AN ACT to amend and reenact section seventeen, article one; to amend and reenact sections one, two, three, four, six, six-a, eight, eight-a, eight-b, eight-c, eight-d, eight-e, ten, fourteen, fifteen, fifteen-b and fifteen-c, article four, all of chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to annual reports by commissioner, occupational pneumoconiosis board and occupational diseases medical board; black lung; workmen's compensation; occupational diseases, including occupational pneumoconiosis; definitions; self-inflicted injuries; injuries intentionally caused by employer; rules and safety appliances; schedule of
maximum disbursements for medical, surgical, and hospital treatment; prohibited acts; penalties; funeral expenses; classification of disability benefits; benefit and mode of payment; physical examination of claimant; the occupational pneumoconiosis board; the terms, duties and remuneration of the members of said board; procedures for such board; autopsies; reports of such board; a presumption of occupational pneumoconiosis; classification of death benefits; computation of benefits; application for benefits; determination of nonmedical questions; and hearings.

Be it enacted by the Legislature of West Virginia:

That section seventeen, article one, be amended and reenacted; that sections one, two, three, four, six, six-a, eight, eight-a, eight-b, eight-c, eight-d, eight-e, ten, fourteen, fifteen, fifteen-b and fifteen-c, article four, all of chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

§23-1-17. Annual report by commissioner, occupational pneumoconiosis board and occupation diseases medical board.

Annually, on or about the fifteenth day of September
in each year, the commissioner, the occupational pneumo-
coniosis board and the occupational diseases medical
board, shall make a report as of the thirtieth day of June
addressed to the governor, which shall include a state-
ment of the causes of the injuries for which the awards
were made, an explanation of the diagnostic techniques
used by the respective medical boards and all examining
physicians to determine the presence of disease, the extent
of impairment attributable thereto, a description of the
scientific support for such techniques, and a summary
of public and private research relating to problems and
prevention of occupational diseases. The report shall
include a detailed statement of all disbursements, and the
condition of the fund, together with any specific recom-
mendations for improvements in the workmen's compen-
sation law and for more efficient and responsive adminis-
tration thereof, which the commissioner may deem ap-
propriate. Copies of all annual reports shall be filed with
the secretary of state and shall be made available to the
Legislature and to the public at large.
ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-1. To whom compensation fund disbursed; occupational pneumoconiosis and other occupational diseases included in "injury" and "personal injury"; definition of occupational pneumoconiosis 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 pro-
For the purposes of this chapter the terms "injury" and "personal injury" shall include occupational pneumoconiosis 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 hazards of occupational pneumoconiosis or other occupational disease, or have suffered a perceptible aggravation of an existing pneumoconiosis, 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, That compensation shall not be payable for the disease of occupational pneumoconiosis, or death resulting therefrom, unless in the state of West Virginia the employee has been exposed to the hazards of occupational pneumoconiosis 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 occupational pneumoconiosis 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 three 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 disability or death resulting from occupational pneumoconiosis, as defined in the immediately succeeding sentence, shall be treated and compensated as an injury by accident.

Pneumoconiosis is a disease of the lungs caused by the inhalation of minute particles of dust over a period of time which has produced pinhead or other nodulation or pathological or abnormal physiological change generally accepted by recognized specialists in the field of respiratory diseases as supporting a diagnosis of pneumoconiosis and which can be identified by X-rays or other medical
evidence and a pneumoconiosis shall be considered to be an occupational pneumoconiosis when the pneumoconiosis results from causes and conditions arising out of and in the course of the employment. The term "occupational pneumoconiosis" shall include, but shall not be limited to, such diseases as silicosis, anthracosilicosis, coal worker's pneumoconiosis, commonly known as black lung or miner's asthma, silico-tuberculosis (silicosis accompanied by active tuberculosis of the lungs), coal worker's pneumoconiosis accompanied by active tuberculosis of the lungs, tuberculo-silicosis, asbestosis, siderosis, anthrax and any and all other dust diseases of the lungs and conditions and diseases caused by occupational pneumoconiosis which are not specifically designated herein meeting the definition of occupational pneumoconiosis set forth in the immediately preceding sentence.

X-ray evidence shall not necessarily be held conclusive insofar as it bears upon the absence or presence of occupational pneumoconiosis.

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 incident
of occupational disease as defined in this chapter. Except
in the case of occupational pneumoconiosis, 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 cir-
cumstances (1) that there is a direct causal connection
between the conditions under which work is performed
and the occupational disease, (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 em-
ployment as the proximate cause, (4) that it does not
come from a hazard to which workmen would have been
equally exposed outside of the employment, (5) that it
is incidental to the character of the business and not
independent of the relation of employer and employee,
and (6) that it must appear to have had its origin in a
risk connected with the employment and to have flowed
from that source as a natural consequence, though it need not have been foreseen or expected before its contraction.

Except in the case of silicosis, no award shall be made under the provisions of this chapter for any occupational disease contracted prior to the first day of July, one thousand nine hundred forty-nine. An employee shall be deemed to have contracted an occupational disease within the meaning of this paragraph if the disease or condition has developed to such an extent that it can be diagnosed as an occupational disease.

§23-4-2. Disbursement where injury is self-inflicted or intentionally caused by employer; rules and safety appliances; "wilful 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 to any employee
9 caused by a self-inflicted injury, wilful misconduct, wil-
10 ful disobedience to such rules and regulations as may
11 be adopted by the employer and approved by the com-
12 missioner of labor or director of the department of
13 mines, and which rules and regulations have been and
14 are kept posted in conspicuous places in and about the
15 work, wilful self-exposure in case of occupational pneu-
16 moconiosis or other occupational disease, as defined
17 herein, or the intoxication of such employee, or the failure
18 of such employee to use or make use of any protective
19 or safety appliance or appliances prescribed by the com-
20 missioner and furnished by the employer for the use
21 of or applicable to such employee. For the purpose of
22 this chapter, the commissioner may cooperate with the
23 state department of mines and the state department of
24 labor in promoting general safety programs and in form-
25 ulating rules and regulations to govern hazardous em-
26 ployments. If injury or death result to any employee
27 from the deliberate intention of his employer to produce
28 such injury or death, the employee, the widow, widower,
child or dependent of the employee shall have the priv-
ilege 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 "wilful self-exposure"
causing the contraction of the disease of occupational
pneumoconiosis or other occupational disease shall also
include: (1) Failure or omission on the part of an em-
ployee truthfully to state to the best of his knowledge,
in answer to inquiry made by the employer, the place,
duration and nature of previous employment; (2) Failure
or omission on the part of an employee truthfully to
furnish, to the best of his knowledge, in answer to an
inquiry made by the employer, full information as to
the previous state of his health, as to exposure to lung
diseases, 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.
§23-4-3. Schedule of maximum disbursements for medical, surgical, dental and hospital treatment; charges in excess of scheduled amounts not to be made; contract by employer with hospital, physician, etc., prohibited; penalties.

1 The commissioner shall establish, and alter from time to time as he may determine to be appropriate, a schedule of the maximum reasonable amounts to be paid to physicians, surgeons, hospitals or other persons, firms or corporations for the rendering of treatment to injured employees under this chapter. Except in the case of occupational pneumoconiosis, 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 medicines, medical, surgical, dental and hospital treatment, crutches, artificial limbs and such other and additional approved mechanical appliances and devices, as may be reasonably required and as are, in the case of medical, surgical, dental or hospital treatment only, within the maximum amount provided for by schedule established by the commissioner as aforesaid, but not as to any one injured em-
ployee in excess of three thousand dollars: Provided,

That in special cases where the treatment required, in the opinion of competent medical authority, is such as to necessitate an expenditure in excess of said sum of three thousand dollars, the commissioner may pay out of any available funds such additional sum as may be necessary, 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, firm or corporation who or which has rendered such treatment or furnished any of the items specified above, or who has 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: Provided, however,

That no payment hereunder shall be made unless such
verified statement shows no charge for or with respect
to such treatment or for or with respect to any of the
items specified above has been or will be made against
the injured employee or any other person, firm or cor-
portion, and when an employee covered under the pro-
visions of this chapter is injured in the course of and
as a result of his employment and is accepted for medi-
cal, surgical, dental or hospital treatment, the person,
firm or corporation rendering such treatment is hereby
prohibited from making any charge or charges therefor
or with respect thereto against the injured employee
or any other person, firm or corporation which would
result in a total charge for the treatment rendered in
excess of the maximum amount set forth therefor in
the commissioner's schedule established as aforesaid.

(c) No employer shall enter into any contracts with
any hospital, its physicians, officers, agents or em-
ployees 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 chapter, 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 comp-
pensable injury. Any employer violating this section
shall be liable in damages to his or its employees and
shall not avail himself of any of the common-law de-
fenses mentioned in section eight, article two of this
chapter, and any employer or hospital or agent or em-
ployee thereof violating the provisions of this section
shall be guilty of a misdemeanor, and, upon conviction
thereof, shall be sentenced to pay a fine not exceeding
one thousand dollars or undergo imprisonment not ex-
ceeding one year, or both.

(d) When an injury has been reported to the com-
missioner by the employer without protest, the commis-
sioner may pay, or order an employer who or which
made the election and who or which received the per-
mission mentioned in section nine, article two of this
chapter to pay, within the maximum amount provided
by schedule established by the commissioner as afore-
said, bills for medical or hospital services without re-
quiring the injured employee to file an application for
benefits.

§23-4-4. Funeral expenses.

1 In case the personal injury causes death, and disability
2 is continuous from the date of such injury to date of
3 death, reasonable funeral expenses, not to exceed seven
4 hundred fifty dollars, shall be paid from the fund, pay-
5 ment to be made to the persons who have furnished the
6 services and supplies, or to the persons who have ad-
7 vanced payment for same, as the commissioner may deem
8 proper, in addition to such award as may be made to the
9 employee's dependents.

§23-4-6. Classification of disability benefits.

1 Where compensation is due an employee under the
2 provisions of this chapter for a personal injury, such
3 compensation shall be as provided in the following sched-
4 ule:

5 (a) The expressions "average weekly wage earnings,
6 wherever earned, of the injured employee, at the date
of injury” and “average weekly wage in West Virginia,”
as used in this chapter, shall have the meaning and shall
be computed as set forth in section fourteen of this ar-
ticle.

(b) If the injury causes temporary total disability,
the employee shall receive during the continuance there-
of weekly benefits as follows: On and after July one,
one thousand nine hundred sixty-nine, and through June
thirty, one thousand nine hundred seventy, inclusive, the
employee shall receive a minimum of twenty-six dollars
per week and a maximum weekly benefit to be com-
puted on the basis of sixty-six and two thirds percent of
the average weekly earnings, wherever earned, of the in-
jured employee, at the date of injury, not to exceed
forty-five percent of the average weekly wage in West
Virginia; and on and after July one, one thousand nine
hundred seventy, the employee shall receive a minimum
of not less than twenty-six dollars per week and a maxi-
mum of sixty-six and two thirds percent of the average
weekly wage earnings, wherever earned, of the injured
employee, at the date of injury, not to exceed fifty per-
cent of the average weekly wage in West Virginia.

(c) Subdivision (b) shall be limited as follows: Aggregate award for a single injury causing temporary disability shall be for a period not exceeding two hundred eight weeks.

(d) If the injury causes permanent disability, the percentage of disability to total disability shall be determined and the award computed and allowed as follows:

On and after July one, one thousand nine hundred sixty-nine, and through June thirty, one thousand nine hundred seventy, inclusive, for permanent disability of from one percent to eighty-four percent, inclusive, sixty-six and two thirds percent of the average weekly earnings, wherever earned, of the injured employee, at the date of injury, not to exceed forty-five percent of the average weekly wage in West Virginia, for a period to be computed on the basis of four weeks compensation for each percent of disability determined.

On and after July one, one thousand nine hundred seventy, for permanent disability of from one percent
to eighty-four percent, inclusive, sixty-six and two thirds percent of the average weekly earnings, wherever earned, of the injured employee at the date of injury, not to exceed fifty percent of the average weekly wage in West Virginia, for a period to be computed on the basis of four weeks compensation for each percent of disability determined.

On and after July one, one thousand nine hundred sixty-nine, through June thirty, one thousand nine hundred seventy, inclusive, for a disability of eighty-five percent to one hundred percent, inclusive, sixty-six and two thirds percent of the average weekly earnings, wherever earned, of the injured employee, at the date of injury, not to exceed forty-five percent of the average weekly wage in West Virginia, during the remainder of life.

On and after July one, one thousand nine hundred seventy, for a disability of eighty-five percent to one hundred percent, inclusive, sixty-six and two thirds percent of the average weekly earnings, wherever earned, of the injured employee, at the date of injury, not to
exceed fifty percent of the average weekly wage in West Virginia, during the remainder of life.

(e) 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 (d) of this section:

- The loss of a great toe shall be considered a ten percent disability.
- The loss of a great toe (one phalanx) shall be considered a five percent disability.
- The loss of other toes shall be considered a four percent disability.
- The loss of other toes (one phalanx) shall be considered a two percent disability.
- The loss of all toes shall be considered a twenty-five percent disability.
- The loss of fore part of foot shall be considered a thirty percent disability.
- The loss of foot shall be considered a thirty-five percent disability.
The loss of a leg shall be considered a forty-five percent disability.

The loss of thigh shall be considered a fifty percent disability.

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

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

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

The loss of ring or third finger (one phalanx) shall be considered a seven percent disability.

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

The loss of thumb (one phalanx) shall be considered a twelve percent disability.

The loss of thumb shall be considered a twenty percent disability.

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

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

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

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

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

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

The loss of middle, ring and little finger shall be considered a twenty percent disability.
The loss of four fingers shall be considered a thirty-two percent disability.

The loss of hand shall be considered a fifty percent disability.

The loss of forearm shall be considered a fifty-five percent disability.

The loss of arm shall be considered a sixty percent disability.

The total and irrecoverable loss of the sight of one eye shall be considered a thirty-three percent disability.

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.

The total and irrecoverable loss of the hearing of one ear shall be considered a fifteen percent disability, and the injured employee shall be entitled to compensation for a period of sixty weeks. The total and irrecoverable loss of the hearing of both ears shall be considered a forty-five percent disability, and the injured employee shall be entitled to compensation for a period of one hundred eighty weeks.
For the partial loss of hearing in one, or both ears, the percentage of disability shall be determined by the commissioner, using as a basis the total loss of hearing in both ears.

(f) Should a claimant to whom has been made a permanent partial award of from one percent to eighty-four percent, 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 made 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.

(g) The award for permanent disabilities intermediate to those fixed by the foregoing schedule and permanent disability of from one percent to eighty-four percent shall be in the same proportion and shall be computed and allowed by the commissioner.
(h) The percentage of all permanent disabilities other than those enumerated in subdivisions (d), (e), (f) and (g) of this section shall be determined by the commissioner, and award made in accordance with the provisions of subdivision (d).

(i) Compensation payable under any subdivision of this section shall be limited as follows: Not to exceed the maximum weekly benefit specified in subdivision (b) of this section, nor to be less than a minimum of twenty-six dollars a week.

(j) Where an injury results in temporary total disability for which compensation is awarded under subdivision (b) of this section and such injury is later determined permanent partial disability under subdivision (d), the amount of compensation so paid in excess of ten weeks shall be considered as payment of the compensation payable for such injury in accordance with the schedule in subdivision (d): Provided, That in cases where the amount of permanent partial disability is specifically provided for under subdivision (e) of this section, payments made under subdivision (b) shall not be
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194 considered as payment of the compensation for such in-
195 jury. Compensation, either total temporary or perma-
196 nent partial, under this section shall be payable only
197 to the injured employee and the right thereto shall not
198 vest in his or her estate, except that any unpaid compen-
199 sation which would have been paid or payable to the
200 employee up to the time of his death, if he had lived,
201 shall be paid to the dependents of such injured employee
202 if there be such dependents at the time of death.
203 (k) The following permanent disabilities shall be con-
204 clusively presumed to be total in character:
205 Loss of both eyes or the sight thereof.
206 Loss of both hands or the use thereof.
207 Loss of both feet or the use thereof.
208 Loss of one hand and one foot or the use thereof.
209 In all other cases permanent disability shall be deter-
210 mined by the commissioner in accordance with the facts
211 in the case, and award made in accordance with the pro-
212 visions of subdivision (d).
§23-4-6a. Benefits and mode of payment to employees and dependents for occupational pneumoconiosis; further adjustment of claim for occupational pneumoconiosis.

1 If an employee is found to be permanently disabled due to occupational pneumoconiosis, as defined in section one of this article, the percentage of permanent disability shall be determined by the commissioner in accordance with the facts in the case and with the advice and recommendation of the occupational pneumoconiosis board. Compensation shall be paid therefor in the same manner and at the same rate as is provided for permanent disability under the provisions of subdivisions (d), (f), (g), (h) and (i) of the preceding section of this article.

12 Impairment of the employee's ability to function normally or to undergo normal prolonged exertion when compared with an average man of his age and like general physical condition may be considered in the determination of the employee's disability from occupational pneumoconiosis.

18 If the employee dies from occupational pneumoconiosis
within ten years from the date of his last exposure to
such disease, 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.

In cases of permanent disability or death due to occu-
pational pneumoconiosis, as defined in section one of this
article, accompanied by active tuberculosis of the lungs,
compensation shall be payable as for disability or death
due to occupational pneumoconiosis alone.

The provisions of section sixteen, article four and sec-
tions one-a, one-b, one-c and one-d, article five of this
chapter providing for the further adjustment of claims
shall be applicable to the claim of any claimant who re-
ceives a permanent partial disability award for occupa-
tional pneumoconiosis.

§23-4-8. Physical examination of claimant.

1 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 occupa-
tional pneumoconiosis 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 occupational pneumoconiosis, 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 pneumoconiosis board hereinafter provided.
If the compensation claimed is for an occupational disease other than occupational pneumoconiosis, 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.

Where the claimant is required to undergo a medical examination or examinations by a physician or physicians selected by the employer, in addition to the reasonable traveling and other expenses, not to exceed the expenses paid when a claimant is examined by a physician or physicians selected by the commissioner, such claimant shall be reimbursed by the employer for loss of wages necessarily incurred by him in connection with such examination or examinations.
§23-4-8a. Occupational pneumoconiosis board created; term of office; duties; remuneration.

1 The medical board created by the former provisions of this section and known as the “Silicosis Medical Board” shall continue in existence but on and after the effective date of this act shall be known and designated as the “Occupational Pneumoconiosis Board.” Such medical board shall consist of three licensed physicians, who shall 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 pulmonary diseases. All members of the occupational pneumoconiosis board shall be physicians of good professional standing, admitted to practice medicine and surgery in this state, and one of them shall be a roentgenologist. One of the board shall be designated annually as chairman by the commissioner. The term of office of each member of such board shall be six years. The three members of the existing board, as redesignated herein, in office on the effective date of this act shall continue to serve
20 until their terms expire and until their successors have
21 been appointed and have qualified. Any member of the
22 board may be appointed to any number of terms. The
23 function of the board shall be to determine all medical
24 questions relating to cases of compensation for occupa-
25 tional pneumoconiosis under the direction and super-
26 vision of the commissioner. The commissioner, from time
27 to time, shall fix the per diem salary, computed on the
28 basis of actual time devoted to the discharge of their
29 duties, to be paid each member of such board, and they
30 shall also be entitled to reasonable and necessary travel-
31 ing and other expenses incurred while actually engaged
32 in the performance of their duties.

§23-4-8b. Occupational pneumoconiosis board; procedure;
autopsy.

1 The occupational pneumoconiosis board, upon refer-
2 ence to it by the commissioner of a case of occupational
3 pneumoconiosis, shall notify the employee, or in case
4 he is dead, the claimant, and the employer, to appear
5 before such board at a time and place stated in the
6 notice. If the employee be living, he shall appear before
the board at the time and place specified and submit
to such examination, including clinical and X-ray exam-
inations, as the board may require. If a physician li-
censed 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 to the board all reports of
medical and X-ray examinations which may be in their
respective possession or control, showing the past or
present condition of the employee. If the employee be
dead, the notice of the board shall further require that
the claimant produce necessary consents and permits
so that an autopsy may be performed, if the board shall
so direct. When in the opinion of the board an autopsy
is deemed necessary accurately and scientifically to
ascertain and determine the cause of death, such au-
topsy 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, and to be represented by attorneys and physicians.

§23-4-8c. The occupational pneumoconiosis board; reports and distribution thereof; presumption; findings required of board; objection to findings; procedure thereon.

(a) The occupational pneumoconiosis 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 state-
ments under oath, if any, of the persons who appeared
before it on behalf of the employee or claimant, or em-
ployer, and also all medical reports and X-ray examina-
tions produced by or on behalf of the employee or claim-
ant, or employer.

(b) If it can be shown that the claimant or deceased
employee has been exposed to the hazard of inhaling
minute particles of dust in the course of and resulting
from his employment for a period of ten years during
the fifteen years immediately preceding the date of his
last exposure to such hazard and that such claimant or
deceased employee has sustained a medically diagnos-
able disease of the lungs consistent with a diagnosis of
occupational pneumoconiosis, then it shall be presumed
that such claimant or deceased employee is suffering
from occupational pneumoconiosis which arose out of
and in the course of his employment. This presumption
shall not be conclusive.
(c) The findings and conclusions of the board shall set forth, among other things, the following:

(1) Whether or not the claimant or the deceased employee has contracted occupational pneumoconiosis, and if so, the percentage of permanent disability resulting therefrom.

(2) Whether or not the exposure in the employment was sufficient to have caused the claimant’s or deceased employee’s pneumoconiosis or to have perceptibly aggravated an existing pneumoconiosis.

(3) What, if any, physician appeared before the board on behalf of the claimant or employer, and what, if any, medical evidence was produced by or on behalf of the claimant or employer.

If either party objects to the whole or any part of such findings and conclusions of the board, he shall file with the commissioner, within fifteen days of the mailing of such copy to him, unless for good cause shown the commissioner extends such time, his objections thereto in writing, specifying the particular statements of the board’s findings and conclusions to which he objects.
After the time has expired for the filing of objections
to the findings and conclusions of the board, the com-
missioner shall proceed to act as provided in this chap-
ter. If after the time has expired for the filing of ob-
jections 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 joining in such findings and con-
clusions shall appear at the time fixed by the commis-
sioner for the hearing to submit to examination and
cross-examination in respect to such findings and con-
clusions. At such hearing evidence to support or con-
trovert the findings and conclusions of the board shall
shall be limited to examination and cross-examination
of the members of the board, and to the taking of tes-
timony of other qualified physicians and roentgenolo-
gists.
§23-4-8d. Occupational diseases medical board created; qualifications; term of office, duties; remunerations.

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 occupational pneumoconiosis, 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 travel-
ing 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.

§23-4-8e. Occupational diseases medical board; procedure,
autopsy.

1 The occupational diseases medical board, upon refer-
ence to it by the commissioner of a case involving an
occupational disease other than occupational pneumo-
coniosis, 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 clini-
cal and X-ray examinations, as the board may require.
If a physician licensed to practice medicine in the state
shall make affidavit that the employee is physically 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 hear-
ing 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 exami-
nations which may be in their respective possession or
control, showing the past or present condition of the
employee. If the employee be dead, the notice of the
board shall further require that the claimant produce
necessary consents and permits so that an autopsy may be performed, if the board shall so direct. When in the opinion of the board an autopsy is deemed necessary accurately and scientifically to ascertain and determine the cause of death, such autopsy examination shall be ordered by the board, which shall designate a duly 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.

§23-4-10. Classification of death benefits; “dependent” defined.

In case a personal injury other than occupational pneumoconiosis or other occupational disease, suffered
by an employee in the course of and resulting from his employment, causes death within the period of ten years and disability is continuous from date of such injury until date of death, or if death results from occupational pneumoconiosis or from any other occupational disease within ten years from the date of the last exposure to the hazards of occupational pneumoconiosis 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 widow or invalid widower, the payment shall be one hundred ten dollars a month until death or remarriage of such widow or widower, and in addition thirty-five dollars a month for each child under eighteen years of age, to be paid until such child reaches such age, or where such child after reaching eighteen years of age continues as a full-time student in an accredited high school,
college, university, business or trade school, to be paid until such child reaches the age of twenty-two years, or, if an invalid child, forty 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 percent 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 widow is living a life of prostitution, the commissioner shall stop the payments of the benefits herein provided to such widow or widower.
If the deceased employee be a widow or widower and leaves a child or children under the age of eighteen years, the payments shall be forty-five dollars a month to each child until he or she reaches the age of eighteen years, or where such child after reaching eighteen years of age continues as a full-time student in an accredited high school, college, university, business or trade school to be paid until such child reaches the age of twenty-two years.

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

(c) If the deceased employee leaves no dependent widow or widower and leaves a wholly dependent father or mother, he or she shall be paid the sum of eighty dollars a month, payments to continue until death, and if there be no widow or widower and both the father and mother are wholly dependent, then a joint award shall be made to the father and mother in the sum of eighty dollars a month until death.

Upon the death of either the father or mother in any
case in which a joint award has been made to them, the
full award of eighty dollars a month shall be paid to the
survivor until his or her death.

(d) If the deceased employee leaves no dependent
widow or widower or wholly dependent father or mother
but there are other wholly dependent persons, as defined
in subdivision (f) of this section, the payment shall
be sixty-five dollars a month, to continue for six years
after the death of the deceased, except as otherwise pro-
vided 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 de-
pendent persons at the time of death, the payment shall
be thirty-five dollars a month, to continue for such por-
tion of the period of six years after the death, as the com-
missioner may determine, but no such partially depend-
ent person shall receive compensation payments as a re-
sult 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, or under twenty-two years of age when a full-time student as provided herein, invalid child or 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, or under twenty-two years of age when a full-time student as provided herein, child under eighteen years of age legally adopted prior to the injury causing death, or under twenty-two years of age when a full-time student as provided herein, 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; and 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.


1 The average weekly wage earnings, wherever earned,
2 of the injured person at the date of injury, and the
3 average weekly wage in West Virginia as determined
4 by the commissioner of employment security, in effect
5 at the date of injury, shall be taken as the basis upon
6 which to compute the benefits.
7 In cases involving occupational pneumoconiosis or
8 other occupational diseases, the “date of injury” shall
9 be the date of the last exposure to the hazards of occu-
10 pational pneumoconiosis or other occupational dis-
11 eases.
12 In computing benefits payable on account of occu-
13 pational pneumoconiosis, the commissioner shall deduct
14 the amount of all prior workmen’s compensation benefits
15 paid to the same claimant on account of silicosis, but a
16 prior silicosis award shall not, in any event, preclude an
17 award for occupational pneumoconiosis otherwise pay-
18 able under this article.
The expression “average weekly wage earnings, wherever earned, of the injured person, at the date of injury,” within the meaning of this chapter, shall be two months, six or twelve months immediately preceding the date of the injury.

The expression “average weekly wage in West Virginia,” within the meaning of this chapter, shall be the average weekly wage in West Virginia as determined by the commissioner of employment security in accordance with the provisions of sections ten and eleven, article six, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and other applicable provisions of said chapter twenty-one-a.


To entitle any employee or dependent of a deceased employee to compensation under this chapter, other than for occupational pneumoconiosis or other occupational disease, the application therefor must be made on the form or forms prescribed 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 commissioner 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.
It shall be the duty of every employer to report to the
commissioner every injury sustained by any person in
his employ. Such report shall be on forms prescribed
by the commissioner and shall be made within sixty
days from the date the employer first receives knowledge
of such injury.
To entitle any employee to compensation for occu-
pational pneumoconiosis under the provisions hereof, the
application therefor must be made on the form or forms
prescribed by the commissioner and filed in the office
of the commissioner within three 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 hazards of occupational pneumoconiosis, or, in the
27 case of death, the application shall be filed as aforesaid
28 by the dependent of such employee within one year
29 from and after such employee's death.
30 To entitle any employee to compensation for occup-
31 pational disease other than occupational pneumoconiosis
32 under the provisions hereof, the application therefor must
33 be made on the form or forms prescribed by the com-
34 missioner and filed in the office of the commissioner
35 within three years from and after the day on which
36 the employee was last exposed to the particular occu-
37 pational hazard involved, or, in the case of death, the
38 application shall be filed as aforesaid by the dependent
39 of such employee within one year from and after such
40 employee's death.

§23-4-15b. Determination of nonmedical questions by com-
missioner—Claims for occupational pneumo-
coniosis; hearing.

1 If a claim for occupational pneumoconiosis benefits be
2 filed by an employee, the commissioner shall determine
3 whether the claimant was exposed to the hazards of oc-
4 cupational pneumoconiosis for a continuous period of
5 not less than sixty days while in the employ of the
employer within three years prior to the filing of his
claim 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 immediately
preceding the date of his last exposure thereto and
whether the claimant was exposed to such hazard over
a period of not less than ten years during the fifteen
years immediately preceding the date of his last ex-
posure thereto. If a claim for occupational pneumocon-
iosis benefits be filed by a dependent of a deceased
employee, the commissioner shall determine whether
the deceased employee was exposed to the hazards of
occupational pneumoconiosis for a continuous period of
not less than sixty days while in the employ of the
employer within ten years prior to the filing of the
claim whether in the state of West Virginia the de-
ceased employee 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 and whether the claimant was
exposed to such hazard over a period of not less than
ten years during the fifteen years immediately preceding the date of his last exposure thereto. The commissioner 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.

§23-4-15c. Same—Hearing on claim for occupational diseases other than occupational pneumoconiosis.

On the hearing of a claim for compensation for an occupational disease other than occupational pneumoconiosis, 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 three 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.
11  (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.

15  (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.

19  (d) Whether the last injurious exposure to the hazard causing occupational disease in the employment with the employer occurred within three 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.

27  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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William Tongan
Chairman Senate Committee

Clayton C. Hawes
Chairman House Committee

Originated in the House.

Takes effect July 1, 1969.

Clarence Hays
Clerk of the Senate

O.A. Blandenship
Clerk of the House of Delegates

Evelyn McElhinney
President of the Senate

Ivo F. Brown
Speaker House of Delegates

The within approved this the 11th day of March, 1969.

Archab. T. Moore Jr.
Governor
PRESENTED TO THE
GOVERNOR

Date 3/11/69
Time 10:00 A.M.

PENNED
May 15, 1969

CAPT. GEORGE
SMAIL OF PENNSYLVANIA