

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 Passage



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(By MR. SPEAKER, MR. FLANNERY)

[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

Article 1. General Administrative Provisions.

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

11 of such depositions was given to the other party, claim-
12 ant or employer, as the case may be, or his attorney:
13 *Provided, however,* That the commissioner, upon due no-
14 tice both to the employer and claimant, shall have au-
15 thority to refuse or permit the taking of such depositions
16 or to reject such depositions after the taking thereof, if
17 in his opinion they were taken at such place or under
18 such circumstances as imposed an undue burden or hard-
19 ship upon the opposite party, and the commissioner's
20 discretion to accept, refuse to approve, or reject such
21 depositions shall be binding in the absence of abuse of
22 such discretion.

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

2 Annually, on or about the fifteenth day of September in
3 each year, the commissioner, under oath, shall make a
4 report as of the thirtieth day of June to the governor,
5 which shall include a statement of the number of awards
6 made by him, a general statement of the causes of the
7 injuries for which the awards were made, a detailed
8 statement of all disbursements, and the condition of the
9 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;*
2 *Deposit to Insure Payment; Refund of Deposit; Notices*
3 *to Employees.*—For the purpose of creating a workmen's
4 compensation fund each employer subject to this chap-
5 ter shall pay the premiums of liabilities based upon and
6 being such a percentage of the payroll of such employer
7 as may have been determined by the commissioner
8 and be then in effect. The premiums shall be paid quart-
9 erly on or before the twentieth day of the next suc-
10 ceeding month for the preceding quarter, and shall be
11 the prescribed percentage of the total earnings of all em-
12 ployees within the meaning of this chapter, for such
13 preceding quarter. The minimum premium to be paid
14 by any employer for any quarter shall be one dollar and
15 fifty cents. The premiums and deposits provided for in
16 this chapter shall be paid by the employers to the state

17 compensation commissioner, who shall issue receipts for
18 all sums so received, mailing the original to the per-
19 son, firm or corporation paying the same, transmitting
20 a copy thereof to the state treasurer and state auditor,
21 and retaining a copy for his own records. All sums re-
22 ceived by the state compensation commissioner as here-
23 in provided shall be deposited in the state treasury to
24 the credit of the workmen's compensation fund in the
25 manner now prescribed by law for depositing money in
26 the state treasury. Each employer shall make a pay-
27 roll report to the commissioner for each quarter as
28 heretofore specified, and such report shall be on the form
29 or forms prescribed by the commissioner, and furnish
30 all information required by him.

31 Failure to pay premiums as herein provided or to
32 make the quarterly payroll reports required by the
33 commissioner shall deprive the employer so delinquent
34 of the benefits and protection afforded by this chapter,
35 and shall automatically terminate the election of such
36 employer to pay into the workmen's compensation fund
37 as herein provided, and such employer shall be liable

38 to his employees as provided in section eight of this ar-
39 ticle; and the commissioner shall not be required to
40 notify the delinquent employer of such termination, but
41 he shall notify the employees of such employer by writ-
42 ten notice posted as hereinafter provided for in this sec-
43 tion. The termination of election of such delinquent em-
44 ployer shall date from twelve o'clock p. m., of the last
45 day of the month in which he fails to pay the premiums
46 or make payroll reports, as above provided, for the pre-
47 ceding quarter.

48 The employer so delinquent may be reinstated upon
49 application under such terms as are prescribed by this
50 chapter and by the commissioner hereunder, after the
51 payment into the workmen's compensation fund of all
52 unpaid premiums, penalties and charges. Such reinstate-
53 ment shall be in effect from and after the date that the
54 new application is accepted by the commissioner: *Pro-*
55 *vided, however,* That such delinquent employer shall
56 be entitled to the benefits and protection of this chapter
57 until twelve o'clock p. m. of the last day of the month
58 immediately succeeding the month in which his election

59 is terminated, and his employees shall be entitled to
60 compensation for injuries received during such period,
61 but not thereafter unless such delinquent employer be-
62 comes reinstated as herein provided.

63 Any employer hereafter electing to avail himself of
64 the benefits of this chapter shall at the time of making
65 application to the commissioner deposit in the workmen's
66 compensation fund an amount estimated to be equal
67 to the amount of the premium which shall be paid by
68 him for the next succeeding quarter. Any employer
69 whose deposit is less than the amount of his premium
70 for the last quarter shall, upon written request from
71 the commissioner mailed to his address as carried upon
72 the books of the commissioner by twelve o'clock p. m.
73 of the twentieth of the month in which request is mailed,
74 pay to the commissioner a sum sufficient to make his
75 deposit at least equal to the amount of his premium for
76 the last preceding quarter, and failure of any employer
77 to comply with such written request within the time
78 specified shall deprive him of the benefits and protection
79 afforded by this chapter, and shall automatically ter-

80 minate his election to pay into the workmen's compen-
81 sation fund as herein provided, and such employer shall
82 be liable to his employees as provided in section eight of
83 this article; and the commissioner shall not be required
84 to notify the delinquent employer of such termination,
85 but he shall notify the employees of such employer by
86 written notice posted as hereafter provided for in this
87 section. The termination of election of such employer
88 shall date from twelve o'clock p. m. of the last day of
89 the month in which he is notified by the commissioner
90 that his deposit is not equal to the sum of his premium
91 for the last preceding quarter. Such employer may be
92 reinstated upon application under such terms as are
93 prescribed by this chapter and the rules of the commis-
94 sioner. The deposit hereinbefore described shall be cred-
95 ited to the employer's account on the books of the com-
96 missioner and used to pay premiums and any other sums
97 due the fund when such employer becomes delinquent
98 in the payment of the same.

99 Upon withdrawal from the fund or termination of
100 election of any employer, he shall be refunded the bal-

101 ance due him of his deposit, after deducting all amounts
102 owed by him to the workmen's compensation fund, and
103 the commissioner shall notify the employees of such
104 employer of said termination in such manner as he may
105 deem best and sufficient.

106 Notices to employees in this section provided for shall
107 be given by posting written notice that the employer is
108 delinquent under the compensatioin law of West Vir-
109 ginia, and that neither the employer nor the employees
110 of such employer are protected by said law as to any
111 injury or death sustained after the date specified in said
112 notice. Such notice shall be in the form prescribed by
113 the commissioner and shall be posted in a conspicuous
114 place at the chief works of the employer, as the same
115 appear in records of the commissioner. If the said chief
116 works of the employer cannot be found or identified,
117 then said notices shall be posted at the front door of
118 the court house of the county in which said chief works
119 are located, according to the records in the commis-
120 sioner's office. Any person who shall, prior to the re-
121 instatement of the said employer, as hereinbefore pro-

122 vided for, or prior to sixty days after the posting of said
123 notice, whichever shall first occur, remove, deface or
124 render illegible the said notice shall be guilty of a mis-
125 demeanor, and upon conviction thereof, shall be fined
126 not to exceed five hundred dollars, and the said notice
127 shall state this provision upon its face. The commis-
128 sioner may require any sheriff, deputy sheriff, constable,
129 or other official of the state of West Virginia, who may
130 be authorized to serve civil process, to post such notice
131 and to make return thereof of the fact of such posting
132 to the commissioner, and any failure of such officer to
133 post any notice within ten days after he shall have re-
134 ceived the same from the commissioner, without just
135 cause or excuse, shall constitute a willful failure or re-
136 fusal to perform a duty required of him by law within
137 the meaning of section twenty-eight, article five, chapter
138 sixty-one of the code of West Virginia. Any person ac-
139 tually injured by reason of such failure shall have an
140 action against said official, and upon any official bond
141 he may have given, for such damages as such person
142 may actually have incurred, but not to exceed, in

143 the case, of any surety upon said bond, the amount of
144 the penalty of said bond. Any official posting said notice
145 as herein required shall be entitled to the same fee as is
146 now or may hereafter be provided for the service of
147 process in suits instituted in courts of record in the state
148 of West Virginia, which fee shall be paid by the com-
149 missioner out of any funds at his disposal, but shall be
150 charged by him against the account of the employer to
151 whose delinquency such notice relates.

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

Article 4. Disability and Death Benefits.

Section 1. *To Whom Compensation Fund Disbursed;*
2 *Silicosis and Other Occupational Diseases Included in*
3 *“Injury” and “Personal Injury”; Definition of Silicosis and*

4 *Other Occupational Diseases.*—Subject to the provisions
5 and limitations elsewhere in this chapter set forth, the
6 commissioner shall disburse the workmen's compensation
7 fund to the employees of such employers as are not de-
8 linquent in the payment of premiums for the quarter in
9 which the injury occurs, and in case of catastrophe, in
10 addition to the employees next above described, to the
11 employees of employers who have elected, under section
12 nine, article two of this chapter, to make payments into
13 the surplus fund as provided in that section, and which
14 employees shall have received personal injuries in the
15 course of and resulting from their employment in this
16 state, or in temporary employment without the state as
17 provided in section one, article two of this chapter, or to
18 the dependents, if any, of such employees in case death
19 has ensued, according to the provisions hereinafter made;
20 and also for the expenses of the administration of this
21 chapter, as provided in section two, article one of this
22 chapter.

23 For the purposes of this chapter the terms "injury" and
24 "personal injury" shall be extended to include silicosis

25 and any other occupational disease as hereinafter defined,
26 and the commissioner shall likewise disburse the work-
27 men's compensation fund to the employees of such em-
28 ployers as are not delinquent in the payment of premiums
29 for the last quarter in which such employees have been
30 exposed to the hazard of silicon dioxide dust or to any
31 other occupational hazard, and have contracted silicosis
32 or other occupational disease, or have suffered a percep-
33 tible aggravation of an existing silicosis, in this state in
34 the course of and resulting from their employment, or to
35 the dependents, if any, of such employees, in case death
36 has ensued, according to the provisions hereinafter made:
37 *Provided, however,* That compensation shall not be pay-
38 able for the disease of silicosis, or death resulting there-
39 from, unless in the state of West Virginia the employee
40 has been exposed to the hazard of silicon dioxide dust
41 over a continuous period of not less than two years during
42 the ten years immediately preceding the date of his last
43 exposure to such hazards. An application for benefits on
44 account of silicosis shall set forth the name of the employ-
45 er or employers and the time worked for each, and the

46 commissioner may allocate to and divide any charges on
47 account of such claim among the employers by whom the
48 claimant was employed for as much as sixty days during
49 the period of two years immediately preceding the filing
50 of the application. The allocation shall be based upon the
51 time and degree of exposure with each employer.

52 For the purpose of this chapter silicosis is defined as
53 an insidious fibrotic disease of the lung or lungs due to
54 the prolonged inhalation and accumulation, sustained in
55 the course of and resulting from employment, of minute
56 particles of dust containing silicon dioxide (SiO_2) over
57 such a period of time and in such amounts as result in
58 the substitution of fibrous tissues for normal lung tissues,
59 whether or not accompanied by tuberculosis of the lungs.

60 Wherever the expression "injurious exposure to silicon
61 dioxide dust", or "injurious exposure to silicon dioxide
62 dust in harmful quantities", or "exposure to the hazard
63 of silicon dioxide dust", or any similar language shall ap-
64 pear in this chapter, such expression shall be construed
65 to mean the exposure of an employee in the course of his
66 employment to a working condition in which the air con-

67 tains such a concentration of silicon dioxide dust that the
68 breathing of such air by a person over a long period of
69 time would be likely to cause him to contract the disease
70 of silicosis.

71 For the purpose of this chapter, occupational disease
72 means a disease incurred in the course of and resulting
73 from employment. No ordinary disease of life to which
74 the general public is exposed outside of the employment
75 shall be compensable except when it follows as an inci-
76 dent of occupational disease as defined in this chapter.
77 Except in the case of silicosis, a disease shall be deemed
78 to have been incurred in the course of or to have resulted
79 from the employment only if it is apparent to the rational
80 mind, upon consideration of all the circumstance (1) that
81 there is a direct casual connection between the conditions
82 under which work is performed and the occupational dis-
83 ease, (2) that it can be seen to have followed as a natural
84 incident of the work as a result of the exposure occasioned
85 by the nature of the employment, (3) that it can be fairly
86 traced to the employment as the proximate cause, (4) that
87 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 bus-
90 iness 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

2 *Intentionally Caused by Employer; Rules and Safety Ap-*
3 *pliances; "Willful Self-Exposure" Defined.*—Notwithstand-
4 ing anything hereinbefore or hereinafter contained, no
5 employee or dependent of any employee shall be entitled
6 to receive any sum from the workmen's compensation
7 fund, or to direct compensation from any employer mak-
8 ing the election and receiving the permission mentioned
9 in section nine, article two of this chapter, or otherwise
10 under the provisions of this chapter, on account of any
11 personal injury to or death of any employee caused by a
12 self-inflicted injury, willful misconduct, willful disobe-
13 dience to such rules and regulations as may be adopted
14 by the employer and approved by the commissioner of
15 labor or chief of the department of mines, and which
16 rules and regulations have been and are kept posted
17 in conspicuous places in and about the work, willful self-
18 exposure in case of silicosis or other occupational disease,
19 as defined herein, or the intoxication of such employee,
20 or the failure of such employee to use or make use of any
21 protective or safety appliance or appliances prescribed
22 by the commissioner and furnished by the employer for

23 the use of or applicable to such employee. For the pur-
24 pose of this chapter, the commissioner may cooperate
25 with the state department of mines and the state depart-
26 ment of labor in promoting general safety programs and
27 in formulating rules and regulations to govern hazardous
28 employments. If injury or death result to any employee
29 from the deliberate intention of his employer to produce
30 such injury or death, the employee, the widow, widower,
31 child or dependent of the employee shall have the priv-
32 ilege to take under this chapter, and shall also have cause
33 of action against the employer, as if this chapter had not
34 been enacted, for any excess of damages over the amount
35 received or receivable under this chapter.

36 As used in this section the term "willful self-exposure"
37 causing the contraction of the disease of silicosis or other
38 occupational disease shall also include: (1) Failure or
39 omission on the part of an employee truthfully to state
40 to the best of his knowledge, in answer to inquiry made
41 by the employer, the place, duration and nature of pre-
42 vious employment; (2) Failure or omission on the part
43 of an employee truthfully to furnish, to the best of his

44 knowledge, in answer to an inquiry made by the em-
45 ployer, full information as to th previous state of his
46 health, as to exposure to lung diseases, to any other occu-
47 pational disease, or to any condition likely to cause an
48 occupational disease, and as to any special medical atten-
49 tion that he may have previously received in connection
50 with any such disease.

Sec. 3. *Disbursements for Medicine, Hospital Treat-*
2 *ment, Artificial Limbs and Other Appliances; Contract*
3 *by Employer with Hospital Prohibited.* Except in case
4 of silicosis, the commissioner shall disburse and pay from
5 the fund for such personal injuries to such employees as
6 may be entitled thereto hereunder as follows:

7 (a) Such sums for medicine, medical, surgical, dental
8 and hospital treatment, crutches, artificial limbs and such
9 other and additional approved mechanical appliances and
10 devices as may be reasonably required, but in no case to
11 exceed the sum of sixteen hundred dollars: *Provided,*
12 *however,* That in exceptional cases where the treatment
13 required, in the opinion of competent medical authority,
14 is such as to necessitate an expenditure in excess of such

15 amount, the commissioner may, with the approval of the
16 employer, pay out of any available funds, such additional
17 sum as may be necessary, not to exceed an additional sum
18 of eight hundred dollars, but such additional sum shall
19 not be charged to the account of the employer.

20 (b) Payment for such medicine, medical, surgical,
21 dental and hospital treatment, crutches, artificial limbs
22 and such other and additional approved mechanical ap-
23 pliances and devices authorized under subdivision (a)
24 hereof may be made to the injured employee, or to the
25 person or persons who have furnished such service, or
26 who have advanced payment for same, as the commis-
27 sioner may deem proper, but no such payments or dis-
28 bursements shall be made or awarded by him unless duly
29 verified statements on forms prescribed by the commis-
30 sioner shall be filed with the commissioner within six
31 months after the cessation of such treatment or the de-
32 livery of such appliances.

33 (c) No employer shall enter into any contracts with
34 any hospital, its physicians, officers, agents or employees,
35 to render medical, dental or hospital service or to give

36 medical or surgical attention therein to any employee
37 for injury compensable within the purview of this act,
38 and no employer shall permit or require any employee
39 to contribtue, directly or indirectly, to any fund for the
40 payment of such medical, surgical, dental or hospital
41 service within such hospital for such compensable injury.
42 Any employer violating this section shall be liable in
43 damages to his or its employees and shall not avail him-
44 self of any of the common law defenses mentioned in
45 section eight, article two of this chapter, and any em-
46 ployer or hospital or agent or employee thereof violating
47 the provisions of this section shall be guilty of a misde-
48 meanor and upon conviction thereof shall be sentenced
49 to pay a fine not exceeding one thousand dollars or to
50 undergo imprisonment not exceeding one year, or both.

Sec. 4. *Funeral Expenses.*—In case the personal injury
2 causes death, and disability is continuous from the date
3 of such injury to date of death, reasonable funeral ex-
4 penses, not to exceed three hundred dollars, shall be paid
5 from the fund, payment to be made to the persons who
6 have furnished the service and supplies, or to the persons

7 who have advanced payment for same, as the commis-
8 sioner may deem proper, in addition to such award as may
9 be made to the employee's dependents.

Sec. 6. *Classification of Disability Benefits.*—Where
2 compensation is due an employee under the provisions
3 of this chapter for a personal injury other than silicosis,
4 such compensation shall be as provided in the following
5 schedule:

6 (a) If the injury causes temporary total disability, the
7 employee shall receive during the continuance thereof
8 sixty-six and two-thirds per cent of his average weekly
9 earnings, not to exceed a maximum of twenty-five dollars
10 a week nor to be less than a minimum of fifteen dollars
11 a week.

12 (b) Subdivision (a) shall be limited as follows: Ag-
13 gregate award for a single injury causing temporary
14 disability shall be for a period not exceeding one hundred
15 and fifty-six weeks.

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

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

24 For a disability from eighty-five to one hundred per
25 cent, sixty-six and two-thirds per cent of the average
26 weekly earnings during the remainder of life.

27 (d) If the injury results in the total loss by
28 severance of any of the members named in this
29 subdivision, the percentage of disability shall be de-
30 termined in accordance with the following table,
31 and award made as provided in subdivision (c) of this
32 section:

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

35 The loss of a great toe (one phalanx) shall be con-
36 sidered a five per cent disability.

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

39 The loss of other toes (one phalanx) shall be consid-
40 ered a two per cent disability.

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

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

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

47 The loss of leg shall be considered a forty-five per cent
48 disability.

49 The loss of thigh shall be considered a fifty per cent
50 disability.

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

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

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

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

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

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

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

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

67 The loss of index or first finger shall be considered a
68 ten per cent disability.

69 The loss of thumb (one phalanx) shall be considered
70 a twelve per cent disability.

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

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

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

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

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

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

83 The loss of index, middle and ring finger shall be con-
84 sidered a thirty per cent disability.

85 The loss of middle, ring and little finger shall be con-
86 sidered a twenty per cent disability.

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

89 The loss of hand shall be considered a fifty per cent
90 disability.

91 The loss of forearm shall be considered a fifty-five per
92 cent disability.

93 The loss of arm shall be considered a sixty per cent
94 disability.

95 The total and irrevocable loss of the sight of one eye
96 shall be considered a thirty-three per cent disability,
97 and the injured employee shall be entitled to compen-
98 sation for a period of one hundred and thirty-two weeks.

99 For the partial loss of vision in one, or both eyes, the

100 percentage of disability shall be determined by the com-
101 missioner, using as a basis the total loss of one eye.

102 (e) Should a claimant to whom has been made a per-
103 manent partial award of from one per cent to eighty-
104 five per cent, both inclusive, die from sickness or non-
105 compensable injury, the unpaid balance of such award
106 shall be paid to claimant's dependents as defined in this
107 chapter, if any; such payment to be in the same install-
108 ments that would have been paid to claimant if living:
109 *Provided, however,* That no payment shall be made to
110 any widow of such claimant after her remarriage, and that
111 this liability shall not accrue to the estate of such claim-
112 ant and shall not be subject to any debts of, or charges
113 against, such estate.

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

119 (g) The percentage of all permanent disabilities other
120 than those enumerated in subdivisions (c), (d), (e),

121 and (f) of this section shall be determined by the com-
122 missioner, and award made in accordance with the pro-
123 visions of subdivision (c).

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

128 (i) Where an injury results in temporary total disa-
129 bility for which compensation is awarded under sub-
130 division (a) of this section and such injury is later de-
131 termined permanent partial disability under subdivision
132 (c), the amount of compensation so paid shall be con-
133 sidered as payment of the compensation payable for such
134 injury in accordance with the schedule in subdivision
135 (c). Compensation, either total temporary or permanent
136 partial, under this section shall be payable only to the
137 injured employee and the right thereto shall not vest
138 in his or her estate, except that any unpaid compensa-
139 tion which would have been paid or payable to the em-
140 ployee upto the time of his death, if he had lived, shall

141 be paid to the dependents of such injured employee if
142 there be such dependents at the time of death.

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

145 Loss of both eyes or the sight thereof.

146 Loss of both hands or the use thereof.

147 Loss of both feet or the use thereof.

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

149 In all other cases permanent disability shall be de-
150 termined by the commissioner in accordance with the
151 facts in the case, and award made in accordance with
152 the provisions of subdivision (c).

Sec. 6-a. *Stages of Silicosis; Benefits and Mode of*

2 *Payment to Employees and Dependents.*—An employee

3 shall, for the purpose hereof, be deemed to have silicosis:

4 (1) In the first stage when it is found by the commis-
5 sioner that the earliest detectable specific signs of sili-
6 cosis are present, whether or not capacity for work is
7 or has been impaired by such silicosis; (2) In the second
8 stage when it is found by the commissioner that definite
9 and specific physical signs of silicosis are present, and

10 that capacity for work is or has been impaired by that
11 disease; (3) In the third stage when it is found by the
12 commissioner that the employee has silicosis resulting
13 in total permanent disability, whether or not accom-
14 panied by tuberculosis of the lungs.

15 Where compensation for silicosis is due an employee
16 under the provisions hereof, such compensation shall
17 be as provided in the following schedule: (a) If the em-
18 ployee is suffering from silicosis in the first stage, the em-
19 ployee shall receive one thousand dollars as compensation
20 in full for silicosis that he has sustained as a result of and
21 in the course of his employment, to be payable as a lump
22 sum or in periodic installments in the discretion of the
23 commissioner, which shall be a final payment and op-
24 erate as a full release by the employee for compensation
25 and for any claim against the employer that the employee
26 may thereafter have for silicosis, and irrespective of
27 whether the employee thereafter continues in the same
28 employment, he shall not have the right to receive any
29 or further compensation or make any claim because of
30 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)

52 If the employee dies from silicosis within six years from
53 the date of his last injurious exposure to silicon dioxide
54 dust in harmful quantities and the commissioner has de-
55 termined at the time of the original award that he was
56 suffering from silicosis in the third stage, the benefits shall
57 be in the amounts and to the persons provided for in sec-
58 tion ten of this article; as to such benefits sections eleven
59 to fourteen inclusive, of this article shall apply.

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

2 The commissioner shall have authority, after due notice
3 to the employer and claimant, whenever in his opinion
4 it shall be necessary, to order a claimant of compensation
5 for a personal injury other than silicosis or other occupa-
6 tional disease to appear for examination before a medical
7 examiner or examiners selected by the commissioner; and
8 the claimant and employer, respectively, shall each have
9 the right to select a physician of his or its own choosing
10 and at his or its own expense to participate in such exami-
11 nation. The claimant and employer shall, respectively be
12 furnished with a copy of the report of examination made
13 by the medical examiner or examiners selected by the

14 commissioner. The respective physicians selected by the
15 claimant and employer shall have the right to concur in
16 any report made by the medical examiner or examiners
17 selected by the commissioner, or each may file with the
18 commissioner a separate report, which separate report
19 shall be considered by the commissioner in passing upon
20 the claim. If the compensation claimed is for silicosis, the
21 commissioner shall have the power, after due notice to the
22 employer, and whenever in his opinion it shall be neces-
23 sary, to order a claimant to appear for examination before
24 the silicosis medical board hereinafter provided. If the
25 compensation claimed is for an occupational disease other
26 than silicosis, the commissioner shall have the power, after
27 due notice to the employer, and whenever in his opinion it
28 shall be necessary, to order a claimant to appear for exami-
29 nation before the occupational diseases medical board
30 hereinafter provided. In any case the claimant shall be
31 entitled to reasonable traveling and other expenses neces-
32 sarily incurred by him in obeying such order, which shall
33 be paid out of the amount allowed under this chapter for
34 medical, surgical, dental and hospital treatment.

Sec. 8-d. *Occupational Diseases Medical Board Created;*

2 *Qualifications; Term of Office; Duties; Remuneration.—*
3 There shall be a medical board, known as the “occupa-
4 tional diseases medical board”, which shall consist of three
5 licensed physicians to be appointed by the commissioner.
6 No person shall be appointed as a member of such board,
7 or as a consultant thereto, who has not by special study
8 or experience, or both, acquired special knowledge of
9 occupational diseases. All members of the board shall
10 be physicians of good professional standing, admitted to
11 practice medicine and surgery in this state. One of the
12 board shall be designated annually as chairman by the
13 commissioner. The term of office of each member of such
14 board shall be six years. The function of the board shall
15 be to determine all medical questions relating to cases of
16 compensation for occupational diseases other than sili-
17 cosis, under the direction and supervision of the commis-
18 sioner. The commissioner from time to time, shall fix
19 the per diem salary, computed on the basis of actual time
20 devoted to the discharge of their duties, to be paid the
21 members of such board, and they shall also be entitled

22 to reasonable and necessary traveling and other expenses
23 incurred while actually engaged in the performance of
24 their duties.

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

Sec. 8-e. *Occupational Diseases Medical Board; Pro-*
2 *cedure; Autopsy.*—The occupational diseases medical

3 board, upon reference to it by the commissioner of a case
4 involving an occupational disease other than silicosis,
5 shall notify the employee, or in case he is dead, the claim-
6 ant, and the employer, to appear before such board, or
7 before an examiner or examiners appointed by it, at the
8 time and place stated in the notice. If the employee be
9 living, he shall appear at the time and place specified and
10 submit to such examination, including clinical and X-ray
11 examinations, as the board may require. If a physician
12 licensed to practice medicine in the state shall make affi-
13 davit that the employee is physically unable to appear
14 at the time and place designated by the board, such board
15 shall, on notice to the proper parties, change the place
16 and time as may reasonably facilitate the hearing or ex-
17 amination of the employee. The employee, or in case he
18 is dead, the claimant, and the employer shall also produce
19 as evidence for the board, or for any examiner appointed
20 by it, all reports of medical and X-ray examinations which
21 may be in their respective possession or control, showing
22 the past or present condition of the employee. If the em-
23 ployee be dead, the notice of the board shall further re-

24 quire that the claimant produce necessary consents and
25 permits so that an autopsy may be performed, if the board
26 shall so direct. When in the opinion of the board an au-
27 topsy is deemed necessary accurately and scientifically
28 to ascertain and determine the cause of death, such au-
29 topsy examination shall be ordered by the board, which
30 shall designate a duly licensed physician, a pathologist,
31 or such other specialists as may be deemed necessary by
32 the board, to make such examination and tests to determ-
33 ine the cause of death and certify his or their written
34 findings, in triplicate, to the board, which findings shall
35 be public records. In the event that a claimant for com-
36 pensation for such death refuses to consent and permit
37 such autopsy to be made, all rights for compensation shall
38 thereupon be forfeited.

39 The employee, or if he be dead, the claimant, and the
40 employer, shall be entitled to be present at all examina-
41 tions conducted by the board, or by any examiner ap-
42 pointed by it, and to be represented by attorneys and
43 physicians.

Sec. 8-f. *Occupational Diseases Medical Board; Reports*

2 *and Distribution Thereof, Findings Required of Board;*
3 *Objection to Findings; Procedure Thereon.*—The occupa-
4 tional diseases medical board, as soon as practicable, after
5 it has completed its investigation, shall make its written
6 report, to the commissioner, of its findings and conclu-
7 sions on every medical question in controversy, and the
8 commissioner shall send one copy thereof to the employee
9 or claimant and one copy to the employer, and the board
10 shall also return to and file with the commissioner all
11 the evidence, as well as all statements under oath, if any,
12 of the persons who appeared before it or before any ex-
13 aminer appointed by it on behalf of the employee or claim-
14 ant, or employer, and also all medical reports and X-ray
15 examinations produced by or on behalf of the employee
16 or claimant, or the employer.

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

19 (a) Does the claimant suffer from a disease or infec-
20 tion? If so, what?

21 (b) When was such disease or infection, if any, con-

22 tracted and approximately how long has claimant suffered
23 therefrom?

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

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

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

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

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

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

40 If either party objects to the whole or any part of such
41 findings and conclusions of the board, he shall file with
42 the commissioner, within fifteen days of the mailing of

43 such copy to him unless for good cause shown the com-
44 missioner extends such time, his objections thereto in
45 writing, specifying the particular statements of the board's
46 findings and conclusions to which he objects. After the
47 time has expired for the filing of objections to the findings
48 and conclusions of the board, the commissioner shall pro-
49 ceed to act as provided in this chapter. If after the time
50 has expired for the filing of objections to the findings and
51 conclusions of the board no objections have been filed,
52 the report of a majority of the board of its findings and
53 conclusions on any medical question shall be taken to be
54 plenary and conclusive evidence of the findings and con-
55 clusions therein stated. If objection has been filed to the
56 findings and conclusions of the board, notice thereof shall
57 be given to the board, and the members thereof who
58 joined in such findings and conclusions, and any exam-
59 iner who filed a report in the case, shall appear at the
60 time fixed by the commissioner for the hearing to submit
61 to examination and cross-examination in respect to such
62 findings and conclusions. At such hearing evidence to

63 support or controvert the findings and conclusions of the
64 board shall be heard.

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

17 In every case in which the commissioner shall order
18 physical or vocational rehabilitation of a claimant as pro-
19 vided herein, the claimant shall, during the time he is

20 receiving any vocational rehabilitation or rehabilitative
21 treatment that renders him totally disabled during the
22 period thereof, be compensated on a temporary total dis-
23 ability basis for such period, unless he is being paid com-
24 pensation under an award granted prior to the time such
25 rehabilitation is authorized by the commissioner.

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

2 *Defined.*—In case a personal injury other than silicosis or
3 other occupational disease, suffered by an employee in the
4 course of and resulting from his employment, causes death
5 within the period of six years and disability is contin-
6 uous from date of such injury until date of death, or if
7 death results from determined third degree silicosis or
8 from any other occupational disease within six years from
9 the date of the last exposure to the hazard of silicon di-
10 oxide dust or to the other particular occupational hazard
11 involved, as the case may be, the benefits shall be in the
12 amounts and to the persons as follows:

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

16 (b) If the deceased employee leaves a dependent wid-
17 ow or invalid widower, the payment shall be fifty dollars
18 a month until death or remarriage of such widow or wid-
19 ower, and in addition fifteen dollars a month for each
20 child under eighteen years of age, to be paid until such
21 child reaches such age, or, if an invalid child, twenty dol-
22 lars a month, to continue as long as such child remains an
23 invalid: *Provided, however,* That if such widow or invalid
24 widower shall remarry within ten years from the date of
25 the death of such employee, such widow or widower shall
26 be paid at the time of remarriage twenty per cent of the
27 amount that would be due for the period remaining be-
28 tween the date of such remarriage and the end of ten
29 years from the date of death of such employee, and such
30 widow or widower shall be advised in writing by the com-
31 missioner of his or her rights under this proviso at the time
32 of making the original award: *Provided further,* That if
33 upon investigation and hearing, as provided in article five
34 of this chapter, it shall be ascertained that such widow
35 or widower is living with a man or woman, as the case
36 may be, as man and wife and not married, or that the

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.

58 (d) If the deceased employee leaves no dependent wid-
59 ow or widower or wholly dependent father or mother but
60 there are other wholly dependent persons, as defined in
61 paragraph (f) of this section, the payment shall be twenty
62 dollars a month, to continue for six years after the death
63 of the deceased, except as otherwise provided herein.

64 (e) If the deceased employee leaves no dependent wid-
65 ow or widower, child under eighteen years of age, or whol-
66 ly dependent person, but there are partially dependent
67 persons at the time of death, the payment shall be twenty
68 dollars a month, to continue for such portion of the period
69 of six years after the death, as the commissioner may de-
70 termine, but no such partially dependent person shall
71 receive compensation payments as a result of the death of
72 more than one employee.

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

77 (f) Dependent, as used in this chapter, shall mean a
78 widow, invalid widower, child under eighteen years of

79 age, invalid child or a posthumous child, who, at the time
80 of the injury causing death, is dependent in whole or in
81 part for his or her support upon the earnings of the em-
82 ployee; also the following persons who are and continue
83 to be residents of the United States or its territorial pos-
84 sessions: Stepchild under eighteen years of age, child
85 under eighteen years of age legally adopted prior to the
86 injury causing death, father, mother, grandfather or
87 grandmother, who, at the time of the injury causing death,
88 is dependent in whole or in part for his or her support
89 upon the earnings of the employee; an invalid brother or
90 sister wholly dependent for his or her support upon the
91 earnings of the employee at the time of the injury causing
92 death.

Sec. 14. *Computation of Benefits.*—The average weekly
2 wage earnings, wherever earned, of the injured person
3 at the time of the injury, shall be taken as the basis upon
4 which to compute the benefits. The time of injury within
5 the meaning of this section shall be two months, six or
6 twelve months immediately preceding the date of the in-
7 jury, whichever is most favorable to the injured em-

8 ployee. In cases involving silicosis or other occupational
9 diseases, the "date of injury" shall be the date of the last
10 exposure to the hazard of silicon dioxide dust or to the
11 other particular occupational hazard involved, as the case
12 may be.

Sec. 15. *Application for Benefits.*—To entitle any em-
2 ployee or dependent of a deceased employee to compensa-
3 tion under this chapter, other than for silicosis, the appli-
4 cation therefor must be made on the form or forms pre-
5 scribed by the commissioner and filed in the office of the
6 commissioner within one year from and after the injury
7 or death, as the case may be, and all proofs of dependency
8 in fatal cases must like wise be filed with the commis-
9 sioner within one year from and after the death. In case
10 the employee is mentally or physically incapable of filing
11 such application, it may be filed by his attorney or by a
12 member of his family.

13 To entitle any employee to compensation for silicosis
14 under the provisions hereof, the application therefor must
15 be made on the form or forms prescribed by the commis-
16 sioner and filed in the office of the commissioner within

17 two years from and after the last day of the last continuous
18 period of sixty days or more during which the employee
19 was exposed to the hazard of silicon dioxide dust or to
20 the other particular occupational hazard involved, as the
21 case may be, or, in the case of death, the application shall
22 be filed as aforesaid by the dependent of such employee
23 within one year from and after such employee's death.

Sec. 15-b. *Nonmedical Questions Determined by the*
2 *Commissioner in Silicosis Cases; Hearing.*—If a claim for
3 silicosis benefits be filed by an employee, the commissioner
4 shall determine whether the claimant was exposed to the
5 hazard of silicon dioxide dust for a continuous period of
6 not less than sixty days while in the employ of the em-
7 ployer within two years prior to the filing of his claim,
8 and whether in the State of West Virginia the claimant
9 was exposed to such hazard over a continuous period of
10 not less than two years during the ten years immediately
11 preceding the date of his last exposure thereto. If a claim
12 for silicosis benefits be filed by a dependent of a deceased
13 employee, the commissioner shall determine whether the
14 deceased employee was exposed to the hazard of silicon

15 dioxide dust for a continuous period of not less than sixty
16 days while in the employ of the employer within six
17 years prior to the filing of the claim, and whether in
18 the state of West Virginia the deceased employee was
19 exposed to such hazard over a continuous period of not
20 less than two years during the ten years immediately pre-
21 ceding the date of his last exposure thereto. The com-
22 missioner shall also determine such other nonmedical facts
23 as may in his opinion be pertinent to a decision on the
24 validity of the claim.

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

Sec. 15-c. *Nonmedical Questions Determined by Com-*
2 *missioner on Hearing of Claim for Occupational Diseases*
3 *other than Silicosis.*—On the hearing of a claim for com-
4 pensation for an occupational disease other than silicosis,
5 the commissioner shall hear, determine and file findings

6 covering, but not limited to, the following nonmedical
7 questions:

8 (a) Whether the employee was in fact, within two
9 years prior to the filing of his claim, in the employ of the
10 employer, and, if so, the duration of such employment
11 and whether or not such employment was subject to the
12 provisions **hereof**.

13 (b) The occupation or occupations, process or pro-
14 cesses, in which the employee was engaged during such
15 employment and the approximate periods of work in each
16 such occupation or **process**.

17 (c) The employments, previous and subsequent to the
18 employment out of which the claim arose, the duration
19 thereof and the exposure therein to the hazard causing
20 the occupational **disease**.

21 (d) Whether the last injurious exposure to the hazard
22 causing occupational disease in the employment with the
23 employer lasted for a continuous period of not less than
24 sixty days and occurred within two years prior to the filing
25 of the claim, and if the employee is no longer in the service
26 of the employer, the date upon which such employee ceased

27 so to work; and, if the employee has died, the date and
28 place of such death, and the place of interment of the body.

29 The parties may in writing waive the hearing required
30 by this section, in which case the commissioner shall de-
31 termine the nonmedical facts listed above, and such other
32 nonmedical facts as may in his opinion be pertinent to a
33 decision on the validity of the claim.

34 The commissioner shall give each interested party notice
35 in writing of his findings with respect to all such non-
36 medical facts, and such findings shall be subject to objec-
37 tion and hearing as provided in section one, article five of
38 this chapter.

Sec. 16. *Commissioner's Jurisdiction over Case Con-*
2 *tinuous; Modification of Finding or Order; Time Limi-*
3 *tation on Awards.*—The power and jurisdiction of the
4 commissioner over each case shall be continuing and he
5 may from time to time, after due notice to the employer,
6 make such modifications or changes with respect to for-
7 mer findings or orders as may be justified: *Provided,*
8 *however,* That no further award may be made in fatal
9 cases arising after March seventh, one thousand nine

10 hundred twenty-nine, except within two years after the
11 death of the employee, or, in case of non-fatal injuries,
12 on and after March seventh, one thousand nine hundred
13 twenty-nine, except within three years after payments
14 for temporary disability shall have ceased or within one
15 year after the commissioner shall have made the last
16 payment in any permanent disability case: *And provided*
17 *further*, That no such modification or change may be
18 made in any case in which no award has been made,
19 except within three years after the date of injury. In
20 any case in which an injured employee shall make ap-
21 plication for a further adjustment of his claim, if such
22 application be in writing and filed within the applicable
23 time limit as prescribed herein, the commissioner shall
24 pass upon and determine the merits of such application
25 within thirty days after the filing thereof.

26 If such application is based on a report of any medical
27 examination made of the claimant and submitted by the
28 claimant to the commissioner in support of his applica-
29 tion, and the claim is opened for further consideration and
30 additional award is later made, the claim shall be reim-

31 bursed for the expenses of such examination. Such reim-
32 bursement shall be made by the commissioner to the
33 claimant, in addition to all other benefits awarded, upon
34 due proof of the amount thereof being furnished the com-
35 missioner by the claimant, but shall in no case exceed the
36 sum of fifty dollars.

Article 5. Review.

Section 5. *Fees of Attorney for Claimant.*—If any
2 claimant shall employ an attorney to represent him in
3 connection with any claim arising under this chapter and
4 such attorney shall file with the commissioner an exe-
5 cuted copy of his contract of employment with such
6 claimant, it shall be the duty of the commissioner to
7 protect such attorney in the collection of his fee to the
8 extent hereinafter provided, and if such contract does
9 not violate the schedule of fees specified herein, the com-
10 missioner shall pay the fee directly to the attorney from
11 any award made in favor of the claimant.

12 In the case of an uncontested claim in respect to which
13 the commissioner has not denied an award or has not
14 refused to make an award in the amount requested by the

15 claimant, the commissioner shall not assist the attorney
16 in the collection of any fee. If, however, in the case of an
17 uncontested claim the commissioner shall, prior to the
18 filing of a formal protest, make an award previously de-
19 nied or shall increase the amount of a claim previously
20 awarded, the attorney fee shall not exceed seventy-five
21 dollars. If a contested claim is finally determined while
22 pending before the commissioner and no appeal is filed
23 therein with the appeal board, the attorney fee shall not
24 exceed one hundred fifty dollars; if the claim is finally
25 determined while pending before the appeal board, the
26 attorney fee shall not exceed three hundred dollars; and
27 if the claim is finally determined by the supreme court of
28 appeals, or if an appeal is allowed by such court, the at-
29 torney fee shall not exceed five hundred dollars. In no
30 event, however, shall the commissioner pay an aggregate
31 attorney fee of more than five hundred dollars in respect
32 to any one claim, nor shall he pay an aggregate attorney
33 fee of more than twenty-five per cent of the total award
34 therein, nor shall he pay an aggregate attorney fee of
35 more than twenty-five percent of any increase in an

36 award that may be made in any case in which a previous
37 award had been made prior to the employment of the
38 attorney, or in which a previous award had been made by
39 the commissioner upon the original application without
40 having been first denied.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. McMan
Chairman Senate Committee

Reynolds
Chairman House Committee

Originated in the House of Delegates

Takes effect *July 1, 1949* passage.

Howard Meyer
Clerk of the Senate

J. Ashiff
Clerk of the House of Delegates

Braxton Houston
President of the Senate

W. E. J. J. J.
Speaker House of Delegates

The within *APPROVED* this the *18th* day of *MARCH*, 1949.

Okey L. Patton
Governor.



Filed in the Office of the Secretary of State
of West Virginia **MAR 18 1949**
D. PITT O'BRIEN,
SECRETARY OF STATE