WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1949

ENROLLED

HOUSE BILL No. 203

(By Mr. Speaker, Mr. Flannery)

PASSED March 10, 1949

In Effect July 1, 1949
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[Passed March 10, 1949; in effect July 1, 1949.]

AN ACT to amend and reenact sections eleven and seventeen, article one; to amend and reenact section five, article two, and to amend article two by adding thereto a new section, to be designated section six-a; to amend and reenact sections one, two, three, four, six, six-a, eight, nine, ten, fourteen, fifteen, fifteen-b and sixteen, article four, and to amend article four by adding thereto four new sections, to be designated sections eight-d, eight-e, eight-f and fifteen-c; and to amend and reenact section five, article five; 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 sections eleven and seventeen, article one, be amended and reenacted; that section five, article two be amended and
reenacted, and that a new section, to be designated section six-a be added to article two; that sections one, two, three, four, six, six-a, eight, nine, ten, fourteen, fifteen, fifteen-b and sixteen, article four, be amended and reenacted, and that four new sections, to be designated sections eight-d, eight-e, eight-f and fifteen-c, be added to article four; and that section five, article five be amended and reenacted; 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:

CHAPTER 23. WORKMEN'S COMPENSATION


Section 11. Depositions.—In an investigation, the commissioner may cause depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions as provided for transcripts in the circuit court, but such depositions shall be upon reasonable notice to claimant and employer or their respective attorneys. The commissioner shall also have discretion to accept and consider depositions taken within or without the state by either the claimant or employer, provided due and reasonable notice of the taking
of such depositions was given to the other party, claim-
ant or employer, as the case may be, or his attorney:

Provided, however, That the commissioner, upon due no-
tice both to the employer and claimant, shall have au-

or to reject such depositions after the taking thereof, if

in his opinion they were taken at such place or under

such circumstances as imposed an undue burden or hard-

orship upon the opposite party, and the commissioner's
discretion to accept, refuse to approve, or reject such
depositions shall be binding in the absence of abuse of

such discretion.

Sec. 17. Annual Report by Commissioner to Governor.—

Annually, on or about the fifteenth day of September in
each year, the commissioner, under oath, shall make a
report as of the thirtieth day of June to the governor,
which shall include a statement of the number of awards
made by him, a general statement of the causes of the
injuries for which the awards were made, a detailed
statement of all disbursements, and the condition of the
fund, together with any other matters which the com-
10 missioner deems it proper to call to the attention of
11 the governor, including any recommendations he may
12 have to make.

Article 2. Employers and Employees Subject to Chapter;

Premiums.

Section 5. Premiums; Failure to Pay; Reinstatement;

Deposit to Insure Payment; Refund of Deposit; Notices
to Employees.—For the purpose of creating a workmen's
compensation fund each employer subject to this chap-
ter shall pay the premiums of liabilities based upon and
being such a percentage of the payroll of such employer
as may have been determined by the commissioner
and be then in effect. The premiums shall be paid quart-
erly on or before the twentieth day of the next suc-
ceding month for the preceding quarter, and shall be
the prescribed percentage of the total earnings of all em-
ployees within the meaning of this chapter, for such
preceding quarter. The minimum premium to be paid
by any employer for any quarter shall be one dollar and
fifty cents. The premiums and deposits provided for in
this chapter shall be paid by the employers to the state
compensation commissioner, who shall issue receipts for all sums so received, mailing the original to the person, firm or corporation paying the same, transmitting a copy thereof to the state treasurer and state auditor, and retaining a copy for his own records. All sums received by the state compensation commissioner as herein provided shall be deposited in the state treasury to the credit of the workmen's compensation fund in the manner now prescribed by law for depositing money in the state treasury. Each employer shall make a payroll report to the commissioner for each quarter as heretofore specified, and such report shall be on the form or forms prescribed by the commissioner, and furnish all information required by him.

Failure to pay premiums as herein provided or to make the quarterly payroll reports required by the commissioner shall deprive the employer so delinquent of the benefits and protection afforded by this chapter, and shall automatically terminate the election of such employer to pay into the workmen's compensation fund as herein provided, and such employer shall be liable
to his employees as provided in section eight of this article; and the commissioner shall not be required to notify the delinquent employer of such termination, but he shall notify the employees of such employer by written notice posted as hereinafter provided for in this section. The termination of election of such delinquent employer shall date from twelve o'clock p.m., of the last day of the month in which he fails to pay the premiums or make payroll reports, as above provided, for the preceding quarter.

The employer so delinquent may be reinstated upon application under such terms as are prescribed by this chapter and by the commissioner hereunder, after the payment into the workmen's compensation fund of all unpaid premiums, penalties and charges. Such reinstatement shall be in effect from and after the date that the new application is accepted by the commissioner: Provided, however, That such delinquent employer shall be entitled to the benefits and protection of this chapter until twelve o'clock p.m. of the last day of the month immediately succeeding the month in which his election
is terminated, and his employees shall be entitled to compensation for injuries received during such period, but not thereafter unless such delinquent employer becomes reinstated as herein provided.

Any employer hereafter electing to avail himself of the benefits of this chapter shall at the time of making application to the commissioner deposit in the workmen's compensation fund an amount estimated to be equal to the amount of the premium which shall be paid by him for the next succeeding quarter. Any employer whose deposit is less than the amount of his premium for the last quarter shall, upon written request from the commissioner mailed to his address as carried upon the books of the commissioner by twelve o'clock p. m. of the twentieth of the month in which request is mailed, pay to the commissioner a sum sufficient to make his deposit at least equal to the amount of his premium for the last preceding quarter, and failure of any employer to comply with such written request within the time specified shall deprive him of the benefits and protection afforded by this chapter, and shall automatically ter-
minimize his election to pay into the workmen's compensation fund as herein provided, and such employer shall be liable to his employees as provided in section eight of this article; and the commissioner shall not be required to notify the delinquent employer of such termination, but he shall notify the employees of such employer by written notice posted as hereafter provided for in this section. The termination of election of such employer shall date from twelve o'clock p. m. of the last day of the month in which he is notified by the commissioner that his deposit is not equal to the sum of his premium for the last preceding quarter. Such employer may be reinstated upon application under such terms as are prescribed by this chapter and the rules of the commissioner. The deposit hereinbefore described shall be credited to the employer's account on the books of the commissioner and used to pay premiums and any other sums due the fund when such employer becomes delinquent in the payment of the same.

Upon withdrawal from the fund or termination of election of any employer, he shall be refunded the bal-
ance due him of his deposit, after deducting all amounts owed by him to the workmen's compensation fund, and the commissioner shall notify the employees of such employer of said termination in such manner as he may deem best and sufficient.

Notices to employees in this section provided for shall be given by posting written notice that the employer is delinquent under the compensation law of West Virginia, and that neither the employer nor the employees of such employer are protected by said law as to any injury or death sustained after the date specified in said notice. Such notice shall be in the form prescribed by the commissioner and shall be posted in a conspicuous place at the chief works of the employer, as the same appear in records of the commissioner. If the said chief works of the employer cannot be found or identified, then said notices shall be posted at the front door of the court house of the county in which said chief works are located, according to the records in the commissioner's office. Any person who shall, prior to the reinstatement of the said employer, as hereinbefore pro-
vided for, or prior to sixty days after the posting of said notice, whichever shall first occur, remove, deface or render illegible the said notice shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not to exceed five hundred dollars, and the said notice shall state this provision upon its face. The commissioner may require any sheriff, deputy sheriff, constable, or other official of the state of West Virginia, who may be authorized to serve civil process, to post such notice and to make return thereof of the fact of such posting to the commissioner, and any failure of such officer to post any notice within ten days after he shall have received the same from the commissioner, without just cause or excuse, shall constitute a willful failure or refusal to perform a duty required of him by law within the meaning of section twenty-eight, article five, chapter sixty-one of the code of West Virginia. Any person actually injured by reason of such failure shall have an action against said official, and upon any official bond he may have given, for such damages as such person may actually have incurred, but not to exceed, in
the case, of any surety upon said bond, the amount of
the penalty of said bond. Any official posting said notice
as herein required shall be entitled to the same fee as is
now or may hereafter be provided for the service of
process in suits instituted in courts of record in the state
of West Virginia, which fee shall be paid by the com-
missioner out of any funds at his disposal, but shall be
charged by him against the account of the employer to
whose delinquency such notice relates.

Sec. 6-a. Exemption from Liability of Officers, Man-
agers, Agents, Representatives or Employees of Contrib-
uting Employers.—The immunity from liability set out
in the preceding section shall extend to every officer,
manager, agent, representative or employee of such em-
ployer when he is acting in furtherance of the employer's
business and does not inflict an injury with deliberate
intention.

Article 4. Disability and Death Benefits.

Section 1. To Whom Compensation Fund Disbursed;

Silicosis and Other Occupational Diseases Included in
"Injury" and "Personal Injury"; Definition of Silicosis and
Other Occupational Diseases.—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 quarter 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 section 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 purposes of this chapter the terms “injury” and “personal injury” shall be extended to include silicosis
and any other occupational disease as hereinafter defined, 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 quarter in which such employees have been exposed to the hazard of silicon dioxide dust or to any other occupational hazard, and have contracted silicosis or other occupational disease, or have suffered a perceptible aggravation of an existing silisosis, 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 in the state of West Virginia the employee has been exposed to the hazard of silicon dioxide dust over a continuous period of not less than two years during the ten years immediately preceding the date of his last exposure to such hazards. 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 by whom the claimant was employed for as much as sixty days during the 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 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, whether or not accompanied by tuberculosis of the lungs.

Wherever the expression “injurious exposure to silicon dioxide dust”, or “injurious exposure to silicon dioxide dust in harmful quantities”, or “exposure to the hazard of silicon dioxide dust”, or any similar language shall appear in this chapter, such expression shall be construed to mean the exposure of an employee in the course of his employment to a working condition in which the air con-
tains such a concentration of silicon dioxide dust that the
breathing of such air by a person over a long period of
time would be likely to cause him to contract the disease
of silicosis.

For the purpose of this chapter, occupational disease
means a disease incurred in the course of and resulting
from employment. No ordinary disease of life to which
the general public is exposed outside of the employment
shall be compensable except when it follows as an inci-
dent of occupational disease as defined in this chapter.

Except in the case of silicosis, a disease shall be deemed
to have been incurred in the course of or to have resulted
from the employment only if it is apparent to the rational
mind, upon consideration of all the circumstance (1) that
there is a direct casual connection between the conditions
under which work is performed and the occupational dis-
sease, (2) that it can be seen to have followed as a natural
incident of the work as a result of the exposure occasioned
by the nature of the employment, (3) that it can be fairly
traced to the employment as the proximate cause, (4) that
it does not come from a hazard to which workmen would
88 have been equally exposed outside of the employment, (5) 
89 that it is incidental and peculiar to the character of the busi-
90 ness and not independent of the relation of employer and 
91 employee, and (6) that it must appear to have had its ori-
92 gin in a risk connected with the employment and to have 
93 flowed from that source as a natural consequence, though 
94 it need not have been foreseen or expected before its 
95 contraction.

96 Except in the case of silicosis, no award shall be made 
97 under the provisions of this chapter for any occupational 
98 disease contracted prior to the first day of July, one thou-
99 sand nine hundred forty-nine. An employee shall be 
100 deemed to have contracted an occupational disease within 
101 the meaning of this paragraph if the disease or condition 
102 has developed to such an extent that it can be diagnosed 
103 as an occupational disease. In every hearing before the 
104 commisioner in this regard, the burden shall be on the 
105 claimant to prove that prior to such date the employee 
106 had not contracted the occupational disease for which 
107 compensation is sought.

Sec. 2. Disbursement Where Injury is Self-Inflicted or
Intentionally Caused by Employer; Rules and Safety Appliances; “Willful Self-Exposure” Defined.—Notwithstanding 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, willful misconduct, willful disobedience to such rules and regulations as may be adopted by the employer and approved by the commissioner of labor or chief of the department of mines, and which rules and regulations have been and are kept posted in conspicuous places in and about the work, willful self-exposure in case of silicosis or other occupational disease, 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 damages over the amount received or receivable under this chapter.

As used in this section the term "willful self-exposure" causing the contraction of the disease of silicosis or other occupational disease shall also include: (1) Failure or omission on the part of an employee 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, to any other occupational disease, or to any condition likely to cause an occupational disease, and as to any special medical attention that he may have previously received in connection with any such disease.

Sec. 3. Disbursements for Medicine, Hospital Treatment, Artificial Limbs and Other Appliances; Contract by Employer with Hospital Prohibited. Except in case of silicosis, 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, but in no case to exceed the sum of sixteen 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 out of any available funds, such additional sum as may be necessary, not to exceed an additional sum of eight hundred dollars, but such additional sum shall not be charged to the account of the employer.

(b) Payment for such medicine, medical, surgical, dental and hospital treatment, crutches, artificial limbs and such other and additional approved mechanical appliances 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 commissioner may deem proper, but no such payments or disbursements shall be made or awarded by him unless duly verified statements on forms prescribed by the commissioner shall be filed with the commissioner within six 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 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 compensable injury.
Any employer violating this section shall be liable in
damages to his or its employees and shall not avail him-
self of any of the common law defenses mentioned in
section eight, article two of this chapter, and any em-
ployer or hospital or agent or employee thereof violating
the provisions of this section shall be guilty of a misde-
meanor and upon conviction thereof shall be sentenced
to pay a fine not exceeding one thousand 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 ex-
penses, not to exceed three hundred 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-

er may deem proper, in addition to such award as may

be made to the employee's dependents.

Sec. 6. Classification of Disability Benefits.—Where

compensation is due an employee 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 twenty-five dollars

a week nor to be less than a minimum of fifteen dollars

a week.

(b) Subdivision (a) shall be limited as follows: Ag-
gregate award for a single injury causing temporary

disability shall be for a period not exceeding 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 irrevocable 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 commissioner, and award made in accordance with the provisions of subdivision (c).

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

(i) Where an injury results in temporary total disability for which compensation is awarded under subdivision (a) of this section and such injury is later determined permanent partial disability under subdivision (c), the amount of compensation so paid shall be considered 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 conclusively 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 determined 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 purpose 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
30 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 resulting
in total permanent disability, whether or not accom-
panied by tuberculosis of the lungs.

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 em-
ployee is suffering from silicosis in the first stage, the em-
ployee shall receive one thousand 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, which shall be a final payment and op-
erate 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
31 against his employer, anything to the contrary in this
32 chapter notwithstanding. (b) If the employee is suffer-
33 ing from silicosis in the second stage, the employee shall
34 receive two thousand dollars as compensation in full for
35 silicosis that he has sustained as a result of and in the
36 course of his employment, to be payable as a lump sum
37 or in periodic installments in the discretion of the com-
38 missioner, which shall be a final payment and operate
39 as a full release by the employee for compensation and
40 for any claim against the employer that the employee
41 may thereafter have for silicosis and irrespective of
42 whether the employee thereafter continues in the same
43 employment, he shall not have the right to receive any
44 or further compensation or make any claim because of
45 silicosis either to the commissioner or against his em-
46 ployer, anything to the contrary in this chapter notwith-
47 standing. (c) If the employee is suffering from silicosis
48 in the third stage, the compensation shall be paid therefor
49 in the same manner and at the same rate as is provided
50 for permanent disability under the provisions of sub-
51 divisions (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 has determined at the time of the original award 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 or other occupational disease to appear for examination before a medical examiner or examiners 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 or examiners 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 or examiners 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 silicosis medical board hereinafter provided. If the compensation claimed is for an occupational disease other than 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 occupational diseases medical board hereinafter provided. In any 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-d. Occupational Diseases Medical Board Created; Qualifications; Term of Office; Duties; Remuneration.—

There shall be a medical board, known as the “occupational diseases medical board”, which shall consist of three licensed physicians to be appointed by the commissioner. No person shall be appointed 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 occupational diseases. All members of the board shall be physicians of good professional standing, admitted to practice medicine and surgery in this state. 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 medical questions relating to cases of compensation for occupational diseases other than silicosis, under the direction and supervision of the commissioner. 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 the members of such board, and they shall also be entitled
to reasonable and necessary traveling and other expenses incurred while actually engaged in the performance of their duties.

In the event the board shall deem it desirable, it may appoint a physician or physicians of good professional standing, admitted to practice medicine and surgery in this state, to conduct such clinical, physical and X-ray examinations of claimants as may in the opinion of the board be necessary. Such examiner or examiners shall prepare a written report setting forth their findings with respect to all medical questions involved in the claim; copies of such report shall be furnished the employee and employer and filed with the board, together with a copy of all hospital records, laboratory findings, X-rays or other evidence considered by such examiner or examiners; such records and reports shall then be considered by the board in passing upon the medical issues involved in the claim. Any such examiners shall be paid such fees and expenses as may be prescribed by the commissioner.

Sec. 8-e. Occupational Diseases Medical Board; Procedure; Autopsy. — The occupational diseases medical
board, upon reference to it by the commissioner of a case involving an occupational disease other than silicosis, shall notify the employee, or in case he is dead, the claimant, and the employer, to appear before such board, or before an examiner or examiners appointed by it, at the time and place stated in the notice. If the employee be living, he shall appear at the time and place specified and submit to such examination, including clinical 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 unable 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 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 for the board, or for any examiner appointed by it, 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 re-
quire 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 licensed 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 employer, shall be entitled to be present at all examinations conducted by the board, or by any examiner appointed by it, and to be represented by attorneys and physicians.

Sec. 8-f. Occupational Diseases Medical Board; Reports
Occupational diseases 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 or before any examiner appointed by 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 the employer.

The findings and conclusions of the board shall set forth, among other things, the following:

(a) Does the claimant suffer from a disease or infection? If so, what?

(b) When was such disease or infection, if any, con-
tracted and approximately how long has claimant suffered
therefrom?

(c) Is such disease or infection, if any, peculiar to the
industrial process, trade or occupation in which claimant
has been last employed?

(d) Was such disease or infection, if any, incurred in
the course of and did it result from the claimant's regular
employment in such industrial process, trade or occupa-
tion?

(e) Is such disease, if any, disabling to the claimant?

(f) If so, to what degree is claimant disabled by such
occupational disease?

(g) Any other matter deemed pertinent by the board.

If the claim be for death benefits under the provisions
of this chapter, the medical board shall find on each of the
above questions as of a date immediately preceding the
employee's death, and in addition shall find the cause of
death.

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 commissioner shall proceed to act as provided in this chapter. If after the time has expired for the filing of objections to the findings and conclusions of the board no objections have been filed, the report of a majority of the board of its findings and conclusions on any medical question shall be taken to be plenary and conclusive evidence of the findings and conclusions therein stated. If objection has been filed to the findings and conclusions of the board, notice thereof shall be given to the board, and the members thereof who joined in such findings and conclusions, and any examiner who filed a report in the case, shall appear at the time fixed by the commissioner for the hearing to submit to examination and cross-examination in respect to such findings and conclusions. At such hearing evidence to
support or controvert the findings and conclusions of the
board shall be heard.

Sec. 9. Physical and Vocational Rehabilitation. — In
cases where an employee has sustained a permanent dis-
ability, or has sustained injuries likely to result in per-
manent disability, and such fact has been determined by
the commissioner, and the employee can be physically
and vocationally rehabilitated and returned to remunera-
tive employment by vocational training, by the use of
crutches, artificial limbs, or other approved mechanic
appliances, or by medicines, medical, surgical, dental or
hospital treatment, the commissioner shall forthwith, after
due notice to the employer, expend such an amount as
may be necessary for the aforesaid purposes, not, how-
ever, in any case, to exceed the sum of eight hundred dol-
lars. No payment, however, shall be made for such pur-
poses as provided by this section unless authorized by the
commissioner prior to the rendering of such treatment.

In every case in which the commissioner shall order
physical or vocational rehabilitation of a claimant as pro-
vided herein, the claimant shall, during the time he is
receiving any vocational rehabilitation or rehabilitative
treatment that renders him totally disabled during the
period thereof, be compensated on a temporary total dis-
ability basis for such period, unless he is being paid com-
pensation under an award granted prior to the time such
rehabilitation is authorized by the commissioner.

Sec. 10. Classification of Death Benefits; "Dependent"

In case a personal injury other than silicosis or
other occupational disease, suffered by an employee in the
course of and resulting from his employment, causes death
within the period of six years and disability is contin-
uous from date of such injury until date of death, or if
death results from determined third degree silicosis or
from any other occupational disease within six years from
the date of the last exposure to the hazard of silicon di-
oxide dust or to the other particular occupational hazard
involved, as the case may be, 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 widower or invalid widower, the payment shall be fifty dollars a month until death or remarriage of such widow or widower, and in addition fifteen dollars a month for each child under eighteen years of age, to be paid until such child reaches such age, or, if an invalid child, twenty dollars a month, to continue as long as such child remains an invalid: Provided, however, That if such widow or invalid widower shall remarry within ten 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: Provided 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
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37 widow is living a life of prostitution, the commissioner
38 shall stop the payments of the benefits herein provided to
39 such widow or widower.

40 If the deceased employee be a widow or widower and
41 leaves a child or children under the age of eighteen years,
42 the payment shall be twenty dollars a month to each child
43 until he or she reaches the age of eighteen years.

44 In all awards of compensation to children, unless other-
45 wise provided herein, the award shall be until they reach
46 the age of eighteen years or until their death prior thereto.

47 (c) If the deceased employee leaves no dependent wid-
48 ow or widower and leaves a wholly dependent father or
49 mother, he or she shall be paid the sum of thirty dollars
50 a month, payments to continue until death, and if there
51 be no widow or widower and both the father and mother
52 are wholly dependent, then a joint award shall be made
53 to the father and mother in the sum of thirty dollars a
54 month until death. Upon the death of either the father or
55 mother in any case in which a joint award has been made
56 to them, the full award of thirty dollars a month shall be
57 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, except as otherwise provided herein.

(e) If the deceased employee leaves no dependent widow or widower, child under eighteen years of age, or wholly dependent person, but there are partially dependent persons at the time of death, the payment shall be twenty dollars a month, to continue for such portion of the period of six years after the death, as the commissioner may determine, but no such partially dependent person shall receive compensation payments as a result of the death of more than one employee.

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 eighteen 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 eighteen years of age, child under eighteen 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. 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 em-
employee. In cases involving silicosis or other occupational
diseases, the "date of injury" shall be the date of the last
exposure to the hazard of silicon dioxide dust or to the
other particular occupational hazard involved, as the case
may be.

Sec. 15. Application for Benefits.—To entitle any em-
ployee or dependent of a deceased employee to compensa-
tion under this chapter, other than for silicosis, the appli-
cation therefor must be made on the form or forms pre-
scribed by the commissioner and filed in the office of the
commissioner within one year from and after the injury
or death, as the case may be, and all proofs of dependency
in fatal cases must likewise be filed with the commis-
sioner within one year from and after the death. 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 the form or forms prescribed by the commis-
sioner and filed in the office of the commissioner within
two years from and after the last day of the last continuous
period of sixty days or more during which the employee
was exposed to the hazard of silicon dioxide dust or to
the other particular occupational hazard involved, as the
case may be, or, in the case of death, the application shall
be filed as aforesaid by the dependent of such employee
within one year from and after such employee's death.

Sec. 15-b. Nonmedical Questions Determined by the
Commissioner in Silicosis Cases; Hearing.—If a claim for
silicosis benefits be filed by an employee, the commissioner
shall determine whether the claimant was exposed to the
hazard of silicon dioxide dust for a continuous period of
not less than sixty days while in the employ of the em-
ployer within two years prior to the filing of his claim,
and whether in the State of West Virginia the claimant
was exposed to such hazard over a continuous period of
not less than two years during the ten years immediately
preceding the date of his last exposure thereto. If a claim
for silicosis benefits be filed by a dependent of a deceased
employee, the commissioner shall determine whether the
deceased employee was exposed to the hazard of silicon
dioxide dust for a continuous period of not less than sixty
days while in the employ of the employer within six
years prior to the filing of the claim, and whether in
the state of West Virginia the deceased employee was
exposed to such hazard over a continuous period of not
less than two years during the ten years immediately pre-
ceding the date of his last exposure thereto. The com-
missioner shall also determine such other nonmedical facts
as may in his opinion be pertinent to a decision on the
validity of the claim.

The commissioner shall give each interested party
notice in writing of his findings with respect to all such
nonmedical facts and such findings shall be subject to
objection and hearing as provided in section one, article
five of this chapter.

Sec. 15-c. Nonmedical Questions Determined by Com-
missioner on Hearing of Claim for Occupational Diseases
other than Silicosis.—On the hearing of a claim for com-
pensation for an occupational disease other than silicosis,
the commissioner shall hear, determine and file findings
covering, but not limited to, the following nonmedical questions:

(a) Whether the employee was in fact, within two years 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 causing the occupational disease.

(d) Whether the last injurious exposure to the hazard causing occupational disease in the employment with the employer lasted for a continuous period of not less than sixty days and occurred within two years prior to the filing of the claim, 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. The parties may in writing waive the hearing required by this section, in which case the commissioner shall determine the nonmedical facts listed above, and such other nonmedical facts as may in his opinion be pertinent to a decision on the validity of the claim.

The commissioner shall give each interested party notice in writing of his findings with respect to all such nonmedical facts, and such findings shall be subject to objection and hearing as provided in section one, article five of this chapter.

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-nine, except within two years after the
dead of the employee, or, in case of non-fatal injuries,
on and after March seventh, one thousand nine hundred
twenty-nine, except within three years after payments
for temporary disability shall have ceased or within one
year after the commissioner shall have made the last
payment in any permanent disability case: And provided
further, That no such modification or change may be
made in any case in which no award has been made,
except within three years after the date of injury. In
any case in which an injured employee shall make ap-
plication for a further adjustment of his claim, if such
application be in writing and filed within the applicable
time limit as prescribed herein, the commissioner shall
pass upon and determine the merits of such application
within thirty days after the filing thereof.
If such application is based on a report of any medical
eexamination made of the claimant and submitted by the
claimant to the commissioner in support of his applica-
tion, and the claim is opened for further consideration and
additional award is later made, the claim shall be reim-
bursed for the expenses of such examination. Such reim-
bursement shall be made by the commissioner to the
claimant, in addition to all other benefits awarded, upon
due proof of the amount thereof being furnished the com-
missioner by the claimant, but shall in no case exceed the
sum of fifty dollars.

Article 5. Review.

Section 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 exe-
cuted 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 his fee to the
extent hereinafter provided, and if such contract does
not violate the schedule of fees specified herein, the com-
missioner shall pay the fee directly to the attorney from
any award made in favor of the claimant.

In the case of an uncontested claim in respect to which
the commissioner has not denied an award or has not
refused to make an award in the amount requested by the
claimant, the commissioner shall not assist the attorney in the collection of any fee. If, however, in the case of an uncontested claim the commissioner shall, prior to the filing of a formal protest, make an award previously denied or shall increase the amount of a claim previously awarded, the attorney fee shall not exceed seventy-five dollars. If a contested claim is finally determined while pending before the commissioner and no appeal is filed therein with the appeal board, the attorney fee shall not exceed one hundred fifty dollars; if the claim is finally determined while pending before the appeal board, the attorney fee shall not exceed three hundred dollars; and if the claim is finally determined by the supreme court of appeals, or if an appeal is allowed by such court, the attorney fee shall not exceed five hundred dollars. In no event, however, shall the commissioner pay an aggregate attorney fee of more than five hundred dollars in respect to any one claim, nor shall he pay an aggregate attorney fee of more than twenty-five per cent of the total award therein, nor shall he pay an aggregate attorney fee of more than twenty-five percent of any increase in an
award that may be made in any case in which a previous
award had been made prior to the employment of the
attorney, or in which a previous award had been made by
the commissioner upon the original application without
having been first denied.
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The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the House of Delegates

Takes effect July 1, 1949

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within Approved this the 18th day of March, 1949.

Governor.

Filed in the Office of the Secretary of State
of West Virginia MAR 18 1949
D. Pitt O'Brien,
Secretary of State