

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1971



ENROLLED

Committee Substitute

For
HOUSE BILL No. 790

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



PASSED March 13 1971

In Effect July 1, 1971 Passage



FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE
THIS DATE 4-2-71

790

ENROLLED
COMMITTEE SUBSTITUTE
FOR
House Bill No. 790

(Originating in the Committee on the Judiciary)

[Passed March 13, 1971; in effect July 1, 1971.]

AN ACT to repeal sections eight-d, eight-e, eight-f and fifteen-c, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, four, five, six, seven, eight, eight-b, eight-c, nine-b, ten, fourteen, fifteen, fifteen-b and sixteen of said article four; to further amend said article four, by adding thereto a new section, designated section sixteen-a; to further amend said chapter by adding thereto a new article, designated article four-a; to amend and reenact sections one, two and five, article five of said chapter; to further amend said article five by adding there-

to a new section, designated section three-a; and to further amend said chapter by adding thereto a new article, designated article six, relating generally to workmen's compensation; relating to the contraction or aggravation of occupational pneumoconiosis or other occupational disease; abolishing the occupational diseases medical board, except as to any claim in which the claimant is examined by such board before July one, one thousand nine hundred seventy-one; relating to funeral expenses in workmen's compensation claims; relating to the payment of temporary total disability benefits; relating to the classification of disability benefits; relating to the maximum and minimum workmen's compensation benefits; relating to the average weekly wage in West Virginia; relating to payment following death of claimant of statutory award for severance of a member of the body and providing limitations and qualifications with respect thereto; relating to the evaluation of disability where there is an injury to a member of the body as opposed to the severance thereof; providing that temporary total disability benefits shall not be subtracted from permanent partial disability awards, relating to

hernias; relating to physical examinations of claimants; relating to examinations for the occupational pneumoconiosis board; relating to the time during which protests may be filed to the findings of the occupational pneumoconiosis board; providing that preexisting physical impairments shall not be considered in fixing amount of compensation; relating to the classification and amounts of death benefits; relating to the computation of benefits and providing that in any claim for injuries, including occupational pneumoconiosis or other occupational diseases, occurring on or after July one, one thousand nine hundred seventy-one, any award for disability benefits or for dependent benefits shall be paid at the weekly rates or the monthly amount in effect on the date of such injury and further providing that if during the life of any such award, the weekly rates or the monthly amount are increased or decreased, the claimant shall receive such increased or decreased benefits as of the effective date of said increase or decrease; relating to the time periods within which applications for various types of workmen's compensation benefits must be filed; relating to the time

within which an employer must report an injury; relating to certain nonmedical findings to be made by the commissioner in claims for occupational pneumoconiosis; relating to the time within which such nonmedical findings may be protested; relating to the reopening of claims; providing for interest on certain benefits under certain circumstances; creating the disabled workmen's relief fund and providing for the payment of benefits from such fund; relating to the computation of benefits to be paid from such fund; relating to the mode of payment of benefits from such fund; providing for the payment of benefits from such fund to employees of self-insurers; relating to the powers of the commissioner over such fund; prohibiting the charging of any fee, compensation or gratuity for representing or assisting or pretending to represent or assist any person to receive benefits from such workmen's relief fund; relating to the employees to administer such workmen's relief fund and their salaries and expenses; providing that such workmen's relief fund shall be funded out of interest earned on the workmen's compensation fund; providing that the purpose of such work-

men's relief fund is to increase the benefits being paid under life awards or in fatal claims ^{to} ~~in~~ the minimum amount payable in such claims under the laws in effect on July one, one thousand nine hundred sixty-one; relating to the time within which the commissioner is to order supplemental hearings and render his decision; relating to the payment of expenses and loss of wages when the claimant attends a hearing under certain circumstances; relating to the salary of the members of the workmen's compensation appeal board; relating to continuances; placing a limitation upon the fees which may be charged by an attorney for a claimant or dependent; and providing a severability clause for said chapter twenty-three.

OK
Ed. B. Hancock
1961

Be it enacted by the Legislature of West Virginia:

That sections eight-d, eight-e, eight-f and fifteen-c, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one, four, five, six, seven, eight, eight-b, eight-c, nine-b, ten, fourteen, fifteen, fifteen-b and sixteen of said article four be amended and reenacted; that said article four

be further amended by adding thereto a new section, designated section sixteen-a; that said chapter be further amended by adding thereto a new article, designated article four-a; that sections one, two and five, article five of said chapter be amended and reenacted; that said article five be further amended by adding thereto a new section, designated section three-a; and that said chapter be further amended by adding thereto a new article, designated article six, 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 who
8 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
14 one, article two of this chapter, or to the dependents, if
15 any, of such employees in case death has ensued, ac-
16 cording to the provisions hereinafter made; and also for
17 the expenses of the administration of this chapter, as
18 provided 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 pneu-
27 moconiosis or other occupational disease and in this
28 state have contracted occupational pneumoconiosis or
29 other occupational disease, or have suffered a perceptible

30 aggravation of an existing pneumoconiosis or other oc-
31 cupational disease, or to the dependents, if any, of such
32 employees, in case death has ensued, according to the
33 provisions hereinafter made: *Provided*, That compensa-
34 tion shall not be payable for the disease of occupational
35 pneumoconiosis, or death resulting therefrom, unless the
36 employee has been exposed to the hazards of occupational
37 pneumoconiosis in the state of West Virginia over a
38 continuous period of not less than two years during the
39 ten years immediately preceding the date of his last
40 exposure to such hazards. An application for benefits on
41 account of occupational pneumoconiosis shall set forth the
42 name of the employer or employers and the time worked
43 for each, and the commissioner may allocate to and divide
44 any charges resulting from such claim among the employ-
45 ers by whom the claimant was employed for as much as
46 sixty days during the period of three years immediately
47 preceding the date of last exposure to the hazards of
48 occupational pneumoconiosis. The allocation shall be
49 based upon the time and degree of exposure with each
50 employer.

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

55 Occupational pneumoconiosis is a disease of the lungs
56 caused by the inhalation of minute particles of dust
57 over a period of time due to causes and conditions aris-
58 ing out of and in the course of the employment. The
59 term "occupational pneumoconiosis" shall include, but
60 shall not be limited to, such diseases as silicosis, an-
61 thracosilicosis, coal worker's pneumoconiosis, commonly
62 known as black lung or miner's asthma, silico-tuber-
63 culosis (silicosis accompanied by active tuberculosis of
64 the lungs), coal worker's pneumoconiosis accompanied
65 by active tuberculosis of the lungs, asbestosis, siderosis,
66 anthrax and any and all other dust diseases of the lungs
67 and conditions and diseases caused by occupational
68 pneumoconiosis which are not specifically designated
69 herein meeting the definition of occupational pneu-
70 moconiosis set forth in the immediately preceding sen-
71 tence.

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

75 For the purposes 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 employ-
79 ment shall be compensable except when it follows as
80 an incident of occupational disease as defined in this
81 chapter. Except in the case of occupational pneumo-
82 coniosis, a disease shall be deemed to have been in-
83 curred in the course of or to have resulted from the
84 employment only if it is apparent to the rational mind,
85 upon consideration of all the circumstances (1) that
86 there is a direct causal connection between the condi-
87 tions under which work is performed and the occu-
88 pational disease, (2) that it can be seen to have followed
89 as a natural incident of the work as a result of the
90 exposure occasioned by the nature of the employment,
91 (3) that it can be fairly traced to the employment as
92 the proximate cause, (4) that it does not come from

93 a hazard to which workmen would have been equally
94 exposed outside of the employment, (5) that it is in-
95 cidental to the character of the business and not inde-
96 pendent of the relation of employer and employee, and
97 (6) that it must appear to have had its origin in a risk
98 connected with the employment and to have flowed
99 from that source as a natural consequence, though it
100 need not have been foreseen or expected before its
101 contraction.

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

111 Claims for occupational disease as hereinbefore de-
112 fined, except occupational pneumoconiosis, shall be pro-
113 cessed in like manner as claims for all other personal

114 injuries: *Provided*, That in any claim in which the oc-
115 cupational diseases medical board has examined the claim-
116 ant prior to July one, one thousand nine hundred seventy-
117 one, such claim shall be processed and final disposition
118 made with respect thereto without regard to the fore-
119 going provisions of this paragraph and with like effect as
120 if (i) sections eight-d, eight-e, eight-f and fifteen-c of
121 this article had not been repealed by this act, and (ii)
122 section eight of this article had not been amended and
123 reenacted by this act.

§23-4-4. Funeral expenses.

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

§23-4-5. Benefits for first three days after injury.

1 If the period of disability does not last longer than
2 three days from the day the employee leaves work as
3 the result of the injury, no award shall be allowed,
4 except the disbursements provided for in the two next
5 preceding sections, but if the period of disability lasts
6 longer than fourteen days from the day the employee
7 leaves work as a result of the injury, an award shall
8 be allowed for the first three days of such disability.

§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 Vir-
8 ginia," as used in this chapter, shall have the meaning
9 and shall be computed as set forth in section fourteen
10 of this article.

11 (b) If the injury causes temporary total disability,

12 the employee shall receive during the continuance
13 thereof weekly benefits as follows: A maximum weekly
14 benefit to be computed on the basis of sixty-six and
15 two-thirds percent of the average weekly earnings,
16 wherever earned, of the injured employee, at the date
17 of injury, not to exceed the percentage of the average
18 weekly wage in West Virginia, as follows: On or after
19 July one, one thousand nine hundred sixty-nine, forty-
20 five percent; on or after July one, one thousand nine
21 hundred seventy, fifty percent; on or after July one,
22 one thousand nine hundred seventy-one, fifty-five per-
23 cent.

24 The minimum weekly benefits paid hereunder shall
25 not be less than twenty-six dollars per week for in-
26 juries occurring on or after July one, one thousand nine
27 hundred sixty-nine and not less than thirty-five dol-
28 lars per week for injuries occurring on or after July
29 one, one thousand nine hundred seventy-one.

30 (c) Subdivision (b) shall be limited as follows:
31 Aggregate 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
36 determined and the award computed on the basis of
37 four weeks compensation for each percent of disability
38 determined and the maximum and minimum weekly
39 benefits as provided in subdivision (b) of this sec-
40 tion for temporary total disability benefits shall be
41 payable.

42 For a disability of eighty-five percent or more, bene-
43 fits shall be payable during the remainder of life at
44 the maximum or minimum weekly benefits as pro-
45 vided in subdivision (b) of this section for temporary
46 total disability.

47 (e) If the injury results in the total loss by sever-
48 ance of any of the members named in this subdivision,
49 the percentage of disability shall be determined in
50 accordance with the following table, and award made
51 as provided in subdivision (d) of this section:

52 The loss of a great toe shall be considered a ten
53 percent disability.

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

56 The loss of other toes shall be considered a four per-
57 cent disability.

58 The loss of other toes (one phalanx) shall be con-
59 sidered a two percent disability.

60 The loss of all toes shall be considered a twenty-
61 five percent disability.

62 The loss of fore part of foot shall be considered a
63 thirty percent disability.

64 The loss of foot shall be considered a thirty-five per-
65 cent disability.

66 The loss of a leg shall be considered a forty-five per-
67 cent disability.

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

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

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

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

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

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

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

82 The loss of middle or second finger shall be considered
83 a seven percent disability.

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

86 The loss of index or first finger shall be considered
87 a ten percent disability.

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

90 The loss of thumb shall be considered a twenty per-
91 cent disability.

92 The loss of thumb and index finger shall be con-
93 sidered a thirty-two percent disability.

94 The loss of index and middle finger shall be con-
95 sidered a twenty percent disability.

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

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

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

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

104 The loss of middle, ring and little finger shall be
105 considered a twenty percent disability.

106 The loss of four fingers shall be considered a thirty-
107 two percent disability.

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

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

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

114 The total and irrecoverable loss of the sight of one

115 eye shall be considered a thirty-three percent disability.
116 For the partial loss of vision in one, or both eyes, the
117 percentage of disability shall be determined by the
118 commissioner, using as a basis the total loss of one
119 eye.

120 The total and irrecoverable loss of the hearing of
121 one ear shall be considered a fifteen percent disability,
122 and the injured employee shall be entitled to compen-
123 sation for a period of sixty weeks. The total and irre-
124 coverable loss of hearing of both ears shall be con-
125 sidered a forty-five percent disability, and the injured
126 employee shall be entitled to compensation for a period
127 of one hundred eighty weeks.

128 For the partial loss of hearing in one, or both ears,
129 the percentage of disability shall be determined by
130 the commissioner, using as a basis the total loss of hear-
131 ing in both ears.

132 Should a claimant sustain a compensable injury which
133 results in the total loss by severance of any of the
134 bodily members named in this subdivision, die from
135 sickness or noncompensable injury before the com-

136 missioner makes the proper award for such injury, the
137 commissioner shall make such award to claimant's de-
138 pendants as defined in this chapter, if any; such pay-
139 ment to be made in the same installments that would
140 have been paid to claimant if living: *Provided*, That
141 no payment shall be made to any widow of such claim-
142 ant after her remarriage, and that this liability shall
143 not accrue to the estate of such claimant and shall
144 not be subject to any debts of, or charges against, such
145 estate.

146 (f) Should a claimant to whom has been made a
147 permanent partial award of from one percent to eighty-
148 four percent, both inclusive, die from sickness or non-
149 compensable injury, the unpaid balance of such award
150 shall be paid to claimant's dependents as defined in
151 this chapter, if any; such payment to be made in the
152 same installments that would have been paid to claim-
153 ant if living: *Provided, however*, that no payment
154 shall be made to any widow of such claimant after
155 her remarriage, and that this liability shall not accrue

156 to the estate of such claimant and shall not be sub-
157 ject to any debts of, or charges against, such estate.

158 (g) The award for permanent disabilities intermedi-
159 ate to those fixed by the foregoing schedule and per-
160 manent disability of from one percent to eighty-four
161 percent shall be in the same proportion and shall be com-
162 puted and allowed by the commissioner.

163 (h) The percentage of all permanent disabilities
164 other than those enumerated in subdivision (e) of this
165 section shall be determined by the commissioner, and
166 awards made in accordance with the provisions of sub-
167 division (d) of this section. Where there has been
168 an injury to a member as distinguished from total
169 loss by severance of that member, the commissioner
170 in determining the percentage of disability may be
171 guided by but shall not be limited to the disabilities
172 enumerated in subdivision (e) of this section.

173 (i) Compensation payable under any subdivision of
174 this section shall be limited as follows: Not to exceed
175 the maximum nor to be less than the minimum weekly
176 benefits specified in subdivision (b) of this section.

177 (j) Temporary total disability benefits payable un-
178 der subdivision (b) of this section shall not be deduc-
179 tible from permanent partial disability awards pay-
180 able under subdivisions (d) and (e) of this section.
181 Compensation, either total temporary or permanent par-
182 tial, under this section shall be payable only to the in-
183 jured employee and the right thereto shall not vest in
184 his or her estate, except that any unpaid compensation
185 which would have been paid or payable to the em-
186 ployee up to the time of his death, if he had lived, shall
187 be paid to the dependents of such injured employee
188 if there be such dependents at the time of death.

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

191 Loss of both eyes or the sight thereof.

192 Loss of both hands or the use thereof.

193 Loss of both feet or the use thereof.

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

195 In all other cases permanent disability shall be de-
196 termined by the commissioner in accordance with the
197 facts in the case, and award made in accordance with
198 the provisions of subdivision (d).

199 (1) A disability which renders the injured employee
200 unable to engage in substantial gainful activity requir-
201 ing skills or abilities comparable to those of any gainful
202 activity in which he has previously engaged with some
203 regularity and over a substantial period of time shall
204 be considered in determining the issue of total dis-
205 ability.

§23-4-7. Hernia.

1 In all claims for compensation for hernia resulting
2 from personal injury received in the course of and re-
3 sulting from the employee's employment, it must be
4 proven by a preponderance of the evidence: First, that
5 there was an injury resulting in hernia; second, that it
6 was accompanied by pain; third, that the hernia fol-
7 lowed an injury; fourth, that the hernia did not exist
8 prior to the injury for which compensation is claimed.
9 All hernia, inguinal, femoral or otherwise, so proven
10 to be the result of an injury received in the course of
11 and resulting from the employment, shall be treated
12 in a surgical manner by radical operation. If death
13 results from such operation, the death shall be con-

14 sidered as a result of the injury, and compensation paid
15 in accordance with the provisions of section ten of this
16 article. In nonfatal cases, time loss only shall be paid,
17 unless it is shown by special examination that the in-
18 jured employee has a permanent partial disability re-
19 sulting after the operation. If so, compensation shall be
20 paid in accordance with the provisions in section six of
21 this article with reference to permanent partial disabil-
22 ity. In case the injured employee refuses to undergo
23 the radical operation for the cure of said hernia, no
24 compensation will be allowed during the time such re-
25 fusal continues. If, however, it is shown that the em-
26 ployee has some chronic disease, or is otherwise in such
27 physical condition that it is considered unsafe for him
28 to undergo such operation, he shall be paid as pro-
29 vided in section six.

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

1 The commissioner shall have authority, after due no-
2 tice to the employer and claimant, whenever in his opin-
3 ion it shall be necessary, to order a claimant of compen-
4 sation for a personal injury other than occupational

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

26 traveling and other expenses necessarily incurred by him
27 in obeying such order, which shall be paid out of the
28 amount allowed under this chapter for medical, surgical,
29 dental and hospital treatment.

30 Where the claimant is required to undergo a medical
31 examination or examinations by a physician or physicians
32 selected by the employer, as aforesaid or in connection
33 with any claim which is in litigation, in addition to the
34 reasonable traveling and other expenses, not to exceed
35 the expenses paid when a claimant is examined by a
36 physician or physicians selected by the commissioner,
37 such claimant shall be reimbursed by the employer for
38 loss of wages necessarily incurred by him in connection
39 with such examination or examinations.

**§23-4-8b. The 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 he
4 is dead, the claimant, and the employer, to appear be-
5 fore such board at a time and place stated in the notice.
6 If the employee be living, he shall appear before the

7 board at the time and place specified and submit to
8 such examination, including clinical and x-ray exami-
9 nations, as the board may require. If a physician lic-
10 ensed to practice medicine in the state shall make af-
11 fidavit 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 hear-
15 ing or examination of the employee, or may appoint a
16 qualified specialist in the field of respiratory disease
17 to examine the claimant on behalf of the board. The
18 employee, or in case he is dead, the claimant, and the
19 employer shall also produce as evidence to the board
20 all reports of medical and x-ray examinations which
21 may be in their respective possession or control, show-
22 ing the past or present condition of the employee. If the
23 employee be dead, the notice of the board shall further
24 require that the claimant produce necessary consents
25 and permits so that an autopsy may be performed, if
26 the board shall so direct. When in the opinion of the
27 board an autopsy is deemed necessary accurately and

28 scientifically to ascertain and determine the cause of
29 death, such autopsy examination shall be ordered by
30 the board, which shall designate a duly licensed phy-
31 sician, a pathologist, or such other specialists as may be
32 deemed necessary by the board, to make such exami-
33 nation and tests to determine the cause of death and
34 certify his or their written findings, in triplicate, to the
35 board, which findings shall be public records. In the
36 event that a claimant for compensation for such death
37 refuses to consent and permit such autopsy to be made,
38 all rights for compensation shall thereupon be forfeited.
39 The employee, or if he be dead, the claimant, and
40 the employer, shall be entitled to be present at all
41 examinations conducted by the board, and to be rep-
42 resented by attorneys and physicians.

**§23-4-8c. Same-Reports and distribution thereof; presumption;
findings required 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

5 in controversy, and the commissioner shall send one
6 copy thereof to the employee or claimant and one copy
7 to the employer, and the board shall also return to and
8 file with the commissioner all the evidence as well as
9 all statements under oath, if any, of the persons who
10 appeared before it on behalf of the employee or claim-
11 ant, or employer and also all medical reports and x-ray
12 examinations produced by or on behalf of the employee
13 or 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 pneumonconiosis,
30 and, if so, the percentage of permanent disability re-
31 sulting 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
38 board on behalf of the claimant or employer, and what,
39 if any, medical evidence was produced by or on behalf
40 of the claimant or employer.

41 If either party objects to the whole or any part of
42 such findings and conclusions of the board, he shall file
43 with the commissioner, within fifteen days of the mail-
44 ing of such copy to him, unless for good cause shown, the
45 commissioner extends such time, his objections thereto
46 in 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
54 the 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 conclus-
58 ions of the board, notice thereof shall be given to the
59 board, and the members thereof joining in such findings
60 and conclusions shall appear at the time fixed by the
61 commissioner for the hearing to submit to examination
62 and cross-examination in respect to such findings and
63 conclusions. At such hearing evidence to support or con-
64 trovert the findings and conclusions of the board shall
65 be limited to examination and cross-examination of the
66 members of the board, and to the taking of testimony of
67 other qualified physicians and roentgenologists.

§23-4-9b. Pre-existing physical impairments not considered in fixing amount of compensation.

1 Where an employee has a definitely ascertainable
2 physical impairment and such employee shall there-
3 after receive an injury in the course of and resulting
4 from his employment, unless such injury results in
5 total permanent disability within the meaning of sec-
6 tion one, article three of this chapter, such physical
7 impairment, and the effect thereof, and an aggravation
8 thereof, shall not be taken into consideration in fixing
9 the amount of compensation allowed by reason of such
10 injury, and such compensation shall be awarded only
11 in the amount that would have been allowable had
12 such employee not had such pre-existing physical im-
13 pairment.

§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
5 years and disability is continuous from date of such

6 injury until date of death, or if death results from
7 occupational pneumoconiosis or from any other occu-
8 pational disease within ten years from the date of the
9 last exposure to the hazards of occupational pneumo-
10 coniosis or to the other particular occupational hazard
11 involved, as the case may be, the benefits shall be
12 in the amounts and to the 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 widow
17 or invalid widower, the payment shall be one hun-
18 dred sixty dollars a month until death or remarriage
19 of such widow or widower, and in addition fifty dol-
20 lars a month for each child under eighteen years of
21 age, to be paid until such child reaches such age, or
22 where such child after reaching eighteen years of age
23 continues as a full-time student in an accredited high
24 school, college, university, business or trade school,
25 to be paid until such child reaches the age of twenty-
26 two years, or if an invalid child, fifty dollars a month,

27 to continue as long as such child remains an invalid
28 to be increased to one hundred sixty dollars per month
29 upon the death of the surviving dependent parent:

30 *Provided*, That if such widow or invalid widower shall
31 remarry within ten years from the date of the death
32 of such employee, such widow or widower shall be
33 paid at the time of remarriage twenty percent of the
34 amount that would be due for the period remaining
35 between the date of such remarriage and the end of
36 ten years from the date of death of such employee,
37 and such widow or widower shall be advised in writing
38 by the commissioner of his or her rights under this
39 proviso at the time of making the original award:

40 *Provided, however*, That if upon investigation and hear-
41 ing, as provided in article five of this chapter, it shall
42 be ascertained that such widow or widower is living
43 with a man or woman, as the case may be, as man
44 and wife and not married, or that the widow is living
45 a life of prostitution, the commissioner shall stop pay-
46 ment of the benefits herein provided to such widow or
47 widower.

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

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

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

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

73 (d) If the deceased employee leaves no dependent
74 widow or widower or wholly dependent father or mother
75 but there are other wholly dependent persons, as de-
76 fined in subdivision (f) of this section, the payment shall
77 be sixty-five dollars a month, to continue for six years
78 after the death of the deceased, except as otherwise
79 provided herein.

80 (e) If the deceased employee leaves no dependent
81 widow or widower, child under eighteen years of age,
82 or wholly dependent person, but there are partially
83 dependent persons at the time of death, the payment
84 shall be thirty-five dollars a month, to continue for
85 such portion of the period of six years after the death,
86 as the commissioner may determine, but no such par-
87 tially dependent person shall receive compensation pay-
88 ments as a result of the death of more than one em-
89 ployee.

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

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

111 in whole or in part for his or her support upon the earn-
112 ings of the employee; and invalid brother or sister
113 wholly dependent for his or her support upon the earn-
114 ings of the employee at the time of the injury causing
115 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 oc-
10 cupational pneumoconiosis or other occupational diseases.

11 In computing benefits payable on account of occupa-
12 tional pneumoconiosis, the commissioner shall deduct
13 the amount of all prior workmen's compensation bene-
14 fits paid to the same claimant on account of silicosis,
15 but a prior silicosis award shall not, in any event, pre-

16 clude an award for occupational pneumoconiosis other-
17 wise payable under this article.

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

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

32 In any claim for injuries, including occupational pneu-
33 moconiosis and other occupational diseases, occurring on
34 or after July one, one thousand nine hundred seventy-
35 one, any award for temporary total, permanent partial or
36 permanent total disability benefits or for dependent bene-

37 fits, shall be paid at the weekly rates or in the monthly
38 amount in the case of dependent benefits applicable to the
39 claimant therein in effect on the date of such injury. If
40 during the life of such award for temporary total, perm-
41 anent partial or permanent total disability benefits or for
42 dependent benefits, the weekly rates or the monthly
43 amount in the case of dependent benefits are increased or
44 dcreased, the claimant shall receive such increased or de-
45 creased benefits beginning as of the effective date of said
46 increase or decrease.

**§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
3 than for occupational pneumoconiosis or other occupa-
4 tional disease, the application therefor must be made on
5 the form or forms prescribed by the commissioner and
6 filed in the office of the commissioner within two years
7 from and after the injury or death, as the case may be,
8 and all proofs of dependency in fatal cases must likewise
9 be filed with the commissioner within two years from

10 and after the death. In case the employee is mentally
11 or 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 thirty
17 days from the date the employer first receives knowledge
18 of such injury.

19 To entitle any employee to compensation for occupa-
20 tional 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 of
23 the commissioner within three years from and after the
24 last day of the last continuous period of sixty days or
25 more during which the employee was exposed to the
26 hazards of occupational pneumoconiosis or within three
27 years from and after the employee's occupational
28 pneumoconiosis was made known to him by a physician
29 or which he should reasonably have known, whichever
30 shall last occur, or, in the case of death, the applica-

31 tion shall be filed as aforesaid by the dependent of such
32 employee within two years from and after such em-
33 ployee's death.

34 To entitle any employee to compensation for occupa-
35 tional disease other than occupational pneumoconiosis
36 under the provisions hereof, the application therefor
37 must be made on the form or forms prescribed by the
38 commissioner and filed in the office of the commissioner
39 within three years from and after the day on which
40 the employee was last exposed to the particular occupa-
41 tional hazard involved or within three years from and
42 after the employee's occupational disease was made
43 known to him by a physician or which he should reason-
44 ably have known, whichever shall last occur, or, in case
45 of death, the application shall be filed as aforesaid by
46 the dependent of such employee within two years from
47 and after such employee's death.

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

1 If a claim for occupational pneumoconiosis benefits
2 be filed by an employee within three years from and

3 after the last day of the last continuous period of sixty
4 days exposure to the hazards of occupational pneumoco-
5 niosis, the commissioner shall determine whether the
6 claimant was exposed to the hazards of occupational
7 pneumoconiosis for a continuous period of not less than
8 sixty days while in the employ of the employer within
9 three years prior to the filing of his claim, whether in
10 the state of West Virginia the claimant was exposed to
11 such hazard over a continuous period of not less than
12 two years during the ten years immediately preceding
13 the date of his last exposure thereto and whether the
14 claimant was exposed to such hazard over a period of
15 not less than ten years during the fifteen years im-
16 mediately preceding the date of his last exposure thereto.
17 If a claim for occupational pneumoconiosis benefits be
18 filed by an employee within three years from and after
19 the employee's occupational pneumoconiosis was made
20 known to him by a physician or otherwise should have
21 reasonably been known to him, the commissioner shall
22 determine whether the claimant filed his application
23 within said period and whether in the state of West

24 Virginia the claimant was exposed to such hazard over
25 a continuous period of not less than two years during
26 the ten years immediately preceding the date of last
27 exposure thereto and whether the claimant was exposed
28 to such hazard over a period of not less than ten years
29 during the fifteen years immediately preceding the date
30 of last exposure thereto. If a claim for occupational
31 pneumoconiosis benefits be filed by a dependent of a
32 deceased employee, the commissioner shall determine
33 whether the deceased employee was exposed to the
34 hazards of occupational pneumoconiosis for a continuous
35 period of not less than sixty days while in the employ
36 of the employer within ten years prior to the filing of the
37 claim, whether in the state of West Virginia the deceased
38 employee was exposed to such hazard over a continuous
39 period of not less than two years during the ten years
40 immediately preceding the date of his last exposure
41 thereto and whether the claimant was exposed to such
42 hazard over a period of not less than ten years during
43 the fifteen years immediately preceding the date of his
44 last exposure thereto. The commissioner shall also de-

45 termine such other nonmedical facts as may in his
46 opinion be pertinent to a decision on the validity of the
47 claim.

48 The commissioner shall give each interested party no-
49 tice in writing of his findings with respect to all such
50 nonmedical facts and such findings and such action of
51 the commissioner shall be final unless the employer, em-
52 ployee, claimant or dependent shall, within fifteen days
53 after receipt of such notice, object to such findings. Upon
54 receipt of such objection the commissioner shall set a
55 hearing as provided in section one, article five of this
56 chapter.

**§23-4-16. Commissioner's jurisdiction over case continuous;
modification of finding or order; time limitation
on awards; reimbursement of claimant for ex-
penses.**

1 The power and jurisdiction of the commissioner over
2 each case shall be continuing and he may from time
3 to time, after due notice to the employer, make such
4 modifications or changes with respect to former findings
5 or orders as may be justified: *Provided*, That no further
6 award may be made in fatal cases arising after March

28 the claimant to the commissioner in support of his ap-
29 plication, and the claim is opened for further consider-
30 ation and additional award is later made, the claimant
31 shall be reimbursed for the expenses of such examina-
32 tion. Such reimbursement shall be made by the com-
33 missioner to the claimant, in addition to all other bene-
34 fits awarded, upon due proof of the amount thereof
35 being furnished the commissioner by the claimant, but
36 shall in no case exceed the sum of one hundred dollars.

§23-4-16a. Interest on benefits.

1 Whenever any award of temporary total, permanent
2 partial or permanent total disability benefits or dependent
3 benefits is made on or after July one, one thousand nine
4 hundred seventy-one, and a protest is filed thereto or an
5 appeal is taken therefrom by an employer only and not
6 by the claimant or dependent and the award is not ulti-
7 mately denied or reduced following such protest or ap-
8 peal, the commissioner shall add thereto interest at the
9 simple rate of six percent per annum from the date the
10 award would have been payable had such protest or ap-
11 peal not been filed or taken, exclusive of any period for

12 which a continuance was granted upon motion of any
13 party other than the protesting or appealing employer.
14 Any interest payable shall be charged to the account of
15 the protesting or appealing employer to the extent that
16 the benefits upon which such interest is computed are
17 charged to the account of such employer.

ARTICLE 4A. DISABLED WORKMEN'S RELIEF FUND.

§23-4A-1. Disabled workmen's relief fund created.

1 For the relief of persons who are receiving workmen's
2 compensation benefits by virtue of and under the laws of
3 this state in amounts less than the minimum amount pay-
4 able under the laws in effect on July one, one thousand
5 nine hundred sixty-one, there is hereby created a separate
6 fund to be known as the "Disabled Workmen's Relief
7 Fund," which fund shall consist of such sums as are from
8 time to time made available to carry out the objects and
9 purposes of this article. Said fund shall be in the custody
10 of the state treasurer and disbursements therefrom shall
11 be made upon requisition signed by the commissioner to
12 those persons entitled to participate therein and in such

13 amounts to each participant as is provided in section
14 three of this article.

§23-4A-2. To whom benefits paid.

1 In order to participate in the disabled workmen's relief
2 fund, an individual must be receiving workmen's compen-
3 sation benefits by virtue of and under the laws of this
4 state in amounts less than the minimum amount payable
5 under the laws in effect on July one, one thousand nine
6 hundred sixty-one, and be receiving such benefits under
7 a permanent total disability award or be receiving such
8 benefits because of the death of an employee.

§23-4A-3. Computation of benefits.

1 Each individual entitled to participate in the disabled
2 workmen's relief fund shall be entitled to receive pay-
3 ments without application (except that an application
4 shall be required under section five of this article) from
5 said fund of an amount equal to the difference between
6 the minimum amount payable under the rates in effect as
7 of July one, one thousand nine hundred ^{sixty-one}~~seventy~~, and the
8 amount said individual is in fact receiving by virtue of
9 and under the laws of this state. The first such payment

10 shall be made concurrently with the payment to him of
11 workmen's compensation for the period next following
12 the expiration of the twelfth calendar week after this
13 article becomes effective and subsequent payments shall
14 be made during the period thereafter in which such par-
15 ticipant shall be entitled to workmen's compensation
16 benefits by virtue of and under the laws of this state.

§23-4A-4. Mode of payment.

1 Payments to an individual entitled to participate in the
2 disabled workmen's relief fund may be made from said
3 fund by separate check or may be made from said fund
4 and from the workmen's compensation fund by one check,
5 but each such check drawn on the two funds shall be so
6 written as to show plainly the payments made from each
7 fund. No disbursements shall be made from the work-
8 men's compensation fund on account of any provisions of
9 this article.

§23-4A-5. Employers providing own system of compensation.

1 The commissioner shall promptly require of each em-
2 ployer who has elected to pay compensation direct under
3 the provisions of section nine, article two of this chapter a

4 verified list of the names and addresses of all persons to
5 whom such employer is paying workmen's compensation
6 on account of permanent total disability or because of the
7 death of an employee and such evidence respecting such
8 persons as the commissioner may reasonably deem neces-
9 sary to determine the eligibility of any such person to
10 participate in the disabled workmen's relief fund. Any
11 person claiming the right to participate in said fund under
12 the provisions of this section may file his application
13 therefor with the commissioner and shall be accorded a
14 hearing thereon.

§23-4A-6. Powers of commissioner over disabled workmen's relief fund.

1 In the investigation and determination of the right of
2 persons to participate in the disabled workmen's relief
3 fund, the commissioner shall have and exercise all the
4 powers which he possesses under the other articles of this
5 chapter. His powers and jurisdiction over each case shall
6 be continuing, but there shall be no appeal from his de-
7 cisions to any other body or tribunal. No attorney, repre-
8 sentative or agent of any claimant or participant shall
9 be entitled to charge or receive a fee or compensation or

10 gratuity in any form for representing or assisting or pre-
11 tending to represent or assist any person to become a
12 participant in said disabled workmen's relief fund.

§23-4A-7. Employees to administer disabled workmen's relief fund; payment of salaries.

1 The commissioner shall employ such employees as may
2 be necessary to discharge his duties and responsibilities
3 under this article. The salaries and expenses of such em-
4 ployees shall be paid by the treasurer of the state from
5 the disabled workmen's relief fund upon vouchers auth-
6 orized and signed as provided in section two, article one
7 of this chapter.

§23-4A-8. Disabled workmen's relief fund; how funded.

1 For the purpose of carrying out the provisions of this
2 article, the commissioner shall transfer annually, out of
3 the interest earned during the previous year on invest-
4 ments held by the workmen's compensation fund, an
5 amount estimated by the commissioner to be necessary
6 to carry out the provisions of this article for one year.

7 Such money shall be deposited by the commissioner in
8 the disabled workmen's relief fund, as required by this
9 article.

ARTICLE 5. REVIEW.**§23-5-1. Notice by commissioner of decision; objections and hearing; appeal.**

1 The commissioner shall have full power and authority
2 to hear and determine all questions within his jurisdic-
3 tion, but upon the making or refusing to make any
4 award, or upon the making of any modification or change
5 with respect to former findings or orders, as provided
6 by section sixteen, article four of this chapter, the com-
7 missioner shall give notice, in writing, to the employer,
8 employee, claimant, or dependent, as the case may be,
9 of his action, which notice shall state the time allowed
10 for filing an objection to such finding, and such action
11 of the commissioner shall be final unless the employer,
12 employee, claimant or dependent shall, within thirty
13 days after the receipt of such notice, object, in writ-
14 ing, to such finding. Upon receipt of such objection the
15 commissioner shall, within thirty days from receipt
16 thereof, set a time and place for the hearing of evidence.
17 Any such hearing may be conducted by the commis-
18 sioner or his duly authorized representative at the coun-
19 ty seat of the county wherein the injury occurred, or

20 at any other place which may be agreed upon by the
21 interested parties, and in the event the interested parties
22 cannot agree, and it appears in the opinion of the com-
23 missioner that the ends of justice require the taking
24 of evidence elsewhere, then at such place as the com-
25 missioner may direct, having due regard for the con-
26 venience of witnesses. Both the employer and claimant
27 shall be notified of such hearing at least ten days in
28 advance, and the hearing shall be held within sixty
29 days after the filing of objection to the commissioner's
30 findings as hereinabove provided, unless such hearing
31 be postponed by agreement of the parties or by the com-
32 missioner for good cause. The evidence taken at such
33 hearing shall be transcribed and become part of the
34 record of the proceedings, together with the other
35 records thereof in the commissioner's office. At any time
36 within forty-five days after hearing, if the commissioner
37 is of the opinion that the facts have not been adequately
38 developed at such hearing, he may order supplemental
39 hearing upon due notice to the parties. After final
40 hearing the commissioner shall, within forty-five days,

41 render his decision affirming, reversing or modifying,
42 his former action, which shall be final: *Provided*, That
43 the claimant or the employer may apply to the appeal
44 board herein created for a review of such decision;
45 but no appeal or review shall lie unless application
46 therefor be made within thirty days of receipt of notice
47 of the commissioner's final action, or in any event within
48 sixty days of the date of such final action, regardless of
49 notice.

50 After protest by the employer only to any finding or
51 determination of the commissioner made on or after July
52 one, one thousand nine hundred seventy-one, and the em-
53 ployer does not prevail in its protest and, in the event
54 the claimant is required to attend a hearing by subpoena
55 or agreement of counsel or at the express direction of the
56 commissioner, then such claimant in addition to reason-
57 able traveling and other expenses shall be reimbursed
58 for loss of wages incurred by him in attending such hear-
59 ing.

§23-5-2. Workmen's compensation appeal board.

1 There shall be a board to be known as the "Workmen's
2 Compensation Appeal Board", which shall be referred

3 to in this article as the "board", to be composed of three
4 members, none of whom shall be a contributor to the
5 compensation fund or in any way connected with a
6 contributor thereto and none of whom shall be a bene-
7 ficiary of the compensation fund or in any way connected
8 with a beneficiary thereof. Two members of such board
9 shall be of opposite politics to the third, and all three
10 shall be citizens of this state who have resided therein
11 for a period of at least five years. All members of the
12 board shall be appointed by the governor for a term of
13 six years. The governor is hereby vested with the power
14 to remove any member of the board in accordance with
15 the provisions of section four, article six, chapter six
16 of this code. Notwithstanding the provisions of section
17 two-a, article seven, chapter six of this code, they shall
18 each receive an annual salary of seven thousand five
19 hundred dollars, payable in monthly installments, and
20 shall also be entitled to reasonable and necessary trav-
21 eling and other expenses incurred while actually en-
22 gaged in the performance of their duties. The governor
23 shall designate one of the members of the board as

24 chairman thereof, and the board shall meet at the capitol
25 or at such other places throughout the state as it may
26 deem proper at regular sessions commencing on the
27 first Tuesday in February, April, June, August, October
28 and December, and continuing as long as may be neces-
29 sary for the proper and expeditious transaction of the
30 business before it. All clerical services required by the
31 board shall be paid for by the compensation commis-
32 sioner from any funds at his disposal. The board shall,
33 from time to time, compile and promulgate such rules
34 of practice and procedure as to it shall appear proper
35 for the prompt and efficient discharge of its business
36 and such rules shall be submitted to the supreme court
37 of appeals for approval, and if approved by such court
38 shall have the same force and effect as the approved
39 rules of procedure of circuit courts. The board shall
40 employ such clerical staff as may be necessary for the
41 efficient conduct of its business but the number of such
42 employees shall not exceed two. Salaries of the board,
43 and its employees, and all of its necessary operating
44 expense shall be paid from the workmen's compensation

45 fund. The board shall submit its annual budget to the
46 state compensation commissioner for inclusion as a sep-
47 arate item in the budget estimates prepared by him
48 annually and within the limits of such budget, all ex-
49 penses of the board shall be by the requisition of the
50 commissioner. Salaries of the employees of the board
51 shall be fixed by the board.

§23-5-3a. Continuances.

1 It is the policy of this chapter that the rights of claim-
2 ants for workmen's compensation be determined as
3 speedily and expeditiously as possible to the end that
4 those incapacitated by injuries and the dependents of de-
5 ceased workmen may receive benefits as quickly as pos-
6 sible in view of the severe economic hardships which
7 immediately befall the families of injured or deceased
8 workmen. Therefore, the criteria for continuances and
9 supplemental hearings "for good cause shown" are to be
10 strictly construed by the commissioner and his authorized
11 representatives to prevent delay, in granting or denying
12 continuances and supplemental hearings. It is also the
13 policy of this chapter to prohibit the denial of just claims

14 of injured or deceased workmen or their dependents on
15 technicalities.

§23-5-5. Fees of attorney for claimant.

1 On or after July one, one thousand nine hundred
2 seventy-one, no attorney's fee in excess of twenty-five
3 percent of any award granted shall be charged or received
4 by an attorney for a claimant or dependent. In the event
5 of any award to be paid for the remainder of the life of
6 the claimant or in the event of any award to a dependent
7 of an employee, an attorney's fee shall not be charged or
8 received by the attorney of such claimant or dependent
9 in excess of twenty-five percent of the benefits to be paid
10 during a period of two hundred eight weeks. This para-
11 graph shall not apply to awards made prior to July one,
12 one thousand nine hundred seventy-one: *Provided*, That
13 the interest on disability or dependent benefits as pro-
14 vided for in this chapter shall not be considered as part of
15 the award in determining any such attorney's fee.

ARTICLE 6. SEVERABILITY.

§23-6-1. Severability.

1 If any provision of this chapter or the application there-
2 of to any person or circumstance is held unconstitutional

3 or invalid, such unconstitutionality or invalidity shall not
4 affect other provisions or applications of the chapter, and
5 to this end the provisions of this chapter are declared to
6 be severable.

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

Russell G. Pace
Chairman Senate Committee

Phyllis J. Rutledge
Chairman House Committee

Originated in the House.

Takes effect July 1, 1971.

Howard Regus
Clerk of the Senate

W. Blankenship
Clerk of the House of Delegates

E. Hans McEvers
President of the Senate

Lewis N. McManus
Speaker House of Delegates

The within approved this the 1st
day of April, 1971.

Arch. A. Stange, Jr.
Governor



PRESENTED TO THE
GOVERNOR

Date 3/22/71

Time 12 noon

RECEIVED

APR 2 11 55 PM '71

OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA