

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1973



ENROLLED

Committee Substitute  
for  
HOUSE BILL No. 1221

(By Mr. Speaker, Mr. Mc Manus  
and Mr. Seibert)



PASSED April 14, 1973

In Effect July 1, 1973 Passage



C 641

FILED IN THE OFFICE  
EDGAR F. WICKELL III  
SECRETARY OF STATE  
THIS DATE 5/3/73

1221

**ENROLLED**

**COMMITTEE SUBSTITUTE**

**FOR**

**House Bill No. 1221**

**(By MR. SPEAKER, MR. McMANUS, and MR. SEIBERT)**

**(Originating in the House Committee on the Judiciary)**

[Passed April 14, 1973; in effect July 1, 1973.]

AN ACT to amend and reenact sections six, fourteen, fifteen and eighteen, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article four by adding thereto three new sections, designated sections one-a, one-b and one-c; to amend and reenact sections one, two and three, article four-a of said chapter; and to amend and reenact sections one and five, article five of said chapter, all relating to workmen's compensation generally; relating to report of injuries by employees; relating to report of injuries by employers; relating to waiver by employers; authorizing payment of total temporary disability benefits directly to claimants; relating to circumstances under which employer's account is not charged and a claimant is not required to refund payments of total temporary disability benefits; relating to the classification of disability benefits and defining terms in connection therewith; establishing minimum and maximum benefits; relating to determining the degree of disability and standards in connection therewith; relating to the computation of benefits and defining terms in connection there-

with; relating to the application for workmen's compensation benefits and prescribing time limits in connection therewith; relating to the mode of paying workmen's compensation benefits generally; exempting workmen's compensation benefits from the claims of creditors and from legal process; relating to 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 disabled workmen's relief 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; providing that the purpose of such disabled workmen's relief fund is to increase the benefits being paid under life awards or in fatal claims to the minimum amount payable in such claims under the law in effect on July one, one thousand nine hundred seventy-one; relating to notice by commissioner of decision; relating to objections and hearings; establishing time standards for the setting of hearings and for decisions after final hearings; relating to appeals; relating to expenses in connection with hearings; limiting the fee of an attorney for a claimant; providing that any contract in excess of such limitation is unlawful and unenforceable; and specifying unlawful practices.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 4. DISABILITY AND DEATH BENEFITS.**

**§23-4-1a. Report of injuries by employee.**

1 Every employee who sustains an injury subject to this chap-  
2 ter, or his representative, shall immediately on the occurrence  
3 of such injury or as soon thereafter as practicable give or  
4 cause to be given to the employer or any of his agents a writ-  
5 ten notice of the occurrence of such injury, with like notice or  
6 a copy thereof to the commissioner, stating in ordinary lan-

7 guage the name and address of the employer, the name and  
8 address of the employee, the time, place, nature and cause of  
9 the injury, and whether temporary total disability has resulted  
10 therefrom. Such notice shall be given personally to the employ-  
11 er or any of his agents, or may be sent by registered mail ad-  
12 dressed to the employer at his last known residence or place  
13 of business. Such notice may be given to the commissioner  
14 personally or by mail.

**§23-4-1b. Report of injuries by employers.**

1 It shall be the duty of every employer to report to the com-  
2 missioner every injury sustained by any person in his employ.  
3 Such report shall be on forms prescribed by the commissioner;  
4 and shall be made within ten days of the employer's receipt  
5 of the employee's notice of injury, required by section one-a of  
6 this article, or within ten days after the employer has been  
7 notified by the commissioner that a claim for benefits has been  
8 filed on account of such injury, whichever is sooner. The  
9 employer's report of injury shall include a statement as to  
10 whether or not, on the basis of the information then available,  
11 the employer disputes the compensability of the injury or  
12 objects to the payment of temporary total disability benefits  
13 in connection therewith. Such statements by the employer shall  
14 not prejudice the employer's right thereafter to contest the  
15 compensability of the injury, or to object to any subsequent  
16 finding or award, in accordance with article five of this chap-  
17 ter; but an employer's failure to make timely report of an  
18 injury as required herein, or statements in such report to the  
19 effect that the employer does not dispute the compensability  
20 of the injury or object to the payment of temporary total dis-  
21 ability benefits for such injury, shall be deemed to be a waiver  
22 of the employer's right to object to any interim payment of  
23 temporary total disability benefits paid by the commissioner  
24 with respect to any period from the date of injury to the date  
25 of the commissioner's receipt of any objection made thereto by  
26 the employer.

**§23-4-1c. Payment of temporary total disability benefits directly to claimant.**

1 In any case of injury in which the employer has failed to

2 make report of an injury as required' in section one-b of this  
3 article, or has made such report of an injury but has not  
4 stated therein that he disputes the compensability of the in-  
5 jury or objects to the payment of temporary total disability  
6 benefits in connection therewith, the commissioner, upon a  
7 finding that a claimant has sustained a compensable injury  
8 within the meaning of section one of this article, and upon  
9 proof by proper physician's report, or otherwise, that dis-  
10 ability will last longer than three days as provided in section  
11 five of this article, shall immediately commence payment of  
12 temporary total disability benefits to the claimant in the  
13 amounts provided for in sections six and fourteen, of this  
14 article, without waiting for the expiration of the thirty-day  
15 period during which objections may be filed to such findings  
16 as provided in section one, article five of this chapter. The  
17 commissioner shall give immediate notice to the employer of  
18 his findings and of the commencement of such payments.

19 Where the employer is a subscriber to the workmen's com-  
20 pensation fund under the provisions of article three of this  
21 chapter, and upon the findings aforesaid, the commissioner  
22 shall mail all workmen's compensation checks paying such  
23 interim temporary total disability benefits directly to the clai-  
24 mant and not to the employer for delivery to the claimant.

25 Where the employer has elected to carry his own risk under  
26 section nine, article two of this chapter, and upon the findings  
27 aforesaid, the commissioner shall immediately issue a pay order  
28 directing the employer to pay such amounts as are due the  
29 claimant for temporary total disability benefits.

30 Upon the filing of timely objection to any finding or order  
31 of the commissioner, as provided in section one, article five  
32 of this chapter, with respect to the payment or continued pay-  
33 ment of temporary total disability benefits as provided herein,  
34 the commissioner shall immediately cease said payments until  
35 such objection has been finally determined as provided in  
36 article five of this chapter. If the claim is later determined not  
37 to be compensable, the employer's account is not to be charged  
38 for temporary total disability payments made, and the claimant  
39 will not be required to refund to the commissioner temporary  
40 total disability payments he has received, unless fraud has  
41 been employed in securing such benefits.

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

1 Where compensation is due an employee under the provi-  
2 sions of this chapter for personal injury, such compensation  
3 shall be as provided in the following schedule:

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

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

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

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

32 (d) If the injury causes permanent disability, the per-  
33 centage of disability to total disability shall be determined and  
34 the award computed on the basis of four weeks compensation  
35 for each percent of disability determined and the maximum  
36 or minimum weekly benefits as provided in subdivision (b) of  
37 this section for temporary total disability benefits shall be  
38 payable.

39 For a disability of eighty-five percent or more, benefits

40 shall be payable during the remainder of life at the maximum or  
41 minimum weekly benefits as provided in subdivision (b) of this  
42 section for temporary total disability.

43 (e) If the injury results in the total loss by severance of  
44 any of the members named in this subdivision, the percentage  
45 of disability shall be determined in accordance with the fol-  
46 lowing table, and award made as provided in subdivision (d)  
47 of this section:

48 The loss of a great toe shall be considered a ten percent  
49 disability.

50 The loss of a great toe (one phalanx) shall be considered  
51 a five percent disability.

52 The loss of other toes shall be considered a four percent  
53 disability.

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

56 The loss of all toes shall be considered a twenty-five percent  
57 disability.

58 The loss of forepart of foot shall be considered a thirty  
59 percent disability.

60 The loss of foot shall be considered a thirty-five percent  
61 disability.

62 The loss of a leg shall be considered a forty-five percent  
63 disability.

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

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

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

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

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

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

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

78 The loss of middle or second finger shall be considered a  
79 seven percent disability.

80 The loss of index or first finger (one phalanx) shall be

81 considered a six percent disability.

82 The loss of index or first finger shall be considered a ten  
83 percent disability.

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

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

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

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

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

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

96 The loss of thumb, index and middle finger shall be con-  
97 sidered a forty percent disability.

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

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

102 The loss of four fingers shall be considered a thirty-two  
103 percent disability.

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

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

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

110 The total and irrecoverable loss of the sight of one eye  
111 shall be considered a thirty-three percent disability. For the  
112 partial loss of vision in one, or both eyes, the percentage of  
113 disability shall be determined by the commissioner, using  
114 as a basis the total loss of one eye.

115 The total and irrecoverable loss of the hearing of one ear  
116 shall be considered a fifteen percent disability, and the in-  
117 jured employee shall be entitled to compensation for a period  
118 of sixty weeks. The total and irrecoverable loss of hearing  
119 of both ears shall be considered a forty-five percent dis-  
120 ability, and the injured employee shall be entitled to com-  
121 pensation for a period of one hundred eighty weeks.



122 For the partial loss of hearing in one, or both ears, the  
123 percentage of disability shall be determined by the com-  
124 missioner, using as a basis the total loss of hearing in both  
125 ears.

126 Should a claimant sustain a compensable injury which  
127 results in the total loss by severance of any of the bodily  
128 members named in this subdivision, die from sickness or  
129 noncompensable injury before the commissioner makes the  
130 proper award for such injury, the commissioner shall make  
131 such award to claimant's dependents as defined in this  
132 chapter, if any; such payment to be made in the same install-  
133 ments that would have been paid to claimant if living:  
134 *Provided*, That no payment shall be made to any widow of  
135 such claimant after her remarriage, and that this liability  
136 shall not accrue to the estate of such claimant and shall  
137 not be subject to any debts of, or charges against, such  
138 estate.

139 (f) Should a claimant to whom has been made a per-  
140 manent partial award of from one percent to eighty-four  
141 percent, both inclusive, die from sickness or noncompensable  
142 injury, the unpaid balance of such award shall be paid to  
143 claimant's dependents as defined in this chapter, if any;  
144 such payment to be made in the same installments that  
145 would have been paid to claimant if living: *Provided*,  
146 *however*, That no payment shall be made to any widow  
147 of such claimant after her remarriage, and that this liability  
148 shall not accrue to the estate of such claimant and shall  
149 not be subject to any debts of, or charges against, such  
150 estate.

151 (g) The award for permanent disabilities intermediate  
152 to those fixed by the foregoing schedule and permanent  
153 disability of from one percent to eighty-four percent shall  
154 be in the same proportion and shall be computed and allowed  
155 by the commissioner.

156 (h) The percentage of all permanent disabilities other  
157 than those enumerated in subdivision (e) of this section  
158 shall be determined by the commissioner, and awards made  
159 in accordance with the provisions of subdivision (d) of  
160 this section. Where there has been an injury to a member  
161 as distinguished from total loss by severance of that member,  
162 the commissioner in determining the percentage of dis-

163 ability may be guided by but shall not be limited to the  
164 disabilities enumerated in subdivision (e) of this section.

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

169 (j) Temporary total disability benefits payable under  
170 subdivision (b) of this section shall not be deductible from  
171 permanent partial disability awards payable under sub-  
172 divisions (d) and (e) of this section. Compensation, either  
173 total temporary or permanent partial, under this section  
174 shall be payable only to the injured employee and the  
175 right thereto shall not vest in his or her estate, except that  
176 any unpaid compensation which would have been paid or  
177 payable to the employee up to the time of his death, if he  
178 had lived, shall be paid to the dependents of such injured  
179 employee if there be such dependents at the time of death.

180 (k) The following permanent disabilities shall be con-  
181 clusively presumed to be total in character:

182 Loss of both eyes or the sight thereof.

183 Loss of both hands or the use thereof.

184 Loss of both feet or the use thereof.

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

186 In all other cases permanent disability shall be deter-  
187 mined by the commissioner in accordance with the facts  
188 in the case, and award made in accordance with the pro-  
189 visions of subdivision (d).

190 (l) A disability which renders the injured employee unable  
191 to engage in substantial gainful activity requiring skills or  
192 abilities comparable to those of any gainful activity in which  
193 he has previously engaged with some regularity and over  
194 a substantial period of time shall be considered in deter-  
195 mining the issue of total disability.

#### **§23-4-14. Computation of benefits.**

1 The average weekly wage earnings, wherever earned, of the  
2 injured person at the date of injury, and the average weekly  
3 wage in West Virginia as determined by the commissioner of  
4 employment security, in effect at the date of injury, shall be  
5 taken as the basis upon which to compute the benefits.

6 In cases involving occupational pneumoconiosis or other

7 occupational diseases, the "date of injury" shall be the date  
8 of the last exposure to the hazards of occupational pneumo-  
9 coniosis or other occupational diseases.

10 In computing benefits payable on account of occupational  
11 pneumoconiosis, the commissioner shall deduct the amount of  
12 all prior workmen's compensation benefits paid to the same  
13 claimant on account of silicosis, but a prior silicosis award  
14 shall not, in any event, preclude an award for occupational  
15 pneumoconiosis otherwise payable under this article.

16 The expression "average weekly wage earnings, wherever  
17 earned, of the injured person, at the date of injury," within  
18 the meaning of this chapter, shall be two months, six or twelve  
19 months immediately preceding the date of the injury, which-  
20 ever is most favorable to the injured employee.

21 The expression "average weekly wage in West Virginia,"  
22 within the meaning of this chapter, shall be the average weekly  
23 wage in West Virginia as determined by the commissioner of  
24 employment security in accordance with the provisions of sec-  
25 tions ten and eleven, article six, chapter twenty-one-a of the  
26 code of West Virginia, one thousand nine hundred thirty-one,  
27 as amended, and other applicable provisions of said chapter  
28 twenty-one-a.

29 In any claim for injuries, including occupational pneumo-  
30 coniosis and other occupational diseases, occurring on or after  
31 July one, one thousand nine hundred seventy-one, any award  
32 for temporary total, permanent partial or permanent total dis-  
33 ability benefits or for dependent benefits, shall be paid at the  
34 weekly rates or in the monthly amount in the case of depen-  
35 dent benefits applicable to the claimant therein in effect on the  
36 date of such injury. If during the life of such award for tempor-  
37 ary total, permanent partial or permanent total disability bene-  
38 fits or for dependent benefits, the weekly rates or the monthly  
39 amount in the case of dependent benefits are increased or de-  
40 creased, the claimant shall receive such increased or decreased  
41 benefits beginning as of the effective date of said increase or  
42 decrease.

#### **§23-4-15. Application for benefits.**

1 To entitle any employee or dependent of a deceased em-  
2 ployee to compensation under this chapter, other than for oc-

3 cupational pneumoconiosis or other occupational disease, the  
4 application therefore must be made on the form or forms pre-  
5 scribed by the commissioner and filed in the office of the com-  
6 missioner within two years from and after the injury or death,  
7 as the case may be, and all proofs of dependency in fatal cases  
8 must likewise be filed with the commissioner within two years  
9 from and after the death. In case the employee is mentally or  
10 physically incapable of filing such application, it may be filed  
11 by his attorney or by a member of his family.

12 To entitle any employee to compensation for occupational  
13 pneumoconiosis under the provisions hereof, the application  
14 therefor must be made on the form or forms prescribed by the  
15 commissioner and filed in the office of the commissioner with-  
16 in three years from and after the last day of the last continuous  
17 period of sixty days or more during which the employee was  
18 exposed to the hazards of occupational pneumoconiosis or  
19 within three years from and after the employee's occupational  
20 pneumoconiosis was made known to him by a physician or  
21 which he should reasonably have known, whichever shall last  
22 occur, or, in the case of death, the application shall be filed as  
23 aforesaid by the dependent of such employee within two years  
24 from and after such employee's death.

25 To entitle any employee to compensation for occupational  
26 disease other than occupational pneumoconiosis under the pro-  
27 visions hereof, the application therefor must be made on the  
28 form or forms prescribed by the commissioner and filed in the  
29 office of the commissioner within three years from and after  
30 the day on which the employee was last exposed to the parti-  
31 cular occupational hazard involved or within three years from  
32 and after the employee's occupational disease was made known  
33 to him by a physician or which he should reasonably have  
34 known, whichever shall last occur, or, in case of death, the  
35 application shall be filed as aforesaid by the dependent of such  
36 employee within two years from and after such employee's  
37 death.

**§23-4-18. Mode of paying benefits generally; exemptions of compen-  
sation from legal process.**

1 Except by this section provided compensation shall be paid  
2 only to such employees or their dependents, and shall be

3 exempt from all claims of creditors and from any attachment,  
4 execution or assignment other than compensation to counsel  
5 for legal services, under the provisions of, and subject to the  
6 limitations contained in section five, article five of this chapter.  
7 Payments may be made in such periodical installments as may  
8 seem best to the commissioner in each case, not exceeding  
9 two weeks apart. In all cases where compensation is awarded  
10 or increased, the amount thereof shall be calculated and paid  
11 from the date of disability.

**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 com-  
2 pensation benefits by virtue of and under the laws of this  
3 state in amounts less than the minimum amount payable under  
4 the laws in effect on July one, one thousand nine hundred  
5 sixty-seven, there is hereby created a separate fund to be known  
6 as the "Disabled Workmen's Relief Fund," which fund shall  
7 consist of such sums as are from time to time made available to  
8 carry out the objects and purposes of this article. Said fund  
9 shall be in the custody of the state treasurer and disbursements  
10 therefrom shall be made upon requisition signed by the com-  
11 missioner to those persons entitled to participate therein and in  
12 such amounts to each participant as is provided in section  
13 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 compensation  
3 benefits by virtue of and under the laws of this state in  
4 amounts less than the minimum amount payable under the  
5 laws in effect on July one, one thousand nine hundred sixty-  
6 seven, and be receiving such benefits under a permanent  
7 total disability award or be receiving such benefits because of  
8 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 payments  
3 without application (except that an application shall be re-

4 quired under section five of this article) from said fund of an  
5 amount equal to the difference between the minimum amount  
6 payable under the rates in effect as of July one, one thousand  
7 nine hundred sixty-seven, and the amount said individual is in  
8 fact receiving by virtue of and under the laws of this state.  
9 The first such payment shall be made concurrently with the  
10 payment to him of workmen's compensation for the period next  
11 following the expiration of the twelfth calendar week after this  
12 section, as amended, becomes effective and subsequent pay-  
13 ments shall be made during the period thereafter in which such  
14 participant shall be entitled to workmen's compensation benefits  
15 by virtue of and under the laws of this state.

#### **ARTICLE 5. REVIEW.**

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

1 The commissioner shall have full power and authority to  
2 hear and determine all questions within his jurisdiction, but  
3 upon the making or refusing to make any award, or upon the  
4 making of any modification or change with respect to former  
5 findings or orders, as provided by section sixteen, article four  
6 of this chapter, the commissioner shall give notice, in writing,  
7 to the employer, employee, claimant or dependent, as the case  
8 may be, of his action, which notice shall state the time allow-  
9 ed for filing an objection to such finding, and such action of  
10 the commissioner shall be final unless the employer, employee,  
11 claimant or dependent shall, within thirty days after the re-  
12 ceipt of such notice, object, in writing, to such finding. Upon  
13 receipt of such objection the commissioner shall, within fif-  
14 teen days from receipt thereof, set a time and place for the  
15 hearing of evidence. Any such hearing may be conducted by  
16 the commissioner or his duly authorized representative at the  
17 county seat of the county wherein the injury occurred, or at  
18 any other place which may be agreed upon by the interested  
19 parties, and in the event the interested parties cannot agree,  
20 and it appears in the opinion of the commissioner that the  
21 ends of justice require the taking of evidence elsewhere, then  
22 at such place as the commissioner may direct, having due re-  
23 gard for the convenience of witnesses. Both the employer and  
24 claimant shall be notified of such hearing at least ten days in

25 advance, and the hearing shall be held within thirty days after  
26 the filing of objection to the commissioner's findings as herein-  
27 above provided, unless such hearing be postponed by agree-  
28 ment of the parties or by the commissioner for good cause.  
29 The evidence taken at such hearing shall be transcribed and  
30 become part of the record of the proceedings, together with the  
31 other records thereof in the commissioner's office. At any  
32 time within thirty days after hearing, if the commissioner is  
33 of the opinion that the facts have not been adequately develop-  
34 ed at such hearing, he may order supplemental hearing upon  
35 due notice to the parties. After final hearing the commissioner  
36 shall, within thirty days, render his decision affirming, revers-  
37 ing or modifying, his former action, which shall be final:  
38 *Provided*, That the claimant or the employer may apply to the  
39 appeal board herein created for a review of such decision; but  
40 no appeal or review shall lie unless application therefor be  
41 made within thirty days of receipt of notice of the commis-  
42 sioner's final action, or in any event within sixty days of the  
43 date of such final action, regardless of notice.

44 After protest by the employer only to any finding or deter-  
45 mination of the commissioner made on or after July one, one  
46 thousand nine hundred seventy-one, and the employer does  
47 not prevail in its protest and, in the event the claimant is re-  
48 quired to attend a hearing by subpoena or agreement of coun-  
49 sel or at the express direction of the commissioner, then such  
50 claimant in addition to reasonable traveling and other expenses  
51 shall be reimbursed for loss of wages incurred by him in at-  
52 tending such hearing.

**§23-5-5. Fees of attorney for claimant; unlawful charging or re-  
ceiving of attorney fees.**

1 On or after the first day of July, one thousand nine hundred  
2 seventy-one, no attorney's fee in excess of twenty-five percent  
3 of any award granted shall be charged or received by an  
4 attorney for a claimant or dependent. In no case shall the  
5 fee received by the attorney of such claimant or dependent be  
6 in excess of twenty-five percent of the benefits to be paid  
7 during a period of two hundred eight weeks. This paragraph  
8 shall not apply to awards made prior to the first day of July,  
9 one thousand nine hundred seventy-one: *Provided*, That the

10 interest on disability or dependent benefits as provided for  
11 in this chapter shall not be considered as part of the award  
12 in determining any such attorney's fee. However, any con-  
13 tract entered into in excess of twenty-five percent of the  
14 benefits to be paid during a period of two hundred eight  
15 weeks, as herein provided, shall be unlawful and unenforce-  
16 able as contrary to the public policy of this state and any  
17 fee charged or received by an attorney in violation thereof  
18 shall be deemed an unlawful practice and render the attorney  
19 subject to disciplinary action.



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

N. Darrel Darby  
Chairman Senate Committee

Clarence C. Christian Jr.  
Chairman House Committee

Originated in the House.

Takes effect July 1, 1973.

Howard W. Carson  
Clerk of the Senate

C. A. Blankenship  
Clerk of the House of Delegates

W. T. Brotherton, Jr.  
President of the Senate

Lewis F. W. Means  
Speaker House of Delegates

The within Approved this the 27th  
day of April, 1973.

Arch A. Moore Jr.  
Governor



PRESENTED TO THE  
GOVERNOR

Date 4/27/23

Time 2:05 pm.

RECEIVED

MAY 3 2 17 PM '23

OFFICE OF  
SECRETARY OF STATE  
STATE OF WEST VIRGINIA