during
the period that he is allowed by the commissioner to
carry his own risk; provided the injured employee has
remained in his service with notice given, as provided for
in section seven of this article, that his employer has
elected to carry his own risk as herein provided. The
continuation in the service of such employer with such
notice shall be deemed a waiver by the employee and by
the parents of any minor employee of the right of action,
as aforesaid, which the employee or his or her parents would otherwise have.

Any employer whose record upon the books of the compensation commissioner shows a liability against the workmen's compensation fund, incurred on account of injury to or death of any of his employees, in excess of premiums paid by such employer, shall not be granted the right, individually and directly or from such benefit funds, department or association, to compensate his injured employees and the dependents of his fatally injured employees until he has paid into the workmen's compensation fund the amount of such excess of liability over premiums paid, including his proper proportion of the liability incurred on account of explosions or catastrophes occurring within the state and charged against such fund.

All employers who have heretofore elected, or shall hereafter elect, to pay compensation and expenses directly, as provided in this section, shall, unless they give the catastrophe security or bond hereinafter provided for, pay into the surplus fund referred to in section one, article three of this chapter upon the same basis and in the
same percentages, subject to the limitations herein set forth, as funds are set aside for the maintenance of the surplus fund out of payments made by premium-paying subscribers, such payments to be made at the same time as hereinbefore provided with respect to payment of proportion of expenses of administration. In case there be a catastrophe, as defined in section one, article three of this chapter, to the employees of any employer making such payments, the employer shall not be liable to pay compensation or expenses arising from or necessitated by the catastrophe, and such compensation and expenses shall not be charged against such employer, but such compensation and expenses shall be paid from the surplus fund in the same manner and to the same extent as in the case of premium-paying subscribers.

If an employer elect to make payments into the surplus fund as aforesaid, then the bond or other security required by this section shall be of such amount as the commissioner considers adequate and sufficient to compel or secure to the employees or their dependents payment of compensation and expenses, except any com-
pensation and expenses that may arise from, or be
necessitated by, any catastrophe, as defined in section
one, article three of this chapter, which last are secured
by and shall be paid from the surplus fund, as herein-
before provided.

If an employer elect not to make payments into the
surplus fund, as hereinbefore provided, then, in addition
to bond or security in the amount hereinbefore set forth,
such employer shall furnish catastrophe security or bond,
approved by the commissioner, in such additional amount
as the commissioner shall consider adequate and sufficient
to compel or secure payment of all compensation and ex-
penses arising from, or necessitated by, any catastrophe
that might thereafter ensue.

All employers hereafter making application to carry
their own risk under the provisions of this section, shall
with such application, make a written statement as to
whether such employer elects to make payments as afore-
said into the surplus fund, or not to make such payments
and to give the catastrophe security or bond hereinbefore
in such case provided for.
All employers who have heretofore elected to carry their own risk under the provisions of this section shall be deemed to have elected to make payments into the surplus fund unless, within thirty days after the effective date of this act, they notify the commissioner in writing to the contrary: Provided, however, That such employers, as have heretofore elected, under the rules heretofore promulgated by the commissioner, not to make payments into the surplus fund, shall be deemed to have elected to give the catastrophe security or bond hereinbefore provided for and not to make payments into the surplus fund. Any catastrophe security or bond heretofore given under rules and regulations promulgated by the commissioner and approved by him shall be valid under this section, and any election heretofore made under rules and regulations of the commissioner to make payments into the surplus fund shall be valid and protective to the person so electing from and after the date of such election.

In any case under the provisions of this section that shall require the payment of compensation or benefits by
an employer in periodical payments, and the nature of

the case makes it possible to compute the present value

of all future payments, the commissioner may, in his dis-

cretion, at any time compute and permit or require to be

paid into the workmen's compensation fund an amount

equal to the present value of all unpaid compensation for

which liability exists, in trust; and thereupon such em-

ployer shall be discharged from any further liability upon

such award, and payment of the same shall be assumed

by the workmen's compensation fund.

**Article 3. Workmen's Compensation Fund.**

**Section**

1. Compensation fund; surplus fund; catastrophe and catastrophe payment defined; compensation by employers.

1-a. Transfer of silicosis fund to workmen's compensation fund.

Section 1. **Compensation Fund; Surplus Fund; Cata-

trophe and Catastrophe Payment Defined; Compensation

by Employers.**—The commissioner shall establish a work-

men's compensation fund from the premiums and other

funds paid thereto by employers, as herein provided, for

the benefit of employees of employers who have paid the

premiums applicable to such employers and have other-

wise complied fully with the provisions of section five,
article two of this chapter, and for the benefit, to the extent elsewhere in this chapter set out, of employees of employers who have elected, under section nine, article two of this chapter, to make payments into the surplus fund hereinafter provided for, and for the benefit of the dependents of all such employees, and for the payment of the administration expenses of this chapter, and shall adopt rules and regulations with respect to the collection, maintenance and disbursement of such funds not in conflict with the provisions of this chapter.

Ten per cent of all that shall hereafter be paid into the workmen's compensation fund by subscribers not electing to carry their own risk under section nine, article two of this chapter, shall be set aside for the creation of a surplus fund until such surplus shall amount to the sum of five hundred thousand dollars, after which time the sum of five per cent of all the money paid into such fund shall be credited to such surplus fund, until such time as in the judgment of the commissioner, such surplus fund shall be sufficiently large to cover the catastro-
A catastrophe is hereby defined as an accident in which three or more employees are killed or receive injuries, which, in the case of one individual, consist of: Loss of both eyes or the sight thereof; or loss of both hands or the use thereof; or loss of both feet or the use thereof; or loss of one hand and one foot or the use thereof. The aggregate of all medical and hospital bills and other costs, and all benefits payable on account of a catastrophe is hereby defined as "catastrophe payment."

In case of a catastrophe to the employees of an employer who is an ordinary premium-paying subscriber to the fund, or to the employees of an employer who, having elected to carry his own risk under section nine, article two of this chapter, has heretofore elected, or may hereafter elect, to pay into the surplus fund under the provisions of that section, then the catastrophe payment arising from such catastrophe shall not be charged against, or paid by, such employer but shall be paid from the surplus fund.
Employers electing, as herein provided, to compensate individually and directly their injured employees and their fatally injured employees' dependents shall do so in the manner prescribed by the commissioner, and shall make all reports and execute all blanks, forms and papers as directed by the commissioner, and as provided in this chapter.


Ten per cent of the funds collected and held as the workmen's compensation silicosis fund under the provisions of former article six of this chapter, which article is by this act repealed, shall be transferred to and made a part of the workmen's compensation fund provided for in the preceding section, and the balance thereof shall be refunded to the subscribers thereto in proportion to their contributions to the same under the provisions of said former article six; and all awards heretofore made under the provisions of article six shall be paid from the workmen's compensation fund, or directly by the employer, under order of the commissioner, if the employer has
15 elected to carry his own risk under the provisions of sec-
16 tion nine, article two of this chapter: Provided, however,
17 notwithstanding the repeal of said article six, the pro-
18 visions thereof shall be applicable in all cases of the 
19 disease or death, because of silicosis, or an employee
20 whose last exposure to silicon dioxide dust has occurred
21 prior to the effective date of this act, whose claim or 
22 application for compensation benefits for silicosis, or that 
23 of his dependent, has not been filed prior to said date, and
24 whose employer, at the time of such exposure, was sub-
25 ject to the provisions of said article six.

Article 4. Disability and Death Benefits.

Section

1. To whom compensation fund disbursed; silicosis included in
   "injury" and "personal injury"; definition of silicosis.
2. Disbursement where injury is self-inflicted or intentionally caused 
   by employer; rules and safety appliances; "wilful self-exposure" 
   defined.
3. Disbursements for medicine, hospital treatment, artificial limbs 
   and other appliances; contract by employer with hospital pro-
   hibited.
4. Funeral expenses.
5. Classification of disability benefits.
6-a. Stages of silicosis; benefits and mode of payment to employees and 
    dependents.
7. Physical examination of claimant; expenses.
8-a. Silicosis medical board created; qualifications; term of office; 
    duties; remuneration.
8-b. Silicosis medical board; procedure; autopsy.
8-c. Silicosis medical board; reports and distribution thereof; findings 
    required by board; objection to findings; procedure thereon.
Section 1. To Whom Compensation Fund Disbursed;

2 Silicosis Included in "Injury" and "Personal Injury";

3 Definition of Silicosis.—Subject to the provisions and limitations elsewhere in this chapter set forth, the commissioner shall disburse the workmen's compensation fund to the employees of such employers as are not delinquent in the payment of premiums for the month in which the injury occurs, and in case of catastrophe, in addition to the employees next above described, to the employees of employers who have elected, under section nine, article two of this chapter to make payments into the surplus fund as provided in that section, and which employees shall have received personal injuries in the course of and resulting from their employment in this state, or in temporary employment without the state as provided in sec-
tion one, article two of this chapter, or to the dependents, if any, of such employees in case death has ensued, according to the provisions hereinafter made; and also for the expenses of the administration of this chapter, as provided in section two, article one of this chapter.

For the purpose of this chapter the terms "injury" and "personal injury" shall be extended to include silicosis, and the commissioner shall likewise disburse the workmen's compensation fund to the employees of such employers as are not delinquent in the payment of premiums for the last month in which such employees have been exposed to silicon dioxide dust in harmful quantities, and which employees shall have contracted silicosis in this state in the course of and resulting from their employment, or to the dependents, if any, of such employees, in case death has ensued, according to the provisions hereinafter made: Provided, however, That compensation shall not be payable for the disease of silicosis, or death resulting therefrom, unless the employee has been exposed to the inhalation of silicon dioxide dust in harmful quantities over a period of not less
than two years in the state of West Virginia. An application for benefits on account of silicosis shall set forth the name of the employer or employers and the time worked for each, and the commissioner may allocate to and divide any charges on account of such claim among the employers for whom the claimant was employed during a period of two years immediately preceding the filing of the application. The allocation shall be based upon the time and degree of exposure with each employer.

For the purpose of this chapter silicosis is defined as an insidious fibrotic disease of the lung or lungs due to the prolonged inhalation and accumulation, sustained in the course of and resulting from his employment, of minute particles of dust containing silicon dioxide (SiO₂) over such a period of time and in such amounts as result in the substitution of fibrous tissues for normal lung tissues; and the term "silicosis" as used herein shall also include silicosis accompanied by tuberculosis of the lungs.

Sec. 2. Disbursement Where Injury is Self-Inflicted or Intentionally Caused by Employer; Rules and Safety Appliances; "Wilful Self-Exposure" Defined.—Not-
withstanding anything hereinbefore or hereinafter contained, no employee or dependent of any employee shall be entitled to receive any sum from the workmen's compensation fund, or to direct compensation from any employer making the election and receiving the permission mentioned in section nine, article two of this chapter, or otherwise under the provisions of this chapter, on account of any personal injury to or death of any employee caused by a self-inflicted injury, wilful misconduct, wilful disobedience to such rules and regulations as may be adopted by the employer and approved by the commissioner, and which rules and regulations have been and are kept posted in conspicuous places in and about the work, wilful self-exposure in case of silicosis, as defined herein, or the intoxication of such employee, or the failure of such employee to use or make use of any protective or safety appliance or appliances prescribed by the commissioner and furnished by the employer for the use of or applicable to such employee. For the purpose of this chapter, the commissioner may cooperate with the state department of mines and
the state department of labor in promoting general safety

programs and in formulating rules and regulations to
govern hazardous employments. If injury or death result
to any employee from the deliberate intention of his
employer to produce such injury or death, the employee,
the widow, widower, child or dependent of the employee
shall have the privilege to take under this chapter, and
shall also have cause of action against the employer, as if
this chapter had not been enacted, for any excess of dam-
ages over the amount received or receivable under this
chapter.

As used in this section, the term "wilful self-exposure"
causing the contraction of the disease of silicosis, shall
include: (1) Failure or omission on the part of an em-
ployee truthfully to state to the best of his knowledge,
in answer to inquiry made by the employer, the place,
duration and nature of previous employment; (2) Failure
or omission on the part of an employee truthfully to
furnish, to the best of his knowledge, in answer to an
inquiry made by the employer, full information as to
the previous state of his health, as to exposure to lung
diseases, and as to any special medical attention that he
may have previously received in connection with a dis-
eased condition of his lungs.

Sec. 3. Disbursements for Medicine, Hospital Treatment,
Artificial Limbs and Other Appliances; Contract by Em-
ployer with Hospital Prohibited.—Except in case of sili-
cosis, the commissioner shall disburse and pay from the
fund for such personal injuries to such employees as may
be entitled thereto hereunder as follows:

(a) Such sums for medicine, medical, surgical, dental
and hospital treatment, crutches, artificial limbs and such
other and additional approved mechanical appliances and
devices as may be reasonably required; not, however, in
any case to exceed the sum of eight hundred dollars:
Provided, however, That in exceptional cases where the
treatment required, in the opinion of competent medical
authority, is such as to necessitate an expenditure in
excess of such amount, the commissioner may, with the
approval of the employer, pay such sum as may be neces-
sary, not, however, in any such special case to exceed
an additional sum of eight hundred dollars or a total
sum of sixteen hundred dollars.

(b) Payment for such medicine, medical, surgical, den-
tal and hospital treatment, crutches, artificial limbs and
such other and additional approved mechanical appli-
ances and devices authorized under subdivision (a)
hereof may be made to the injured employee, or to the
person or persons who have furnished such service, or
who have advanced payment for same, as the commis-
sioner may deem proper, but no such payments or dis-
bursements shall be made or awarded by him unless
duly verified statements on forms prescribed by the
commissioner shall be filed with the commissioner within
three months after the cessation of such treatment or
the delivery of such appliances.

(c) No employer shall enter into any contracts with
any hospital, its physicians, officers, agents or employees,
to render medical, dental or hospital service or to give
medical or surgical attention therein to any employee for
accidental injury compensable within the purview of this
act, and no employer shall permit or require any employee
to contribute, directly or indirectly, to any fund for the
payment of such medical, surgical, dental or hospital
service within such hospital for such accidental com-
mensurable injury. Any employer violating this section
shall be liable in damages to his or its employee, and shall
not avail himself of any of the common law defenses
mentioned in section eight, article two of this chapter,
and any employer or hospital or agent or employee
thereof violating the provisions of this section shall be
guilty of a misdemeanor and upon conviction thereof
shall be sentenced to pay a fine not exceeding one thou-
sand dollars or to undergo imprisonment not exceeding
one year, or both.

Sec. 4. Funeral Expenses.—In case the personal injury
causes death, and disability is continuous from the date of
such injury to date of death, reasonable funeral expenses,
not to exceed one hundred and fifty dollars, shall be paid
from the fund, payment to be made to the persons who
have furnished the service and supplies, or to the persons
who have advanced payment for same, as the commis-
Sec. 6. Classification of Disability Benefits.—Where compensation is due an employer under the provisions of this chapter for a personal injury other than silicosis, such compensation shall be as provided in the following schedule:

(a) If the injury causes temporary total disability, the employee shall receive during the continuance thereof sixty-six and two-thirds per cent of his average weekly earnings, not to exceed a maximum of eighteen dollars a week nor to be less than a minimum of ten dollars a week.

(b) Subdivisions (a) shall be limited as follows: Aggregate award for a single injury causing temporary disability shall be for a period not exceeding fifty-two weeks: Provided, however, That in case an injured employee, by reason of having an ununited fracture or having undergone a surgical operation to correct a vicious union following a fracture, or for the repair of an ununited fracture, or having suffered an injury to the spine or pelvic bones which is of a temporary nature, or for
any ankylose joint, is disabled for a longer period than
fifty-two weeks, the period during which compensation
shall be paid may be seventy-eight weeks: Provided,
further, That if at the end of such period of fifty-two or
seventy-eight weeks the temporary disability continues
but does not warrant a finding of permanent disability, the
commissioner may grant a temporary extension for such
further period as may appear necessary, but in no case
shall the combined periods exceed one hundred and fifty-
six weeks.

(c) If the injury causes permanent disability, the per-
centage of disability to total disability shall be determined
and the award computed and allowed as follows:

For permanent disability of from one per cent to eighty-
five per cent, sixty-six and two-thirds per cent of the
average weekly earnings for a period to be computed on
the basis of four weeks' compensation for each per cent of
disability determined.

For a disability from eighty-five to one hundred per
cent, sixty-six and two-thirds per cent of the average
weekly earnings during the remainder of life.
(d) If the injury results in the total loss by severance of any of the members named in this subdivision, the percentage of disability shall be determined in accordance with the following table, and award made as provided in subdivision (c) of this section:

The loss of a great toe shall be considered a ten per cent disability.

The loss of a great toe (one phalanx) shall be considered a five per cent disability.

The loss of other toes shall be considered a four per cent disability.

The loss of other toes (one phalanx) shall be considered a two per cent disability.

The loss of all toes shall be considered a twenty-five per cent disability.

The loss of fore part of foot shall be considered a thirty per cent disability.

The loss of foot shall be considered a thirty-five per cent disability.

The loss of leg shall be considered a forty-five per cent disability.
The loss of thigh shall be considered a fifty per cent disability.

The loss of thigh at hip joint shall be considered a sixty per cent disability.

The loss of little or fourth finger (one phalanx) shall be considered a three per cent disability.

The loss of little or fourth finger shall be considered a five per cent disability.

The loss of ring or third finger (one phalanx) shall be considered a three per cent disability.

The loss of ring or third finger shall be considered a five per cent disability.

The loss of middle or second finger (one phalanx) shall be considered a three per cent disability.

The loss of middle or second finger shall be considered a seven per cent disability.

The loss of index or first finger (one phalanx) shall be considered a six per cent disability.

The loss of index or first finger shall be considered a ten per cent disability.
The loss of thumb (one phalanx) shall be considered a twelve per cent disability.

The loss of thumb shall be considered a twenty per cent disability.

The loss of thumb and index finger shall be considered a thirty-two per cent disability.

The loss of index and middle finger shall be considered a twenty per cent disability.

The loss of middle and ring finger shall be considered a fifteen per cent disability.

The loss of ring and little finger shall be considered a ten per cent disability.

The loss of thumb, index and middle finger shall be considered a forty per cent disability.

The loss of index, middle and ring finger shall be considered a thirty per cent disability.

The loss of middle, ring and little finger shall be considered a twenty per cent disability.

The loss of four fingers shall be considered a thirty-two per cent disability.

The loss of hand shall be considered a fifty per cent disability.
The loss of forearm shall be considered a fifty-five per cent disability.
The loss of arm shall be considered a sixty per cent disability.
The total and irrecoverable loss of the sight of one eye shall be considered a thirty-three per cent disability, and the injured employee shall be entitled to compensation for a period of one hundred and thirty-two weeks.
For the partial loss of vision in one, or both eyes, the percentage of disability shall be determined by the commissioner, using as a basis the total loss of one eye.
(e) Should a claimant to whom has been made a permanent partial award of from one per cent to eighty-five per cent, both inclusive, die from sickness or non-compensable injury, the unpaid balance of such award shall be paid to claimant's dependents as defined in this chapter, if any; such payment to be in the same installments that would have been paid to claimant if living: Provided, however, That no payment shall be made to any widow of such claimant after her remarriage, and that this liability shall not accrue to the estate of such
claimant and shall not be subject to any debts of, or
charges against, such estate.

(f) The award for permanent disabilities intermediate
to those fixed by the foregoing schedule and permanent
disability of from one per cent to eighty-five per cent
shall be in the same proportion and shall be computed and
allowed by the commissioner.

(g) The percentage of all permanent disabilities other
than those enumerated in subdivisions (c), (d), (e), and
(f) of this section shall be determined by the commis-
sioner, and award made in accordance with the pro-
visions of subdivision (c).

(h) Compensation payable under any subdivision of
this section shall be limited as follows: Not to exceed
a maximum of eighteen dollars a week, nor to be less
than a minimum of ten dollars a week.

(i) Where an injury results in temporary total dis-
ability for which compensation is awarded under sub-
division (a) of this section and such injury is later de-
termined permanent partial disability under subdivision
(c), the amount of compensation so paid shall be con-
sidered as payment of the compensation payable for such
injury in accordance with the schedule in subdivision
(c). Compensation, either total temporary or permanent
partial, under this section shall be payable only to the
injured employee and the right thereto shall not vest in
his or her estate, except that any unpaid compensation
which would have been paid or payable to the employee
up to the time of his death, if he had lived, shall be paid
to the dependents of such injured employee if there be
such dependents at the time of death.

(j) The following permanent disabilities shall be con-
cclusively presumed to be total in character:

Loss of both eyes or the sight thereof.

Loss of both hands or the use thereof.

Loss of both feet or the use thereof.

Loss of one hand and one foot or the use thereof.

In all other cases permanent disability shall be deter-
mined by the commissioner in accordance with the facts
in the case, and award made in accordance with the
provisions of subdivision (c).
Sec. 6-a. *Stages of Silicosis; Benefits and Mode of Payment to Employees and Dependents.*—An employee shall, for the purposes hereof, be deemed to have silicosis: (1) In the first stage when it is found by the commissioner that the earliest detectable specific signs of silicosis are present, whether or not capacity for work is or has been impaired by such silicosis; (2) In the second stage when it is found by the commissioner that definite and specific physical signs of silicosis are present, and that capacity for work is or has been impaired by that disease; (3) In the third stage when it is found by the commissioner that the employee has silicosis accompanied by active tuberculosis of the lungs resulting in total and permanent disability.

Where compensation for silicosis is due an employee under the provisions hereof, such compensation shall be as provided in the following schedule: (a) If the employee is suffering from silicosis in the first stage, the employee shall receive eight hundred dollars as compensation in full for silicosis that he has sustained as a result of and in the course of his employment, to be payable as a lump sum or in periodic installments in the
discretion of the commissioner, and shall be a final payment and operate as a full release by the employee for compensation and for any claim against the employer that the employee may thereafter have for silicosis, and irrespective of whether the employee thereafter continues in the same employment, he shall not have the right to receive any or further compensation or make any claim because of silicosis, either to the compensation commissioner or against his employer, anything to the contrary in this chapter notwithstanding. (b) If the employee is suffering from silicosis in the second stage, the employee shall receive sixteen hundred dollars as compensation in full for silicosis that he has sustained as a result of and in the course of his employment, to be payable as a lump sum or in periodic installments in the discretion of the commissioner, and shall be a final payment and operate as a full release by the employee for compensation and for any claim against the employer that the employee may thereafter have for silicosis, and irrespective of whether the employee thereafter continues in the same employment, he shall not have the right to receive any
or further compensation or make any claim because of silicosis either to the commissioner or against his employer, anything to the contrary in this chapter notwithstanding. (c) If the employee is suffering from silicosis in the third stage, the compensation shall be paid therefor in the same manner and at the same rate as is provided for permanent disability under the provisions of subdivisions (c), (f) and (h) of the preceding section. 

(d) If the employee dies from silicosis within six years from the date of his last injurious exposure to silicon dioxide dust in harmful quantities and the commissioner determines that he was suffering from silicosis in the third stage, the benefits shall be in the amounts and to the persons provided for in section ten of this article; as to such benefits sections eleven to fourteen, inclusive, of this article shall apply.

Sec. 8. Physical Examination of Claimant; Expenses.—

The commissioner shall have authority, after due notice to the employer and claimant, whenever in his opinion it shall be necessary, to order a claimant of compensation for a personal injury other than silicosis to appear for
examination before a medical examiner selected by the commissioner; and the claimant and employer, respectively, shall each have the right to select a physician of his or its own choosing and at his or its own expense to participate in such examination. The claimant and employer shall, respectively, be furnished with a copy of the report of examination made by the medical examiner selected by the commissioner. The respective physicians selected by the claimant and employer shall have the right to concur in any report made by the medical examiner selected by the commissioner, or each may file with the commissioner a separate report, which separate report shall be considered by the commissioner in passing upon the claim. If the compensation claimed is for silicosis, the commissioner shall have the power, after due notice to the employer, and whenever in his opinion it shall be necessary, to order a claimant to appear for examination before the medical board hereinafter provided. In either case the claimant shall be entitled to reasonable traveling and other expenses necessarily incurred by him in obeying such order, which shall be paid out of the amount
allowed under this chapter for medical, surgical, dental
and hospital treatment.

Sec. 8-a. Silicosis Medical Board Created; Qualifications;
Term of Office; Duties; Remuneration.—There shall be a
medical board, known as the "silicosis medical board,"
which shall consist of three licensed physicians, who shall
be appointed by the commissioner. No person shall be ap-
pointed as a member of such board, or as a consultant
thereto, who has not by special study or experience, or
both, acquired special knowledge of pulmonary diseases.
All members of the silicosis medical board shall be phy-
sicians of good professional standing, admitted to practice
medicine and surgery in this state, and one of them shall
be a roentgenologist. One of the board shall be designated
annually as chairman by the commissioner. The term of
office of each member of such board shall be six years.
The function of the board shall be to determine all medi-
cal questions relating to cases of compensation for sili-
cosis under the direction and supervision of the com-
missioner. The commissioner, from time to time, shall
fix the per diem salary, computed on the basis of actual
time devoted to the discharge of their duties, to be paid
each member of such board, and they shall also be
entitled to reasonable and necessary traveling and other
expenses incurred while actually engaged in the per-
formance of their duties.

Sec. 8-b. Silicosis Medical Board; Procedure; Autopsy.

The silicosis medical board, upon reference to it by the
commissioner of a case of silicosis, shall notify the em-
ployee, or in case he is dead the claimant, and the
employer, to appear before such board at a time and
place stated in the notice. If the employee be living, he
shall appear before the board at the time and place
specified and submit to such examination, including clini-
cal and X-ray examinations, as the board may require.

If a physician licensed to practice medicine in the state
shall make affidavit that the employee is physically un-
able to appear at the time and place designated by the
board, such board shall, on notice to the proper parties,
change the place and time of examination to such other
place and time as may reasonably facilitate the hearing or
examination of the employee. The employee, or in case he
is dead, the claimant, and the employer shall also produce
as evidence to the board all reports of medical and X-ray
examinations which may be in their respective possession
or control, showing the past or present condition of the
employee. If the employee be dead, the notice of the
board shall further require that the claimant produce
necessary consents and permits so that an autopsy may be
performed, if the board shall so direct. When in the
opinion of the board an autopsy is deemed necessary
accurately and scientifically to ascertain and determine
the cause of death, such autopsy examination shall be
ordered by the board, which shall designate a duly li-
censed physician, a pathologist, or such other specialists
as may be deemed necessary by the board, to make such
examination and tests to determine the cause of death
and certify his or their written findings, in triplicate, to
the board, which findings shall be public records. In the
event that a claimant for compensation for such death
refuses to consent and permit such autopsy to be made,
all rights for compensation shall thereupon be forfeited.
The employee, or if he be dead, the claimant, and the
Sec. 8-c. *Silicosis Medical Board; Reports and Distribution Thereof; Findings Required of Board; Objection to Findings; Procedure Thereon.*—The silicosis medical board, as soon as practicable, after it has completed its investigation, shall make its written report, to the commissioner of its findings and conclusions on every medical question in controversy, and the commissioner shall send one copy thereof to the employee or claimant and one copy to the employer, and the board shall also return to and file with the commissioner all the evidence, as well as all statements under oath, if any, of the persons who appeared before it on behalf of the employee or claimant, or employer, and also all medical reports and X-ray examinations produced by or on behalf of the employee or claimant, or employer.

The findings and conclusions of the board shall set forth, among other things, the following:
(a) Whether or not the claimant or the deceased employee has contracted silicosis, and, if so, the stage thereof.

(b) If the claimant or the deceased employee has contracted such disease, whether or not the exposure in the employment was sufficient to have caused silicosis or to have perceptibly aggravated an existing silicosis.

(c) What, if any, physician appeared before the board on behalf of the claimant, and what, if any, X-rays were produced by or on behalf of the claimant, and what, if any, physician appeared before the board on behalf of the employer, and what, if any, X-rays were produced by or on behalf of the employer.

If either party objects to the whole or any part of such findings and conclusions of the board, he shall file with the commissioner, within fifteen days of the mailing of such copy to him unless for good cause shown the commissioner extends such time, his objections thereto in writing, specifying the particular statements of the board's findings and conclusions to which he objects.

After the time has expired for the filing of objections to the findings and conclusions of the board, the commis-
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Sec. 9-b. Effect of Pre-Existing Physical Impairment; Limited Compensation.—Where an employee has a definitively ascertainable physical impairment originating as
hereafter set forth in this section, then in the event that
such employee shall thereafter receive an injury in the
course of and resulting from his employment, such
physical impairment, and the effect thereof, and an ag-
gravation thereof, shall not be taken into consideration
in fixing the amount of compensation allowed by reason
of such injury, and such compensation shall be awarded
only in the amount that would have been allowable had
such employee not had such pre-existing physical im-
pairment. This section shall only apply to definitely
ascertainable physical impairments, either
(a) Originating either before or after October 1, 1913,
otherwise than from an injury received in the course of
and resulting from employment, or
(b) Originating, prior to October 1, 1913, from an in-
jury in the course of and resulting from employment,
or
(c) Originating after October 1, 1913, from an injury
in the course of and resulting from employment by an
employer, who at the time of such injury had not elected
to comply with, or was not in good standing, under the workmen's compensation law of West Virginia, or (d) Originating in any injury of whatsoever origin whenever received, occurring without the state of West Virginia, except injuries received after October 1, 1913, in the employ of a subscriber in good standing under the compensation fund of West Virginia in the course of and resulting from temporary employment without the state as defined and limited by section one, article two of this chapter.

Sec. 10. **Classification of Death Benefits; “Dependent”**

In case a personal injury other than silicosis, suffered by an employee in the course of and resulting from his employment, causes death within the period of six years and the disability is continuous from date of such injury until date of death, or if death results from determined third degree silicosis within six years from the date of his last injurious exposure to silicon dioxide dust in harmful quantities, the benefits shall be in the amounts and to the persons as follows:

(a) If there be no dependents, the disbursements shall
be limited to the expense provided for in sections three
and four of this article.

(b) If the deceased employee leaves a dependent widow
or invalid widower, the payment shall be thirty dollars
a month until death or remarriage of such widow or
widower, and in addition ten dollars a month for each
child under sixteen years of age, to be paid until such
child reaches such age, or, if an invalid child, fifteen
dollars a month, to continue as long as such child re-
mains an invalid: Provided, however, That if such widow
or invalid widower shall remarry within two years from
the date of the death of such employee, such widow or
widower shall be paid at the time of remarriage twenty
per cent of the amount that would be due for the period
remaining between the date of such remarriage and the
end of ten years from the date of death of such employee,
and such widow or widower shall be advised in writing
by the commissioner of his or her rights under this
proviso at the time of making the original award: Pro-
vided, further, That if upon investigation and hearing,
as provided in article five of this chapter, it shall be
ascertained that such widow or widower is living with a man or woman, as the case may be, as man and wife and not married, or that the widow is living a life of prostitution, the commissioner shall stop the payment of the benefits herein provided to such widow or widower.

If the deceased employee be a widow or widower and leave a child or children under the age of sixteen years, the payment shall be fifteen dollars a month to each child until he or she reaches the age of sixteen years.

In all awards of compensation to children, unless otherwise provided herein, the award shall be until they reach the age of sixteen years or their death prior thereto.

(c) If the deceased employee leaves no dependent widow or widower and leaves a wholly dependent father or mother, he or she shall be paid the sum of twenty dollars a month, payments to continue until death, and if there be no widow or widower and both the father and mother are wholly dependent, then a joint award shall be made to the father and mother in the sum of twenty dollars a month until death. Upon the death of either the father or mother in any case in which a joint award has
been made to them, the full award of twenty dollars a month shall be paid to the survivor until his or her death.

(d) If the deceased employee leaves no dependent widow or widower or wholly dependent father or mother but there are other wholly dependent persons, as defined in paragraph (f) of this section, the payment shall be twenty dollars a month, to continue for six years after the death of the deceased.

(e) If the deceased employee leaves no dependent widow or widower, child under sixteen years of age, or wholly dependent person, but there are partially dependent persons at the time of death, the payment shall be twelve dollars and fifty cents a month, to continue for such portion of the period of six years after the date of death, as the commissioner may determine.

Compensation under subdivisions (b), (c), (d), and (e) hereof shall, except as may be specifically provided to the contrary therein, cease upon the death of the dependent, and the right thereto shall not vest in his or her estate.

(f) Dependent, as used in this chapter, shall mean a
widow; invalid widower; child under sixteen years of age; invalid child; or a posthumous child, who, at the time of the injury causing death, is dependent in whole or in part for his or her support upon the earnings of the employee; also the following persons who are and continue to be residents of the United States or its territorial possessions; stepchild under sixteen years of age; child under sixteen years of age legally adopted prior to the injury causing death; father; mother; grandfather or grandmother, who, at the time of the injury causing death, is dependent in whole or in part for his or her support upon the earnings of the employee; an invalid brother or sister wholly dependent for his or her support upon the earnings of the employee at the time of the injury causing death.

Sec. 13. Widow or Widower Living Separate from Employee.—Notwithstanding anything herein contained, no sum shall be paid to a widow or widower who shall have abandoned the employee before the injury causing death, but nothing herein contained shall be construed to preclude a widow or widower from receiving compensa-
tion in accordance with section ten of this article if such
widow or widower has been abandoned within a period
of two years by the employee for any reason except such
reason as would have entitled the deceased employee to
an annulment or a divorce from the bonds of matrimony
as provided in article two, chapter forty-eight of this
code.

Sec. 14. **Computation of Benefits.**—The average weekly
wage earnings, wherever earned, of the injured person
at the time of the injury, shall be taken as the basis
upon which to compute the benefits. The time of injury
within the meaning of this section shall be two months,
six or twelve months immediately preceding the date of
the injury, whichever is most favorable to the injured
employee. In cases involving third stage silicosis "time
of injury" within the meaning of this section shall be the
day of cessation of work.

Sec. 15. **Application for Benefits; Nonresident Aliens.**—
To entitle any employee or dependent of a deceased
employee to compensation, other than for silicosis, under
this chapter, the application therefor must be made on a
form or forms prescribed by the commissioner and filed in the office of the commissioner within six months from and after the date of injury or death, as the case may be, and all proofs of dependency in fatal cases must be filed with the commissioner within nine months from and after the death: Provided, however, That in case an employer fails to report an injury within five months from and after the date such injury occurs the claimant shall have two months from and after the date of the filing of the report by the employer within which to file his application for compensation with the commissioner: Provided further, That no employee shall be entitled to compensation regardless of whether or not report of injury be submitted by the employer unless application therefor be filed in the office of the commissioner within one year from the date of the injury. In case the employee is mentally or physically incapable of filing such application, it may be filed by his attorney or by a member of his family.

To entitle any employee to compensation for silicosis under the provisions hereof, the application therefor must
be made on a form or forms prescribed by the commis-

tioner and filed in the office of the commissioner within

one year from and after the date of the last injurious

exposure to silicon dioxide dust, or, in the case of death,

the application shall be filed as aforesaid by the dependent

of such employee within six months from and after such

employee's death.

Nonresident aliens who may be entitled to benefits

under prior law with respect to injuries sustained prior

to March eleventh, one thousand nine hundred thirty-
nine, may be officially represented by the consular officers

of the country of which such aliens may be citizens or

subjects, but no compensation shall be paid to such non-
resident aliens in fatal cases through the consular officers

of the country of which such aliens may be citizens or

subjects until such consular officers or a representative

of such consular officer or a representative of such con-

sular officer is appointed personal representative of the

deceased party by proper authority in the county in

which the deceased resided, or in which the seat of

government is located. Nothing herein contained shall
be construed as giving such consular officer the right to
make application for compensation on behalf of non-
resident aliens.

Sec. 15-a. Nonresident Alien Beneficiaries.—Notwith-
standing any other provisions of this chapter, no benefits
under any such provisions and no commutation of peri-
odical benefits under the provisions of section seventeen
of this article shall be made to nonresident alien bene-
ficiaries on account of any injury sustained after March
eleventh, one thousand nine hundred thirty-nine. Non-
resident alien beneficiaries within the meaning hereof
shall mean persons not citizens of the United States re-
siding outside of the territorial limits of the United States
at the time of the injury with respect to which benefits
would otherwise have been payable to them in the ab-
sence of such nonresident alienage. In case of nonresident
alien beneficiaries entitled under prior law to benefits on
account of accidents occurring prior to March eleventh,
one thousand nine hundred thirty-nine, the commissioner
in his discretion may make, and such beneficiary shall be
required to accept, commutation of such benefits into a
lump sum settlement and payment, at the rate of one-half of like benefits to resident beneficiaries.

Sec. 15-b. Nonmedical Questions Determined by Commissioner on Hearing of Silicosis Claim.—On the hearing of a claim for compensation for silicosis, the commissioner shall hear, determine and file findings covering, but not limited thereto, the following nonmedical questions:

(a) Whether the employee was in fact, within one year prior to the filing of his claim, in the employ of the employer, and, if so, the duration of such employment and whether or not such employment was subject to the provisions hereof.

(b) The occupation or occupations, process or processes in which the employee was engaged during such employment, and the approximate periods of work in each such occupation or process.

(c) The employments, previous and subsequent to the employment out of which the claim arose, the duration thereof, and the exposure therein to the hazard of silicon dioxide dust.
(d) Whether the employee contracted such disease through wilful self-exposure.

(e) The average weekly wages of the employee at the time he ceased work for his last employer in whose employment he was exposed to silicon dioxide dust. The time of cessation of work, within the meaning of this section, shall be two months, six months or twelve months immediately preceding the date of the injury, whichever is most favorable to the injured employee.

(f) Whether the last injurious exposure to silicon dioxide dust in the employment with the employer, occurred within one year prior to the filing of the claim for silicosis benefits, and if the employee is no longer in the service of the employer, the date upon which such employee ceased so to work; and, if the employee has died, the date and place of such death, and the place of interment of the body.

Sec. 16. Commissioner's Jurisdiction over Case Continuous; Modification of Finding or Order; Time Limitation on Awards.—The power and jurisdiction of the commissioner over each case shall be continuing, and he may
from time to time, after due notice to the employer, make
such modifications or changes with respect to former
findings or orders as may be justified: Provided, however,
That no further award may be made in fatal cases arising
after March seventh, one thousand nine hundred twenty-
ine, except within two years after the death of the
employee, or, in case of nonfatal injuries on and after
March seventh, one thousand nine hundred twenty-nine,
except within three years after payments for temporary
disability shall have ceased and within one year after
the commissioner shall have made the last payment in
any permanent disability case: And provided further,
That no further award may be made in either fatal or
nonfatal cases arising on account of injuries occurring
prior to March seventh, one thousand nine hundred
twenty-nine, unless written application for such award,
signed personally by claimant, or, in case of claimant's
infancy or physical or mental incapacity, by his or her
guardian, next friend, or committee, be filed with the
commisioner on or before September fifteenth, one thou-
sand nine hundred thirty-nine. In any case in which an
26 injured employee shall make application for a further
27 adjustment of his claim, if such application be in writing
28 and filed within the applicable time limit as prescribed
29 herein, the commissioner shall pass upon and determine
30 the merits of such application within thirty days after
31 the filing thereof.

Sec. 20. Post-Mortem Examinations. — The commis-
2 sioner shall have authority, after due notice to the em-
3 ployer and claimant, whenever he shall deem it necessary,
4 to order an autopsy, and may designate a duly licensed
5 physician to make such post-mortem examination or
6 examinations as may be necessary to determine the cause
7 of the deceased employee's death, and such physician shall
8 file with the commissioner a written report of his findings;
9 the claimant and the employer respectively, shall have the
10 right to select a physician of his or its own choosing and
11 at his or its own expense, to participate in the post-
12 mortem examination, and the respective physicians
13 selected by the claimant and the employer shall have the
14 right to concur in any report made by the physician
15 selected by the commissioner, or each may file with the
commissioner a separate report. In any case, including silicosis cases, in which either the employer or a claimant requests that an autopsy be performed, then such autopsy shall be directed as hereinbefore provided, and in the event that a claimant for compensation for such death refuses to consent and permit such autopsy to be made all rights to compensation shall be forfeited.

Article 5. Review.

Section

2. Workmen's compensation appeal board.
3. Appeals to board; procedure.
4. Appeals from final decisions of board.
4-a. Findings of fact.
5. Fees of attorney for claimant.

Section 2. Workmen's Compensation Appeal Board—

There shall be a board to be known as the "Workmen's Compensation Appeal Board," which shall be referred to in this chapter as the "board," to be composed of three members, none of whom shall be a contributor to the compensation fund or in any way connected with a contributor thereto and none of whom shall be a beneficiary of the compensation fund or in any way connected with a beneficiary thereof. Two members of such board
10 shall be of opposite politics to the third, and all three
11 shall be citizens of this state who have resided therein
12 for a period of at least five years. All members of the
13 board shall be appointed by the governor for a term of
14 six years. The governor is hereby vested with power to
15 remove any member of the board according to section
16 four, article six, chapter six, of this code. They shall
17 each receive an annual salary of two thousand four hun-
18 dred dollars, payable in monthly installments, and shall
19 also be entitled to reasonable and necessary traveling
20 and other expenses incurred while actually engaged in
21 the performance of their duties. The governor shall
22 designate one of the members of the board as chairman
23 thereof, and the board shall meet at the capitol or at
24 such other places throughout the state as it may deem
25 proper, at regular sessions commencing on the first Tues-
26 day in February, April, June, August, October and Decem-
27 ber, and continuing as long as may be necessary for the
28 proper and expeditious transaction of the business before
29 it. All clerical services required by the board shall be paid
30 for by the compensation commissioner from any funds
at his disposal. The board shall, from time to time, compile and promulgate such rules of practice and procedure as to it shall appear proper for the prompt and efficient discharge of its business and such rules shall be submitted to the supreme court of appeals for approval, and if approved by such court shall have the same force and effect as the approved rules of procedure of circuit courts.

Sec. 3. Appeals to Board; Procedure.—Any employer, employee, claimant, or dependent, who shall feel aggrieved at any final action of the commissioner taken after a hearing held in accordance with the provisions of section one of this article, and any claimant or employer who shall feel aggrieved at any action of the commissioner in refusing to reopen a claim under the provisions of sections one-b and one-d of this article, shall have the right to appeal to the board created in section two of this article for a review of such action. The aggrieved party shall file a written notice of appeal with the compensation commissioner, directed to such board, within thirty days, after receipt of notice of the action complained of, or in
any event, regardless of notice, within sixty days after
the date of the action complained of, and the commissioner
shall notify the other party immediately upon the filing of
a notice of appeal. The commissioner shall forthwith
make up a transcript of the proceedings before him and
certify and transmit the same to the board. In such
certificate, he shall incorporate a brief recital of the
proceedings therein had and recite each order entered
and the date thereof. The board shall review the action
of the commissioner complained of at its next meeting
after the filing of notice of appeal, provided such notice
of appeal shall have been filed thirty days before such
meeting of the board, unless such review be postponed
by agreement of parties or by the board for good cause.
The board shall set a time and place for the hearing of
arguments on each claim and shall notify the interested
parties thereof, and briefs may be filed by the interested
parties in accordance with the rules of procedure pre-
scribed by the board. And thereupon, after a review of
the case, the board shall sustain the finding of the
commissioner or enter such order or make such award as
the commissioner should have made and shall thereupon
certify the same to the commissioner, who shall proceed
in accordance therewith. Or, instead of affirming or re-
versing the commissioner as aforesaid, the board may,
upon motion of either party or upon its own motion, for
good cause shown, to be set forth in the order of the
board, remand the case to the commissioner for the
taking of such new, additional or further evidence as
in the opinion of the board may be necessary for a full
and complete development of the facts of the case. In
the event the board shall remand the case to the com-
missioner for the taking of further evidence therein, the
commissioner shall proceed to take such new, additional
or further evidence in accordance with any instructions
given by the board, and shall take the same within thirty
days after receipt of the order remanding the case, giving
to the interested parties at least ten days' notice of such
supplemental hearing, unless the taking of evidence shall
be postponed by agreement of parties, or by the com-
missioner for good cause. After the completion of such
supplemental hearing the commissioner shall, within
sixty days, render his decision affirming, reversing or modifying his former action, which decision shall be appealable to, and proceeded with by the appeal board in like manner as in the first instance. The board may remand any case as often as in its opinion is necessary for a full development and just decision of the case. The board may take evidence or consider ex parte statements furnished in support of any motion to remand the case to the commissioner. All evidence taken by or filed with the board shall become a part of the record. All appeals from the action of the commissioner shall be decided by the board at the same session at which they are heard, unless good cause for delay thereof be shown and entered of record. In all proceedings before the board, either party may be represented by counsel.

Sec. 4. Appeals from Final Decisions of Board.—From any final decision of the board, including any order of remand, an application for review may be prosecuted by either party, or by the commissioner, to the supreme court of appeals within thirty days from the date thereof by the filing of a petition therefor to such court against
the board and the adverse party (claimant or employer, as the case may be) as respondents, and the clerk of such court shall notify each of the respondents and the commissioner of the filing of such petition. The board shall, within ten days after receipt of such notice, file with the clerk of the court the record of the proceedings had before it, including all the evidence. The court or any judge thereof in vacation may thereupon determine whether or not a review shall be granted. And if granted to a non-resident of this state, he shall be required to execute and file with the clerk before such order of review shall become effective, a bond, with security to be approved by the clerk, conditioned to perform any judgment which may be awarded against him thereon. The board may certify to the court and request its decision of any question of law arising upon the record, and withhold its further proceeding in the case, pending the decision of court on the certified question, or until notice that the court has declined to docket the same. If a review be granted or the certified question be docketed for hearing, the clerk shall notify the board and the parties litigant or
their attorneys and the commissioner, of that fact by mail. If a review be granted or the certified question docketed, the case shall be heard by the court in the same manner as in other cases, except that neither the record nor briefs need be printed. Every such review granted or certified question docketed prior to thirty days before the beginning of the term, shall be placed upon the docket for such term. The attorney general shall, without extra compensation, represent the board in such cases. The court shall determine the matter so brought before it and certify its decision to the board and to the commissioner. The cost of such proceedings on petition, including a reasonable attorney's fee, not exceeding thirty dollars to the claimant's attorney, shall be fixed by the court and taxed against the employer if the latter be unsuccessful, and if the claimant, or the commissioner (in case the latter be the applicant for review) be unsuccessful, such costs, not including attorney's fees, shall be taxed against the commissioner, payable out of any funds available in his hands, or shall be taxed against the claimant, in the dis-
cretion of the court. But there shall no cost taxed upon a certified question.

Sec. 4-a. Findings of Fact.—In a judicial proceeding to review a decision of the board, the findings of fact of the board shall have like weight to that accorded to the findings of facts of a trial chancellor or judge in equity procedure.

Sec. 4-b. Jurisdictional Findings and Decisions Appealable.—In any case where the jurisdiction of the commissioner is contested, his order in respect thereto shall be deemed final for the purpose of appeal to the board and any decision of the board in respect to such questions of jurisdiction, shall be deemed final for the purpose of appeal to the supreme court of appeals.

Sec. 5. Fees of Attorney for Claimant.—If any claimant shall employ an attorney to represent him in connection with any claim arising under this chapter and such attorney shall file with the commissioner an executed copy of his contract of employment with such claimant, it shall be the duty of the commissioner to protect such attorney in the collection of the amount provided for
therein from any award made under the provisions of this chapter in favor of the claimant, up to but not in excess of twenty-five per cent of the total amount awarded.
The Joint Committee on Enrolled Bills hereby certifies that
the foregoing bill is correctly enrolled.

Charles O. Murray
Chairman Senate Committee

Chairman House Committee

Originated in the

Senate

Takes effect 90 days from passage

Clerk of the Senate

Clerk of the House of Delegates

Donald M. Vickers
President of the Senate

John E. Amos
Speaker House of Delegates

The within is approved this the 12th
day of March, 1945.

Governor.