

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1969



ENROLLED

HOUSE BILL No. 1040

(By ~~Mr.~~ *Originating in the Committee*
on the Judiciary)

PASSED March 8, 1969

In Effect July 1, 1969 ~~Passage~~



FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE
THIS DATE _____

#1040

ENROLLED

House Bill No. 1040

(Originating in the Committee on the Judiciary)

[Passed March 8, 1969: In effect July 1, 1969.]

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.

1. Annually, on or about the fifteenth day of September

2 in each year, the commissioner, the occupational pneumo-
3 coniosis board and the occupational diseases medical
4 board, shall make a report as of the thirtieth day of June
5 addressed to the governor, which shall include a state-
6 ment of the causes of the injuries for which the awards
7 were made, an explanation of the diagnostic techniques
8 used by the respective medical boards and all examining
9 physicians to determine the presence of disease, the extent
10 of impairment attributable thereto, a description of the
11 scientific support for such techniques, and a summary
12 of public and private research relating to problems and
13 prevention of occupational diseases. The report shall
14 include a detailed statement of all disbursements, and the
15 condition of the fund, together with any specific recom-
16 mendations for improvements in the workmen's compen-
17 sation law and for more efficient and responsive adminis-
18 tration thereof, which the commissioner may deem ap-
19 propriate. Copies of all annual reports shall be filed with
20 the secretary of state and shall be made available to the
21 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.

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

18 vided in section two, article one of this chapter.

19 For the purposes of this chapter the terms "injury"
20 and "personal injury" shall include occupational pneumo-
21 coniosis and any other occupational disease, as herein-
22 after defined, and the commissioner shall likewise dis-
23 burse the workmen's compensation fund to the employees
24 of such employers as are not delinquent in the payment
25 of premiums for the last quarter in which such em-
26 ployees have been exposed to the hazards of occupa-
27 tional pneumoconiosis or other occupational disease, or
28 have suffered a perceptible aggravation of an existing
29 pneumoconiosis, in this state in the course of and resulting
30 from their employment, or to the dependents, if any, of
31 such employees, in case death has ensued, according to the
32 provisions hereinafter made: *Provided*, That compensa-
33 tion shall not be payable for the disease of occupational
34 pneumoconiosis, or death resulting therefrom, unless in
35 the state of West Virginia the employee has been exposed
36 to the hazards of occupational pneumoconiosis over a
37 continuous period of not less than two years during the
38 ten years immediately preceding the date of his last

39 exposure to such hazards. An application for benefits on
40 account of occupational pneumoconiosis shall set forth
41 the name of the employer or employers and the time
42 worked for each, and the commissioner may allocate to
43 and divide any charges on account of such claim among
44 the employers by whom the claimant was employed for
45 as much as sixty days during the period of three years
46 immediately preceding the filing of the application. The
47 allocation shall be based upon the time and degree of ex-
48 posure with each employer.

49 For the purpose of this chapter disability or death
50 resulting from occupational pneumoconiosis, as defined in
51 the immediately succeeding sentence, shall be treated
52 and compensated as an injury by accident.

53 Pneumoconiosis is a disease of the lungs caused by the
54 inhalation of minute particles of dust over a period of
55 time which has produced pinhead or other nodulation or
56 pathological or abnormal physiological change generally
57 accepted by recognized specialists in the field of respira-
58 tory diseases as supporting a diagnosis of pneumoconiosis
59 and which can be identified by X-rays or other medical

60 evidence and a pneumoconiosis shall be considered to be
61 an occupational pneumoconiosis when the pneumoconiosis
62 results from causes and conditions arising out of and
63 in the course of the employment. The term "occupational
64 pneumoconiosis" shall include, but shall not be limited
65 to, such diseases as silicosis, anthracosilicosis, coal work-
66 er's pneumoconiosis, commonly known as black lung or
67 miner's asthma, silico-tuberculosis (silicosis accompanied
68 by active tuberculosis of the lungs), coal worker's pneu-
69 moconiosis accompanied by active tuberculosis of the
70 lungs, tuberculo-silicosis, asbestosis, siderosis, anthrax
71 and any and all other dust diseases of the lungs and
72 conditions and diseases caused by occupational pneumo-
73 coniosis which are not specifically designated herein
74 meeting the definition of occupational pneumoconiosis
75 set forth in the immediately preceding sentence.

76 X-ray evidence shall not necessarily be held conclusive
77 insofar as it bears upon the absence or presence of occu-
78 pational pneumoconiosis.

79 For the purpose of this chapter, occupational disease
80 means a disease incurred in the course of and resulting

81 from employment. No ordinary disease of life to which
82 the general public is exposed outside of the employment
83 shall be compensable except when it follows as an incident
84 of occupational disease as defined in this chapter. Except
85 in the case of occupational pneumoconiosis, a disease shall
86 be deemed to have been incurred in the course of or to
87 have resulted from the employment only if it is apparent
88 to the rational mind, upon consideration of all the cir-
89 cumstances (1) that there is a direct causal connection
90 between the conditions under which work is performed
91 and the occupational disease, (2) that it can be seen
92 to have followed as a natural incident of the work as
93 a result of the exposure occasioned by the nature of the
94 employment, (3) that it can be fairly traced to the em-
95 ployment as the proximate cause, (4) that it does not
96 come from a hazard to which workmen would have been
97 equally exposed outside of the employment, (5) that it
98 is incidental to the character of the business and not
99 independent of the relation of employer and employee,
100 and (6) that it must appear to have had its origin in a
101 risk connected with the employment and to have flowed

102 from that source as a natural consequence, though it
103 need not have been foreseen or expected before its con-
104 traction.

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

**§23-4-2. Disbursement where injury is self-inflicted or inten-
tionally caused by employer; rules and safety ap-
pliances; "wilful self-exposure" defined.**

1 Notwithstanding anything hereinbefore or hereinafter
2 contained, no employee or dependent of any employee
3 shall be entitled to receive any sum from the workmen's
4 compensation fund, or to direct compensation from any
5 employer making the election and receiving the permis-
6 sion mentioned in section nine, article two of this chapter,
7 or otherwise under the provisions of this chapter, on ac-
8 count 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,

29 child or dependent of the employee shall have the pri-
30 vilege to take under this chapter, and shall also have
31 cause of action against the employer, as if this chapter
32 had not been enacted, for any excess of damages over
33 the amount received or receivable under this chapter.

34 As used in this section the term "wilful self-exposure"
35 causing the contraction of the disease of occupational
36 pneumoconiosis or other occupational disease shall also
37 include: (1) Failure or omission on the part of an em-
38 ployee truthfully to state to the best of his knowledge,
39 in answer to inquiry made by the employer, the place,
40 duration and nature of previous employment; (2) Failure
41 or omission on the part of an employee truthfully to
42 furnish, to the best of his knowledge, in answer to an
43 inquiry made by the employer, full information as to
44 the previous state of his health, as to exposure to lung
45 diseases, to any other occupational disease, or to any
46 condition likely to cause an occupational disease, and
47 as to any special medical attention that he may have
48 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
2 to time as he may determine to be appropriate, a sched-
3 ule of the maximum reasonable amounts to be paid to
4 physicians, surgeons, hospitals or other persons, firms or
5 corporations for the rendering of treatment to injured
6 employees under this chapter. Except in the case of
7 occupational pneumoconiosis, the commissioner shall
8 disburse and pay from the fund for such personal in-
9 juries to such employees as may be entitled thereto
10 hereunder as follows:

11 (a) Such sums for medicines, medical, surgical,
12 dental and hospital treatment, crutches, artificial limbs
13 and such other and additional approved mechanical ap-
14 pliances and devices, as may be reasonably required and
15 as are, in the case of medical, surgical, dental or hos-
16 pital treatment only, within the maximum amount
17 provided for by schedule established by the commis-
18 sioner as aforesaid, but not as to any one injured em-

19 ployee in excess of three thousand dollars: *Provided*,
20 That in special cases where the treatment required, in
21 the opinion of competent medical authority, is such as to
22 necessitate an expenditure in excess of said sum of three
23 thousand dollars, the commissioner may pay out of any
24 available funds such additional sum as may be necessary,
25 but such additional sum shall not be charged to the
26 account of the employer.

27 (b) Payment for such medicine, medical, surgical,
28 dental and hospital treatment, crutches, artificial limbs
29 and such other and additional approved mechanical
30 appliances and devices authorized under subdivision (a)
31 hereof may be made to the injured employee, or to the
32 person, firm or corporation who or which has rendered
33 such treatment or furnished any of the items specified
34 above, or who has advanced payment for same, as the
35 commissioner may deem proper, but no such payments
36 or disbursements shall be made or awarded by him un-
37 less duly verified statements on forms prescribed by the
38 commissioner shall be filed with the commissioner
39 within six months after the cessation of such treatment

40 or the delivery of such appliances: *Provided, however,*
41 That no payment hereunder shall be made unless such
42 verified statement shows no charge for or with respect
43 to such treatment or for or with respect to any of the
44 items specified above has been or will be made against
45 the injured employee or any other person, firm or cor-
46 poration, and when an employee covered under the pro-
47 visions of this chapter is injured in the course of and
48 as a result of his employment and is accepted for medi-
49 cal, surgical, dental or hospital treatment, the person,
50 firm or corporation rendering such treatment is hereby
51 prohibited from making any charge or charges therefor
52 or with respect thereto against the injured employee
53 or any other person, firm or corporation which would
54 result in a total charge for the treatment rendered in
55 excess of the maximum amount set forth therefor in
56 the commissioner's schedule established as aforesaid.

57 (c) No employer shall enter into any contracts with
58 any hospital, its physicians, officers, agents or em-
59 ployees to render medical, dental or hospital service or
60 to give medical or surgical attention therein to any

61 employee for injury compensable within the purview
62 of this chapter, and no employer shall permit or require
63 any employee to contribute, directly or indirectly, to any
64 fund for the payment of such medical, surgical, dental
65 or hospital service within such hospital for such com-
66 pensable injury. Any employer violating this section
67 shall be liable in damages to his or its employees and
68 shall not avail himself of any of the common-law de-
69 fenses mentioned in section eight, article two of this
70 chapter, and any employer or hospital or agent or em-
71 ployee thereof violating the provisions of this section
72 shall be guilty of a misdemeanor, and, upon conviction
73 thereof, shall be sentenced to pay a fine not exceeding
74 one thousand dollars or undergo imprisonment not ex-
75 ceeding one year, or both.

76 (d) When an injury has been reported to the com-
77 missioner by the employer without protest, the commis-
78 sioner may pay, or order an employer who or which
79 made the election and who or which received the per-
80 mission mentioned in section nine, article two of this
81 chapter to pay, within the maximum amount provided

82 by schedule established by the commissioner as afore-
83 said, bills for medical or hospital services without re-
84 quiring the injured employee to file an application for
85 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

7 of injury” and “average weekly wage in West Virginia,”
8 as used in this chapter, shall have the meaning and shall
9 be computed as set forth in section fourteen of this ar-
10 ticle.

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

28 cent of the average weekly wage in West Virginia.

29 (c) Subdivision (b) shall be limited as follows: Aggre-
30 gate award for a single injury causing temporary dis-
31 ability shall be for a period not exceeding two hundred
32 eight weeks.

33 (d) If the injury causes permanent disability, the
34 percentage of disability to total disability shall be de-
35 termined and the award computed and allowed as fol-
36 lows:

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

47 On and after July one, one thousand nine hundred
48 seventy, for permanent disability of from one percent

49 to eighty-four percent, inclusive, sixty-six and two thirds
50 percent of the average weekly earnings, wherever earned,
51 of the injured employee at the date of injury, not to
52 exceed fifty percent of the average weekly wage in West
53 Virginia, for a period to be computed on the basis of
54 four weeks compensation for each percent of disability
55 determined.

56 On and after July one, one thousand nine hundred
57 sixty-nine, through June thirty, one thousand nine hun-
58 dred seventy, inclusive, for a disability of eighty-five
59 percent to one hundred percent, inclusive, sixty-six and
60 two thirds percent of the average weekly earnings, wher-
61 ever earned, of the injured employee, at the date of in-
62 jury, not to exceed forty-five percent of the average
63 weekly wage in West Virginia, during the remainder
64 of life.

65 On and after July one, one thousand nine hundred
66 seventy, for a disability of eighty-five percent to one
67 hundred percent, inclusive, sixty-six and two thirds per-
68 cent of the average weekly earnings, wherever earned,
69 of the injured employee, at the date of injury, not to

70 exceed fifty percent of the average weekly wage in West
71 Virginia, during the remainder of life.

72 (e) If the injury results in the total loss by severance
73 of any of the members named in this subdivision, the
74 percentage of disability shall be determined in accord-
75 ance with the following table, and award made as pro-
76 vided in subdivision (d) of this section:

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

79 The loss of a great toe (one phalanx) shall be con-
80 sidered a five percent disability.

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

83 The loss of other toes (one phalanx) shall be considered
84 a two percent disability.

85 The loss of all toes shall be considered a twenty-five
86 percent disability.

87 The loss of fore part of foot shall be considered a thirty
88 percent disability.

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

91 The loss of a leg shall be considered a forty-five per-
92 cent disability.

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

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

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

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

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

103 The loss of ring or third finger shall be considered a
104 five percent disability.

105 The loss of middle or second finger (one phalanx) shall
106 be considered a three percent disability.

107 The loss of middle or second finger shall be considered
108 a seven percent disability.

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

111 The loss of index or first finger shall be considered a
112 ten percent disability.

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

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

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

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

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

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

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

127 The loss of index, middle and ring finger shall be con-
128 sidered a thirty percent disability.

129 The loss of middle, ring and little finger shall be con-
130 sidered a twenty percent disability.

131 The loss of four fingers shall be considered a thirty-two
132 percent disability.

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

135 The loss of forearm shall be considered a fifty-five per-
136 cent disability.

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

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

141 For the partial loss of vision in one, or both eyes, the
142 percentage of disability shall be determined by the com-
143 missioner, using as a basis the total loss of one eye.

144 The total and irrecoverable loss of the hearing of one
145 ear shall be considered a fifteen percent disability, and
146 the injured employee shall be entitled to compensation
147 for a period of sixty weeks. The total and irrecoverable
148 loss of the hearing of both ears shall be considered a
149 forty-five percent disability, and the injured employee
150 shall be entitled to compensation for a period of one
151 hundred eighty weeks.

152 For the partial loss of hearing in one, or both ears,
153 the percentage of disability shall be determined by the
154 commissioner, using as a basis the total loss of hearing in
155 both ears.

156 (f) Should a claimant to whom has been made a
157 permanent partial award of from one percent to eighty-
158 four percent, both inclusive, die from sickness or non-
159 compensable injury, the unpaid balance of such award
160 shall be paid to claimant's dependents as defined in this
161 chapter, if any; such payment to be made in the same
162 installments that would have been paid to claimant if
163 living: *Provided, however,* That no payment shall be
164 made to any widow of such claimant after her remarriage,
165 and that this liability shall not accrue to the estate of
166 such claimant and shall not be subject to any debts of,
167 or charges against, such estate.

168 (g) The award for permanent disabilities intermediate
169 to those fixed by the foregoing schedule and permanent
170 disability of from one percent to eighty-four percent
171 shall be in the same proportion and shall be computed
172 and allowed by the commissioner.

173 (h) The percentage of all permanent disabilities other
174 than those enumerated in subdivisions (d), (e), (f) and
175 (g) of this section shall be determined by the commis-
176 sioner, and award made in accordance with the provisions
177 of subdivision (d).

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

183 (j) Where an injury results in temporary total dis-
184 ability for which compensation is awarded under sub-
185 division (b) of this section and such injury is later de-
186 termined permanent partial disability under subdivision
187 (d), the amount of compensation so paid in excess of
188 ten weeks shall be considered as payment of the compen-
189 sation payable for such injury in accordance with the
190 schedule in subdivision (d): *Provided*, That in cases
191 where the amount of permanent partial disability is spe-
192 cifically provided for under subdivision (e) of this sec-
193 tion, payments made under subdivision (b) shall not be

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
2 due to occupational pneumoconiosis, as defined in section
3 one of this article, the percentage of permanent dis-
4 ability shall be determined by the commissioner in ac-
5 cordance with the facts in the case and with the advice
6 and recommendation of the occupational pneumoconiosis
7 board. Compensation shall be paid therefor in the same
8 manner and at the same rate as is provided for perma-
9 nent disability under the provisions of subdivisions (d),
10 (f), (g), (h) and (i) of the preceding section of this
11 article.

12 Impairment of the employee's ability to function nor-
13 mally or to undergo normal prolonged exertion when
14 compared with an average man of his age and like gen-
15 eral physical condition may be considered in the determi-
16 nation of the employee's disability from occupational
17 pneumoconiosis.

18 If the employee dies from occupational pneumoconiosis

19 within ten years from the date of his last exposure to
20 such disease, the benefits shall be in the amounts and to
21 the persons provided for in section ten of this article; as
22 to such benefits sections eleven to fourteen, inclusive, of
23 this article shall apply.

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

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

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

1 The commissioner shall have authority, after due
2 notice to the employer and claimant, whenever in his
3 opinion it shall be necessary, to order a claimant of
4 compensation for a personal injury other than occupa-

5 tional pneumoconiosis or other occupational disease to
6 appear for examination before a medical examiner or
7 examiners selected by the commissioner; and the claim-
8 ant and employer, respectively, shall each have the right
9 to select a physician of his or its own choosing and at
10 his or its own expense to participate in such examina-
11 tion. The claimant and employer shall, respectively,
12 be furnished with a copy of the report of examination
13 made by the medical examiner or examiners selected
14 by the commissioner. The respective physicians selected
15 by the claimant and employer shall have the right to
16 concur in any report made by the medical examiner or
17 examiners selected by the commissioner, or each may
18 file with the commissioner a separate report, which
19 separate report shall be considered by the commissioner
20 in passing upon the claim. If the compensation claimed
21 is for occupational pneumoconiosis, the commissioner
22 shall have the power, after due notice to the employer,
23 and whenever in his opinion it shall be necessary, to
24 order a claimant to appear for examination before the
25 occupational pneumoconiosis board hereinafter provided.

26 If the compensation claimed is for an occupational disease
27 other than occupational pneumoconiosis, the commis-
28 sioner shall have the power, after due notice to the
29 employer, and whenever in his opinion it shall be neces-
30 sary, to order a claimant to appear for examination be-
31 fore the occupational diseases medical board hereinafter
32 provided. In any case the claimant shall be entitled
33 to reasonable traveling and other expenses necessarily
34 incurred by him in obeying such order, which shall be
35 paid out of the amount allowed under this chapter for
36 medical, surgical, dental and hospital treatment.

37 Where the claimant is required to undergo a medical
38 examination or examinations by a physician or physi-
39 cians selected by the employer, in addition to the reason-
40 able traveling and other expenses, not to exceed the
41 expenses paid when a claimant is examined by a physician
42 or physicians selected by the commissioner, such claim-
43 ant shall be reimbursed by the employer for loss of
44 wages necessarily incurred by him in connection with
45 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
2 of this section and known as the "Silicosis Medical
3 Board" shall continue in existence but on and after the
4 effective date of this act shall be known and designated
5 as the "Occupational Pneumoconiosis Board." Such medi-
6 cal board shall consist of three licensed physicians, who
7 shall be appointed by the commissioner. No person shall
8 be appointed as a member of such board, or as a consul-
9 tant thereto, who has not by special study or experience,
10 or both, acquired special knowledge of pulmonary dis-
11 eases. All members of the occupational pneumoconiosis
12 board shall be physicians of good professional stand-
13 ing, admitted to practice medicine and surgery in this
14 state, and one of them shall be a roentgenologist. One
15 of the board shall be designated annually as chairman
16 by the commissioner. The term of office of each member
17 of such board shall be six years. The three members
18 of the existing board, as redesignated herein, in office
19 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 occu-
25 pational 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

7 the board at the time and place specified and submit
8 to such examination, including clinical and X-ray exam-
9 inations, as the board may require. If a physician li-
10 censed to practice medicine in the state shall make
11 affidavit that the employee is physically unable to appear
12 at the time and place designated by the board, such
13 board shall, on notice to the proper parties, change the
14 place and time as may reasonably facilitate the hearing
15 or examination of the employee. The employee, or in
16 case he is dead, the claimant, and the employer shall
17 also produce as evidence to the board all reports of
18 medical and X-ray examinations which may be in their
19 respective possession or control, showing the past or
20 present condition of the employee. If the employee be
21 dead, the notice of the board shall further require that
22 the claimant produce necessary consents and permits
23 so that an autopsy may be performed, if the board shall
24 so direct. When in the opinion of the board an autopsy
25 is deemed necessary accurately and scientifically to
26 ascertain and determine the cause of death, such au-
27 topsy examination shall be ordered by the board, which

28 shall designate a duly licensed physician, a pathologist,
29 or such other specialists as may be deemed necessary
30 by the board, to make such examination and tests to
31 determine the cause of death and certify his or their
32 written findings, in triplicate, to the board, which find-
33 ings shall be public records. In the event that a claim-
34 ant for compensation for such death refuses to consent
35 and permit such autopsy to be made, all rights for com-
36 pensation shall thereupon be forfeited.

37 The employee, or if he be dead, the claimant, and the
38 employer, shall be entitled to be present at all exam-
39 inations conducted by the board, and to be represented
40 by attorneys and physicians.

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

1 (a) The occupational pneumoconiosis board, as soon
2 as practicable, after it has completed its investigation,
3 shall make its written report, to the commissioner, of its
4 findings and conclusions on every medical question in
5 controversy, and the commissioner shall send one copy

6 thereof to the employee or claimant and one copy to the
7 employer, and the board shall also return to and file with
8 the commissioner all the evidence, as well as all state-
9 ments under oath, if any, of the persons who appeared
10 before it on behalf of the employee or claimant, or em-
11 ployer, and also all medical reports and X-ray examina-
12 tions produced by or on behalf of the employee or claim-
13 ant, or employer.

14 (b) If it can be shown that the claimant or deceased
15 employee has been exposed to the hazard of inhaling
16 minute particles of dust in the course of and resulting
17 from his employment for a period of ten years during
18 the fifteen years immediately preceding the date of his
19 last exposure to such hazard and that such claimant or
20 deceased employee has sustained a medically diagnos-
21 able disease of the lungs consistent with a diagnosis of
22 occupational pneumoconiosis, then it shall be presumed
23 that such claimant or deceased employee is suffering
24 from occupational pneumoconiosis which arose out of
25 and in the course of his employment. This presumption
26 shall not be conclusive.

27 (c) The findings and conclusions of the board shall
28 set forth, among other things, the following:

29 (1) Whether or not the claimant or the deceased em-
30 ployee has contracted occupational pneumoconiosis, and
31 if so, the percentage of permanent disability resulting
32 therefrom.

33 (2) Whether or not the exposure in the employment
34 was sufficient to have caused the claimant's or deceased
35 employee's pneumoconiosis or to have perceptibly ag-
36 gravated an existing pneumoconiosis.

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

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

48 After the time has expired for the filing of objections
49 to the findings and conclusions of the board, the com-
50 missioner shall proceed to act as provided in this chap-
51 ter. If after the time has expired for the filing of ob-
52 jections to the findings and conclusions of the board no
53 objections have been filed, the report of a majority of the
54 board of its findings and conclusions on any medical
55 question shall be taken to be plenary and conclusive
56 evidence of the findings and conclusions therein stated.
57 If objection has been filed to the findings and conclusions
58 of the board, notice thereof shall be given to the board,
59 and the members thereof joining in such findings and con-
60 clusions shall appear at the time fixed by the commis-
61 sioner for the hearing to submit to examination and
62 cross-examination in respect to such findings and con-
63 clusions. At such hearing evidence to support or con-
64 trovert the findings and conclusions of the board shall
65 shall be limited to examination and cross-examination
66 of the members of the board, and to the taking of tes-
67 timony of other qualified physicians and roentgenolo-
68 gists.

§23-4-8d. Occupational diseases medical board created; qualifications; term of office, duties; remunerations.

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

21 ing and other expenses incurred while actually engaged
22 in the performance of their duties.

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

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

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

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

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

1 In case a personal injury other than occupational
2 pneumoconiosis or other occupational disease, suffered

3 by an employee in the course of and resulting from his
4 employment, causes death within the period of ten years
5 and disability is continuous from date of such injury un-
6 til date of death, or if death results from occupational
7 pneumoconiosis or from any other occupational disease
8 within ten years from the date of the last exposure to
9 the hazards of occupational pneumoconiosis or to the
10 other particular occupational hazard involved, as the case
11 may be, the benefits shall be in the amounts and to the
12 persons as follows:

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

16 (b) If the deceased employee leaves a dependent
17 widow or invalid widower, the payment shall be one
18 hundred ten dollars a month until death or remarriage
19 of such widow or widower, and in addition thirty-five
20 dollars a month for each child under eighteen years of
21 age, to be paid until such child reaches such age, or where
22 such child after reaching eighteen years of age con-
23 tinues as a full-time student in an accredited high school,

24 college, university, business or trade school, to be paid
25 until such child reaches the age of twenty-two years, or,
26 if an invalid child, forty dollars a month, to continue as
27 long as such child remains an invalid: *Provided, how-*
28 *ever,* That if such widow or invalid widower shall re-
29 marry within ten years from the date of the death of
30 such employee, such widow or widower shall be paid at
31 the time of remarriage twenty percent of the amount
32 that would be due for the period remaining between the
33 date of such remarriage and the end of ten years from
34 the date of death of such employee, and such widow or
35 widower shall be advised in writing by the commissioner
36 of his or her rights under this proviso at the time of mak-
37 ing the original award: *Provided, further,* That if upon
38 investigation and hearing, as provided in article five of
39 this chapter, it shall be ascertained that such widow or
40 widower is living with a man or woman, as the case may
41 be, as man and wife and not married, or that the widow
42 is living a life of prostitution, the commissioner shall
43 stop the payments of the benefits herein provided to such
44 widow or widower.

45 If the deceased employee be a widow or widower and
46 leaves a child or children under the age of eighteen years,
47 the payments shall be forty-five dollars a month to each
48 child until he or she reaches the age of eighteen years,
49 or where such child after reaching eighteen years of age
50 continues as a full-time student in an accredited high
51 school, college, university, business or trade school to be
52 paid until such child reaches the age of twenty-two years.

53 In all awards of compensation to children, unless oth-
54 wise provided herein, the award shall be until they reach
55 the age of eighteen years or until their death prior
56 thereto.

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

65 Upon the death of either the father or mother in any

66 case in which a joint award has been made to them, the
67 full award of eighty dollars a month shall be paid to the
68 survivor until his or her death.

69 (d) If the deceased employee leaves no dependent
70 widow or widower or wholly dependent father or mother
71 but there are other wholly dependent persons, as defined
72 in subdivision (f) of this section, the payment shall
73 be sixty-five dollars a month, to continue for six years
74 after the death of the deceased, except as otherwise pro-
75 vided herein.

76 (e) If the deceased employee leaves no dependent
77 widow or widower, child under eighteen years of age,
78 or wholly dependent person, but there are partially de-
79 pendent persons at the time of death, the payment shall
80 be thirty-five dollars a month, to continue for such por-
81 tion of the period of six years after the death, as the com-
82 missioner may determine, but no such partially depend-
83 ent person shall receive compensation payments as a re-
84 sult of the death of more than one employee.

85 Compensation under subdivisions (b), (c), (d) and (e)
86 hereof shall, except as may be specifically provided to

87 the contrary therein, cease upon the death of the depend-
88 ent, and the right thereto shall not vest in his or her
89 estate.

90 (f) Dependent, as used in this chapter, shall mean a
91 widow, invalid widower, child under eighteen years of
92 age, or under twenty-two years of age when a full-time
93 student as provided herein, invalid child or posthumous
94 child, who, at the time of the injury causing death, is de-
95 pendent in whole or in part for his or her support upon
96 the earnings of the employee; also the following persons
97 who are and continue to be residents of the United States
98 or its territorial possessions: Stepchild under eighteen
99 years of age, or under twenty-two years of age when a
100 full-time student as provided herein, child under eighteen
101 years of age legally adopted prior to the injury causing
102 death, or under twenty-two years of age when a full-
103 time student as provided herein, father, mother, grand-
104 father or grandmother, who at the time of the injury
105 causing death, is dependent in whole or in part for his
106 or her support upon the earnings of the employee; and
107 invalid brother or sister wholly dependent for his or her

108 support upon the earnings of the employee at the time
109 of the injury causing death.

§23-4-14. Computation of benefits.

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.

19 The expression "average weekly wage earnings, wher-
20 ever earned, of the injured person, at the date of injury,"
21 within the meaning of this chapter, shall be two months,
22 six or twelve months immediately preceding the date
23 of the injury.

24 The expression "average weekly wage in West Vir-
25 ginia," within the meaning of this chapter, shall be the
26 average weekly wage in West Virginia as determined
27 by the commissioner of employment security in accor-
28 dance with the provisions of sections ten and eleven,
29 article six, chapter twenty-one-a of the code of West
30 Virginia, one thousand nine hundred thirty-one, as
31 amended, and other applicable provisions of said chap-
32 ter twenty-one-a.

**§23-4-15. Application for benefits; report of injuries by
employer.**

1 To entitle any employee or dependent of a deceased
2 employee to compensation under this chapter, other than
3 for occupational pneumoconiosis or other occupational
4 disease, the application therefor must be made on the
5 form or forms prescribed by the commissioner and filed

6 in the office of the commissioner within one year from
7 and after the injury or death, as the case may be, and
8 all proofs of dependency in fatal cases must likewise be
9 filed with the commissioner within one year from and
10 after the death. In case the employee is mentally or
11 physically incapable of filing such application, it may
12 be filed by his attorney or by a member of his family.
13 It shall be the duty of every employer to report to the
14 commissioner every injury sustained by any person in
15 his employ. Such report shall be on forms prescribed
16 by the commissioner and shall be made within sixty
17 days from the date the employer first receives knowledge
18 of such injury.

19 To entitle any employee to compensation for occu-
20 pational pneumoconiosis under the provisions hereof, the
21 application therefor must be made on the form or forms
22 prescribed by the commissioner and filed in the office
23 of the commissioner within three years from and after
24 the last day of the last continuous period of sixty days
25 or more during which the employee was exposed to
26 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 occu-
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

6 employer within three years prior to the filing of his
7 claim whether in the state of West Virginia the claimant
8 was exposed to such hazard over a continuous period of
9 not less than two years during the ten immediately
10 preceding the date of his last exposure thereto and
11 whether the claimant was exposed to such hazard over
12 a period of not less than ten years during the fifteen
13 years immediately preceding the date of his last ex-
14 posure thereto. If a claim for occupational pneumocon-
15 iosis benefits be filed by a dependent of a deceased
16 employee, the commissioner shall determine whether
17 the deceased employee was exposed to the hazards of
18 occupational pneumoconiosis for a continuous period of
19 not less than sixty days while in the employ of the
20 employer within ten years prior to the filing of the
21 claim whether in the state of West Virginia the de-
22 ceased employee was exposed to such hazard over a
23 continuous period of not less than two years during
24 the ten years immediately preceding the date of his
25 last exposure thereto and whether the claimant was
26 exposed to such hazard over a period of not less than

27 ten years during the fifteen years immediately preceding
28 the date of his last exposure thereto. The commissioner
29 shall also determine such other nonmedical facts as
30 may in his opinion be pertinent to a decision on the
31 validity of the claim.

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

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

1 On the hearing of a claim for compensation for an
2 occupational disease other than occupational pneumoco-
3 niosis, the commissioner shall hear, determine and file
4 findings covering, but not limited to, the following non-
5 medical questions:

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

11 (b) The occupation or occupations, process or proc-
12 esses in which the employee was engaged during such em-
13 ployment and the approximate periods of work in each
14 such occupation or process.

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

19 (d) Whether the last injurious exposure to the hazard
20 causing occupational disease in the employment with the
21 employer occurred within three years prior to the filing
22 of the claim, and if the employee is no longer in the
23 service of the employer, the date upon which such em-
24 ployee ceased so to work; and, if the employee has died,
25 the date and place of such death, and the place of inter-
26 ment of the body.

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

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

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

William Tampa
Chairman Senate Committee

Clayton C. Ravelsan
Chairman House Committee

Originated in the House.

Takes effect July 1, 1969.

Howard Tye
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Elizabeth
President of the Senate

Gov. F. B. Brown
Speaker House of Delegates

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

Arch. H. Hassie Jr.
Governor



PRESENTED TO THE
GOVERNOR

Date 3/11/69

Time 10:00 A.M.

PRESENTED

Mar 13 10 50 AM '69

OFFICE OF
STATE ARCHIVES
STATE OF WEST VIRGINIA