WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1970

ENROLLED

HOUSE BILL No. 746

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

PASSED January 13, 1970

In Effect July 1, 1970

FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE
THIS DATE 2-18-70
ENROLLED

House Bill No. 746
[Originating in the Committee on the Judiciary]

[Passed February 12, 1970; in effect July 1, 1970.]

AN ACT to amend and reenact sections one, three, six, six-a, eight-c, fifteen, fifteen-b and sixteen, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend said article four by adding thereto a new section, designated section twenty-one, all relating to workmen's compensation and occupational pneumoconiosis and to the severability of the provisions of said article.

Be it enacted by the Legislature of West Virginia:

That sections one, three, six, six-a, eight-c, fifteen, fifteen-b and sixteen, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, and that said article four
be further amended by adding thereto a new section, designated section twenty-one, all to read as follows:

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 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 the 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-
vided in section two, article one of this chapter.

For the purposes of this chapter the terms "injury"
and "personal injury" shall include occupational pneumo-
coniosis and any other occupational disease, as herein-
after defined, and the commissioner shall likewise dis-
burse 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 pneumo-
coniosis or other occupational disease, and have con-
tracted occupational pneumoconiosis or other occupa-
tional disease, or have suffered a perceptible aggravation
of an existing pneumoconiosis or other occupational di-
sease, 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 compensta-
tion shall not be payable for the disease of occupational
pneumoconiosis, or death resulting therefrom, unless the
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37 employee has been exposed to the hazards of occupational pneumoconiosis in the state of West Virginia 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 resulting from 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 date of last exposure to the hazards of occupational pneumoconiosis. The allocation shall be based upon the time and degree of exposure with each employer.

52 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.

56 Occupational pneumoconiosis is a disease of the lungs caused by the inhalation of minute particles of dust over
a period of time due to causes and conditions arising out
of and in the course of the employment. The term "occupa-
tional 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 accom-
panied by active tuberculosis of the lungs), coal worker's
pneumoconiosis accompanied by active tuberculosis of
the lungs, asbestosis, siderosis, anthrax and any and all
other dust diseases of the lungs and conditions and dis-
eases caused by occupational pneumoconiosis which are
not specifically designated herein meeting the definition
of occupational pneumoconiosis set forth in the immedi-
ately preceding sentence.
X-ray evidence shall not necessarily be held conclusive
insofar as it bears upon the absence 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 circumstances (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 employment 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.

§23-4-3. 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.

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.

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 employee 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
one year 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 spe-
cified above has been or will be made against the injured
employee or any other person, firm or corporation, and
when an employee covered under the provisions of this
chapter is injured in the course of and as a result of his
employment and is accepted for medical, surgical, dental
or hospital treatment, the person, firm or corporation
rendering such treatment is hereby prohibited from mak-
ing any charge or charges therefor or with respect
thereof 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 employees to render medical, dental or hospital service or to give medical or surgical attention therein to any employee for injury compensable within the purview of this 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 compensable 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 defenses mentioned in section eight, article two of this chapter, and any employer or hospital or agent or employee thereof violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be
sentenced to pay a fine not exceeding one thousand dollars or undergo imprisonment not exceeding one year, or both.

(d) When an injury has been reported to the commissioner by the employer without protest, the commissioner may pay, or order an employer who or which made the election and who or which received the permission mentioned in section nine, article two of this chapter to pay, within the maximum amount provided by schedule established by the commissioner as aforesaid, bills for medical or hospital services without requiring the injured employee to file an application for benefits.

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

Where compensation is due an employee under the provisions of this chapter for a personal injury, such compensation shall be as provided in the following schedule:

(a) The expressions "average weekly wage earnings, 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 article.

(b) If the injury causes temporary total disability, the employee shall receive during the continuance thereof 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 computed on the basis of 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; 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 maximum 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 percent 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 three percent disability.

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

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

The loss of middle or second finger 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 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 fifteen 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 considered as payment of the compensation for such injury. Compensation, either total temporary or permanent partial, under this section shall be payable only
to the injured employee and the right thereto shall not vest in his or her estate, except that any unpaid compensation which would have been paid or payable to the employee upon to the time of his death, if he had lived, shall be paid to the dependents of such injured employee if there be such dependents at the time of death.

(k) The following permanent disabilities shall be conclusively presumed to be total in character:

- Loss of both eyes or the sight thereof.
- Loss of both hands or the use thereof.
- Loss of both feet or the use thereof.
- Loss of one hand and one foot or the use thereof.

In all other cases permanent disability shall be determined by the commissioner in accordance with the facts in the case, and award made in accordance with the provisions of subdivision (d).

(l) A disability which renders the injured employee unable to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he has previously engaged with some
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219 regularity and over a substantial period of time shall be
220 considered in determining the issue of total disability.

§23-4-6a. Benefits and mode of payment to employees and
dependents for occupational pneumoconiosis; fur­
ther adjustment of claim for occupational pneumo­
coniosis.

1 If an employee is found to be permanently disabled
2 due to occupational pneumoconiosis, as defined in sec­
3 tion one of this article, the percentage of permanent
4 disability shall be determined by the commissioner in
5 accordance 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 per­
9manent disability under the provisions of subdivisions
10 (d), (f), (g), (h), (i), (k) and (l) of the preceding section
11 of this article.

12 If the employee dies from occupational pneumoconiosis
13 within ten years from the date of his last exposure to
14 such disease, the benefits shall be in the amounts and
15 to the persons provided for in section ten of this article;
16 as to such benefits sections eleven to fourteen, inclusive,
17 of this article shall apply.
In cases of permanent disability or death due to occupational 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 sections 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 receives a permanent partial disability award for occupational pneumoconiosis.

§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 exam-
inations produced by or on behalf of the employee or
claimant, 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 chronic respiratory
disability, then it shall be presumed that such claimant
is suffering or such deceased employee was suffering at
the time of his death 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 result-
ing therefrom.

(2) Whether or not the exposure in the employment
was sufficient to have caused the claimant’s or deceased
employee’s occupational pneumoconiosis or to have per-
ceptibly aggravated an existing occupational pneumo-
coniosis, or other occupational disease.

(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 thirty days of the mailing of
such copy to him, unless for good cause shown the com-
missioner 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 find-
ings and conclusions of the board, the commissioner shall
proceed to act as provided in this chapter. If after the
time has expired for the filing of objections to the find-
ings 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 mem-
ers thereof joining in such findings and conclusions
shall appear at the time fixed by the commissioner for
the hearing to submit to examination and cross-exam-
ination in respect to such findings and conclusions. At
such hearing evidence to support or controvert the find-
ings and conclusions of the board shall be limited to
examination and cross-examination of the members of
the board, and to the taking of testimony of other quali-
fied physicians and roentgenologists.

§23-4-15. Application for benefits; report of injuries by em-
ployer.

To entitle any employee or dependent of a deceased em-
ployee to compensation under this chapter, other than for
occupational pneumoconiosis or other occupational dis-
ease, 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 occupa-
tional 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 within one
year from and after the employee’s occupational pneumo-
coniosis was made known to him by a physician or which
he should reasonably have known, whichever shall last
occur, or, in the case of death, the application shall be
filed as aforesaid by the dependent of such employee
within one year from and after such employee’s death.

To entitle any employee to compensation for occupa-
tional disease other than occupational pneumoconiosis
under the provisions hereof, the application therefor must
be made on the form or forms prescribed by the commis-
sioner and filed in the office of the commissioner within
three years from and after the day on which the em-
ployee was last exposed to the particular occupational
hazard involved, or, in the case of death, the application
shall be filed as aforesaid by the dependent of such em-
ployee within one year from and after such employee’s
death.
§23-4-15b. Determination of nonmedical questions by commissioner—Claims for occupational pneumoconiosis; hearing.

1 If a claim for occupational pneumoconiosis benefits be filed by an employee within three years from and after the last day of the last continuous period of sixty days exposure to the hazards of occupational pneumoconiosis,
2 the commissioner shall determine whether the claimant 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 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 exposure thereto. If a claim for occupational pneumoconiosis benefits be filed by a dependent of a deceased employee, the commissioner shall determine whether the deceased employee was ex-
posed 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 deceased 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.

§23-4-16. Commissioner's jurisdiction over case continuous; modification of finding or order; time limitation on awards; reimbursement of claimant for expenses.
The power and jurisdiction of the commissioner over each case shall be continuing and he may from time to time, after due notice to the employer, make such modifications or changes with respect to former findings or orders as may be justified: Provided, however, That no further award may be made in fatal cases arising after March seventh, one thousand nine hundred twenty-nine, except within two years after the death of the employee, or in case of non-fatal injuries, on and after March seventh, one thousand nine hundred twenty-nine, except within three years after payments for temporary disability shall have ceased or not more than two times within five years after the commissioner shall have made the last payment in any permanent disability case: And provided further, That no such modification or change may be made in any case in which no award has been made, except within three years after the date of injury. If any case in which an injured employee shall make application for a further adjustment of his claim, if such application be in writing and filed within the applicable time limit as prescribed herein, the commissioner
shall pass upon and determine the merits of such application within thirty days after the filing thereof.

If such application is based on a report of any medical examination made of the claimant and submitted by the claimant to the commissioner in support of his application, and the claim is opened for further consideration and additional award is later made, the claimant shall be reimbursed for the expenses of such examination. Such reimbursement shall be made by the commissioner to the claimant, in addition to all other benefits awarded, upon due proof of the amount thereof being furnished the commissioner by the claimant, but shall in no case exceed the sum of one hundred dollars.


If any provision of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other provisions or applications of the article, and to this end the provisions of this article are declared to be severable.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William Tompar
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the House.

Takes effect July 1, 1970.

John Blankenship
Clerk of the Senate

Clerk of the House of Delegates

Landis E. Jackson
President of the Senate

Walter F. Barbour
Speaker House of Delegates

The within approved this the 18th day of February, 1970.

James S. Davis
Governor
PRESENTED TO THE
GOVERNOR

Date 2/16/10
Time 2:40 p.m.