

WEST VIRGINIA LEGISLATURE  
REGULAR SESSION, 1970



ENROLLED

HOUSE BILL No. 746

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



PASSED February 18, 1970

In Effect July 1, 1970 Passage

FILED IN THE OFFICE  
SECRETARY OF STATE  
WEST VIRGINIA  
FEB 19 10 30 AM '70

03-11-70



FILED IN THE OFFICE  
JOHN D. ROCKEFELLEY, IV  
SECRETARY OF STATE

THIS DATE 2-18-70

746

**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  
2 in 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 the 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 pro-  
10 vided 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 employees  
26 have been exposed to the hazards of occupational pneumo-  
27 coniosis or other occupational disease, and have con-  
28 tracted occupational pneumoconiosis or other occupa-  
29 tional disease, or have suffered a perceptible aggravation  
30 of an existing pneumoconiosis or other occupational di-  
31 sease, in this state in the course of and resulting from  
32 their employment, or to the dependents, if any, of such  
33 employees, in case death has ensued, according to the  
34 provisions hereinafter made: *Provided*, That compensa-  
35 tion shall not be payable for the disease of occupational  
36 pneumoconiosis, or death resulting therefrom, unless the

37 employee has been exposed to the hazards of occupational  
38 pneumoconiosis in the state of West Virginia over a con-  
39 tinuous period of not less than two years during the  
40 ten years immediately preceding the date of his last  
41 exposure to such hazards. An application for benefits  
42 on account of occupational pneumoconiosis shall set forth  
43 the name of the employer or employers and the time  
44 worked for each, and the commissioner may allocate to  
45 and divide any charges resulting from such claim among  
46 the employers by whom the claimant was employed for  
47 as much as sixty days during the period of three years  
48 immediately preceding the date of last exposure to the  
49 hazards of occupational pneumoconiosis. The allocation  
50 shall be based upon the time and degree of exposure  
51 with each employer.

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

56 Occupational pneumoconiosis is a disease of the lungs  
57 caused by the inhalation of minute particles of dust over

58 a period of time due to causes and conditions arising out  
59 of and in the course of the employment. The term "occu-  
60 pational pneumoconiosis" shall include, but shall not be  
61 limited to, such diseases as silicosis, anthracosilicosis, coal  
62 worker's pneumoconiosis, commonly known as black lung  
63 or miner's asthma, silico-tuberculosis (silicosis accom-  
64 panied by active tuberculosis of the lungs), coal worker's  
65 pneumoconiosis accompanied by active tuberculosis of  
66 the lungs, asbestosis, siderosis, anthrax and any and all  
67 other dust diseases of the lungs and conditions and dis-  
68 eases caused by occupational pneumoconiosis which are  
69 not specifically designated herein meeting the definition  
70 of occupational pneumoconiosis set forth in the immedi-  
71 ately preceding sentence.

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

75 For the purpose of this chapter, occupational disease  
76 means a disease incurred in the course of and resulting  
77 from employment. No ordinary disease of life to which  
78 the general public is exposed outside of the employment

79 shall be compensable except when it follows as an inci-  
80 dent of occupational disease as defined in this chapter.  
81 Except in the case of occupational pneumoconiosis, a  
82 disease shall be deemed to have been incurred in the  
83 course of or to have resulted from the employment only  
84 if it is apparent to the rational mind, upon consideration  
85 of all the circumstances (1) that there is a direct causal  
86 connection between the conditions under which work is  
87 performed and the occupational disease, (2) that it can  
88 be seen to have followed as a natural incident of the work  
89 as a result of the exposure occasioned by the nature of  
90 the employment, (3) that it can be fairly traced to the  
91 employment as the proximate cause, (4) that it does  
92 not come from a hazard to which workmen would have  
93 been equally exposed outside of the employment, (5)  
94 that it is incidental to the character of the business and  
95 not independent of the relation of employer and em-  
96 ployee, and (6) that it must appear to have had its  
97 origin in a risk connected with the employment and to  
98 have flowed from that source as a natural consequence,

99 though it need not have been foreseen or expected before  
100 its contraction.

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

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.

7 The commissioner shall disburse and pay from the  
8 fund for such personal injuries to such employees as may

9 be entitled thereto hereunder as follows:

10 (a) Such sums for medicines, medical, surgical, den-  
11 tal and hospital treatment, crutches, artificial limbs and  
12 such other and additional approved mechanical appli-  
13 ances and devices, as may be reasonably required and as  
14 are, in the case of medical, surgical, dental or hospital  
15 treatment only, within the maximum amount provided  
16 for by schedule established by the commissioner as afore-  
17 said, but not as to any one injured employee in excess  
18 of three thousand dollars: *Provided*, That in special  
19 cases where the treatment required, in the opinion of  
20 competent medical authority, is such as to necessitate  
21 an expenditure in excess of said sum of three thousand  
22 dollars, the commissioner may pay out of any available  
23 funds such additional sum as may be necessary, but such  
24 additional sum shall not be charged to the account of  
25 the employer.

26 (b) Payment for such medicine, medical, surgical,  
27 dental and hospital treatment, crutches, artificial limbs  
28 and such other and additional approved mechanical ap-  
29 pliances and devices authorized under subdivision (a)

30 hereof may be made to the injured employee, or to the  
31 person, firm or corporation who or which has rendered  
32 such treatment or furnished any of the items specified  
33 above, or who has advanced payment for same, as the  
34 commissioner may deem proper, but no such payments  
35 or disbursements shall be made or awarded by him unless  
36 duly verified statements on forms prescribed by the  
37 commissioner shall be filed with the commissioner within  
38 one year after the cessation of such treatment or the  
39 delivery of such appliances: *Provided, however,* That no  
40 payment hereunder shall be made unless such verified  
41 statement shows no charge for or with respect to such  
42 treatment or for or with respect to any of the items spe-  
43 cified above has been or will be made against the injured  
44 employee or any other person, firm or corporation, and  
45 when an employee covered under the provisions of this  
46 chapter is injured in the course of and as a result of his  
47 employment and is accepted for medical, surgical, dental  
48 or hospital treatment, the person, firm or corporation  
49 rendering such treatment is hereby prohibited from mak-  
50 ing any charge or charges therefor or with respect

51 thereto against the injured employee or any other person,  
52 firm or corporation which would result in a total charge  
53 for the treatment rendered in excess of the maximum  
54 amount set forth therefor in the commissioner's schedule  
55 established as aforesaid.

56 (c) No employer shall enter into any contracts with  
57 any hospital, its physicians, officers, agents or employees  
58 to render medical, dental or hospital service or to give  
59 medical or surgical attention therein to any employee  
60 for injury compensable within the purview of this chap-  
61 ter, and no employer shall permit or require any em-  
62 ployee to contribute, directly or indirectly, to any fund  
63 for the payment of such medical, surgical, dental or hos-  
64 pital service within such hospital for such compensable  
65 injury. Any employer violating this section shall be  
66 liable in damages to his or its employees and shall not  
67 avail himself of any of the common-law defenses men-  
68 tioned in section eight, article two of this chapter, and  
69 any employer or hospital or agent or employee thereof  
70 violating the provisions of this section shall be guilty of  
71 a misdemeanor, and, upon conviction thereof, shall be

72 sentenced to pay a fine not exceeding one thousand dol-  
73 lars or undergo imprisonment not exceeding one year,  
74 or both.

75 (d) When an injury has been reported to the com-  
76 missioner by the employer without protest, the commis-  
77 sioner may pay, or order an employer who or which made  
78 the election and who or which received the permission  
79 mentioned in section nine, article two of this chapter  
80 to pay, within the maximum amount provided by sched-  
81 ule established by the commissioner as aforesaid, bills  
82 for medical or hospital services without requiring the  
83 injured employee to file an application for benefits.

**§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  
4 schedule:

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

9 shall be computed as set forth in section fourteen of this  
10 article.

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

30 (c) Subdivision (b) shall be limited as follows: Ag-  
31 gregate award for a single injury causing temporary  
32 disability shall be for a period not exceeding two hun-  
33 dred eight weeks.

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

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

48 On and after July one, one thousand nine hundred  
49 seventy, for permanent disability of from one percent  
50 to eighty-four percent, inclusive, sixty-six and two-thirds

51 percent of the average weekly earnings, wherever earned,  
52 of the injured employee at the date of injury, not to ex-  
53 ceed fifty percent of the average weekly wage in West  
54 Virginia, for a period to be computed on the basis of four  
55 weeks compensation for each percent of disability de-  
56 termined.

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

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

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

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

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

80 The loss of a great toe (one phalanx) shall be consid-  
81 ered a five percent disability.

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

84 The loss of other toes (one phalanx) shall be consid-  
85 ered a two percent disability.

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

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

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

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

94 The loss of thigh shall be considered a fifty percent dis-  
95 ability.

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

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

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

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

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

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

108 The loss of middle or second finger shall be consid-  
109 ered a seven percent disability.

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

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

114 The loss of thumb (one phalanx) shall be consid-  
115 ered a twelve percent disability.

116 The loss of thumb shall be considered a twenty per-  
117 cent disability.

118 The loss of thumb and index finger shall be consid-  
119 ered a thirty-two percent disability.

120 The loss of index and middle finger shall be consid-  
121 ered a twenty percent disability.

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

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

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

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

130 The loss of middle, ring and little finger shall be consid-  
131 ered a twenty percent disability.

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

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

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

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

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

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

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

153 For the partial loss of hearing in one, or both ears,  
154 the percentage of disability shall be determined by the

155 commissioner, using as a basis the total loss of hearing  
156 in both ears.

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

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

174 (h) The percentage of all permanent disabilities  
175 other than those enumerated in subdivisions (d), (e),

176 (f) and (g) of this section shall be determined by the  
177 commissioner, and award made in accordance with the  
178 provisions of subdivision (d).

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

184 (j) Where an injury results in temporary total dis-  
185 ability for which compensation is awarded under sub-  
186 division (b) of this section and such injury is later de-  
187 termined permanent partial disability under subdivision  
188 (d), the amount of compensation so paid in excess of  
189 fifteen weeks shall be considered as payment of the com-  
190 pensation payable for such injury in accordance with  
191 the schedule in subdivision (d): *Provided*, That in cases  
192 where the amount of permanent partial disability is  
193 specifically provided for under subdivision (e) of this  
194 section, payments made under subdivision (b) shall not  
195 be considered as payment of the compensation for such  
196 injury. Compensation, either total temporary or per-  
197 manent partial, under this section shall be payable only

198 to the injured employee and the right thereto shall not  
199 vest in his or her estate, except that any unpaid com-  
200 pensation which would have been paid or payable to  
201 the employee upon to the time of his death, if he had  
202 lived, shall be paid to the dependents of such injured  
203 employee if there be such dependents at the time of  
204 death.

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

207 Loss of both eyes or the sight thereof.

208 Loss of both hands or the use thereof.

209 Loss of both feet or the use thereof.

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

211 In all other cases permanent disability shall be de-  
212 termined by the commissioner in accordance with the  
213 facts in the case, and award made in accordance with  
214 the provisions of subdivision (d).

215 (l) A disability which renders the injured employee  
216 unable to engage in substantial gainful activity requir-  
217 ing skills or abilities comparable to those of any gainful  
218 activity in which he has previously engaged with some

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; 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 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-  
9 manent 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.

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

23 The provisions of section sixteen, article four and sec-  
24 tions one-a, one-b, one-c and one-d, article five of this  
25 chapter providing for the further adjustment of claims  
26 shall be applicable to the claim of any claimant who  
27 receives a permanent partial disability award for occu-  
28 pational pneumoconiosis.

**§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  
4 its 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 exam-  
12 inations produced by or on behalf of the employee or  
13 claimant, 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 chronic respiratory  
21 disability, then it shall be presumed that such claimant  
22 is suffering or such deceased employee was suffering at  
23 the time of his death from occupational pneumoconiosis  
24 which arose out of and in the course of his employment.  
25 This presumption shall not be conclusive.

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

28 (1) Whether or not the claimant or the deceased

29 employee has contracted occupational pneumoconiosis,  
30 and, if so, the percentage of permanent disability result-  
31 ing therefrom.

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

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 thirty 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 board's  
47 findings and conclusions to which he objects. After the  
48 time has expired for the filing of objections to the find-  
49 ings and conclusions of the board, the commissioner shall

50 proceed to act as provided in this chapter. If after the  
51 time has expired for the filing of objections to the find-  
52 ings and conclusions of the board no objections have  
53 been filed, the report of a majority of the board of its  
54 findings and conclusions on any medical question shall  
55 be taken to be plenary and conclusive evidence of the  
56 findings and conclusions therein stated. If objection has  
57 been filed to the findings and conclusions of the board,  
58 notice thereof shall be given to the board, and the mem-  
59 bers thereof joining in such findings and conclusions  
60 shall appear at the time fixed by the commissioner for  
61 the hearing to submit to examination and cross-exam-  
62 ination in respect to such findings and conclusions. At  
63 such hearing evidence to support or controvert the find-  
64 ings and conclusions of the board shall be limited to  
65 examination and cross-examination of the members of  
66 the board, and to the taking of testimony of other quali-  
67 fied physicians and roentgenologists.

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

1 To entitle any employee or dependent of a deceased em-

2 ployee to compensation under this chapter, other than for  
3 occupational pneumoconiosis or other occupational dis-  
4 ease, the application therefor must be made on the form  
5 or forms prescribed by the commissioner and filed in the  
6 office of the commissioner within one year from and after  
7 the injury or death, as the case may be, and all proofs  
8 of dependency in fatal cases must likewise be filed with  
9 the commissioner within one year from and after the  
10 death. In case the employee is mentally or physically  
11 incapable of filing such application, it may be filed by  
12 his attorney or by a member of his family. It shall be  
13 the duty of every employer to report to the commissioner  
14 every injury sustained by any person in his employ. Such  
15 report shall be on forms prescribed by the commissioner  
16 and shall be made within sixty days from the date the  
17 employer first receives knowledge of such injury.

18 To entitle any employee to compensation for occupa-  
19 tional pneumoconiosis under the provisions hereof, the  
20 application therefor must be made on the form or forms  
21 prescribed by the commissioner and filed in the office of  
22 the commissioner within three years from and after the

23 last day of the last continuous period of sixty days or  
24 more during which the employee was exposed to the  
25 hazards of occupational pneumoconiosis or within one  
26 year from and after the employee's occupational pneumo-  
27 coniosis was made known to him by a physician or which  
28 he should reasonably have known, whichever shall last  
29 occur, or, in the case of death, the application shall be  
30 filed as aforesaid by the dependent of such employee  
31 within one year from and after such employee's death.

32 To entitle any employee to compensation for occupa-  
33 tional disease other than occupational pneumoconiosis  
34 under the provisions hereof, the application therefor must  
35 be made on the form or forms prescribed by the commis-  
36 sioner and filed in the office of the commissioner within  
37 three years from and after the day on which the em-  
38 ployee was last exposed to the particular occupational  
39 hazard involved, or, in the case of death, the application  
40 shall be filed as aforesaid by the dependent of such em-  
41 ployee within one year from and after such employee's  
42 death.

**§23-4-15b. Determination of nonmedical questions by commissioner—Claims for occupational pneumoconiosis; hearing.**

1 If a claim for occupational pneumoconiosis benefits be  
2 filed by an employee within three years from and after  
3 the last day of the last continuous period of sixty days  
4 exposure to the hazards of occupational pneumoconiosis,  
5 the commissioner shall determine whether the claimant  
6 was exposed to the hazards of occupational pneumoconi-  
7 osis for a continuous period of not less than sixty days  
8 while in the employ of the employer within three years  
9 prior to the filing of his claim, whether in the state of  
10 West Virginia the claimant was exposed to such hazard  
11 over a continuous period of not less than two years  
12 during the ten immediately preceding the date of his  
13 last exposure thereto and whether the claimant was  
14 exposed to such hazard over a period of not less than  
15 ten years during the fifteen years immediately pre-  
16 ceding the date of his last exposure thereto. If a claim  
17 for occupational pneumoconiosis benefits be filed by a  
18 dependent of a deceased employee, the commissioner  
19 shall determine whether the deceased employee was ex-

20 posed to the hazards of occupational pneumoconiosis for a  
21 continuous period of not less than sixty days while in  
22 the employ of the employer within ten years prior to  
23 the filing of the claim, whether in the state of West  
24 Virginia the deceased employee was exposed to such  
25 hazard over a continuous period of not less than two  
26 years during the ten years immediately preceding the  
27 date of his last exposure thereto and whether the claimant  
28 was exposed to such hazard over a period of not less than  
29 ten years during the fifteen years immediately preceding  
30 the date of his last exposure thereto. The commissioner  
31 shall also determine such other nonmedical facts as may  
32 in his opinion be pertinent to a decision on the validity  
33 of the claim.

34 The commissioner shall give each interested party  
35 notice in writing of his findings with respect to all such  
36 nonmedical facts and such findings shall be subject to  
37 objection and hearing as provided in section one, article  
38 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.**

1 The power and jurisdiction of the commissioner over  
2 each case shall be continuing and he may from time to  
3 time, after due notice to the employer, make such modi-  
4 fications or changes with respect to former findings or  
5 orders as may be justified: *Provided, however,* That no  
6 further award may be made in fatal cases arising after  
7 March seventh, one thousand nine hundred twenty-nine,  
8 except within two years after the death of the employee,  
9 or in case of non-fatal injuries, on and after March  
10 seventh, one thousand nine hundred twenty-nine, ex-  
11 cept within three years after payments for temporary  
12 disability shall have ceased or not more than two times  
13 within five years after the commissioner shall have made  
14 the last payment in any permanent disability case: *And*  
15 *provided further,* That no such modification or change  
16 may be made in any case in which no award has been  
17 made, except within three years after the date of injury.  
18 If any case in which an injured employee shall make  
19 application for a further adjustment of his claim, if  
20 such application be in writing and filed within the applic-  
21 able time limit as prescribed herein, the commissioner

22 shall pass upon and determine the merits of such appli-  
23 cation within thirty days after the filing thereof.

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

**§23-4-21. Severability.**

1 If any provision of this article or the application thereof  
2 to any person or circumstance is held unconstitutional or  
3 invalid, such unconstitutionality or invalidity shall not  
4 affect other provisions or applications of the article, and  
5 to this end the provisions of this article are declared to  
6 be severable.

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

*William Tomp*  
\_\_\_\_\_

Chairman Senate Committee

*Clayton L. Davidson*  
\_\_\_\_\_

Chairman House Committee

Originated in the House.

Takes effect July 1, 1970.

*Howard Keegan*  
\_\_\_\_\_

Clerk of the Senate

*C. A. Blankenship*  
\_\_\_\_\_

Clerk of the House of Delegates

*Langston Jackson*  
\_\_\_\_\_

President of the Senate

*Sam F. Bausley*  
\_\_\_\_\_

Speaker House of Delegates

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

*Arch A. Stange*  
\_\_\_\_\_

Governor



PRESENTED TO THE  
GOVERNOR

Date 2/16/70

Time 2:40 p.m.