WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1973

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ENROLLED
Committee Substitute
for
HOUSE BILL No. 1221

(By Mr. Speaker, Mr. McManus...)
and Mr. Seibert

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PASSED April 14, 1973
In Effect July 1, 1973

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


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

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

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

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

In any case of injury in which the employer has failed to
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make report of an injury as required in section one-b of this article, or has made such report of an injury but has not stated therein that he disputes the compensability of the injury or objects to the payment of temporary total disability benefits in connection therewith, the commissioner, upon a finding that a claimant has sustained a compensable injury within the meaning of section one of this article, and upon proof by proper physician's report, or otherwise, that disability will last longer than three days as provided in section five of this article, shall immediately commence payment of temporary total disability benefits to the claimant in the amounts provided for in sections six and fourteen, of this article, without waiting for the expiration of the thirty-day period during which objections may be filed to such findings as provided in section one, article five of this chapter. The commissioner shall give immediate notice to the employer of his findings and of the commencement of such payments.

where the employer is a subscriber to the workmen's compensation fund under the provisions of article three of this chapter, and upon the findings aforesaid, the commissioner shall mail all workmen's compensation checks paying such interim temporary total disability benefits directly to the claimant and not to the employer for delivery to the claimant.

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

upon the filing of timely objection to any finding or order of the commissioner, as provided in section one, article five of this chapter, with respect to the payment or continued payment of temporary total disability benefits as provided herein, the commissioner shall immediately cease said payments until such objection has been finally determined as provided in article five of this chapter. if the claim is later determined not to be compensable, the employer's account is not to be charged for temporary total disability payments made, and the claimant will not be required to refund to the commissioner temporary total disability payments he has received, unless fraud has been employed in securing such benefits.
§23-4-6. Classification of disability benefits.

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

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

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

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

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

(d) If the injury causes permanent disability, the percentage of disability to total disability shall be determined and the award computed on the basis of four weeks compensation for each percent of disability determined and the maximum or minimum weekly benefits as provided in subdivision (b) of this section for temporary total disability benefits shall be payable.

For a disability of eighty-five percent or more, benefits
shall be payable during the remainder of life at the maximum or
minimum weekly benefits as provided in subdivision (b) of this
section for temporary total disability.
(e) If the injury results in the total loss by severance of
any of the members named in this subdivision, the percentage
of disability shall be determined in accordance with the fol-
lowing table, and award made as provided in subdivision (d)
of this section:
The loss of a great toe shall be considered a ten percent
disability.
The loss of a great toe (one phalanx) shall be considered
a five percent disability.
The loss of other toes shall be considered a four percent
disability.
The loss of other toes (one phalanx) shall be considered a
two percent disability.
The loss of all toes shall be considered a twenty-five percent
disability.
The loss of forepart of foot shall be considered a thirty
percent disability.
The loss of foot shall be considered a thirty-five percent
disability.
The loss of a leg shall be considered a forty-five percent
disability.
The loss of thigh shall be considered a fifty percent
disability.
The loss of thigh at hip joint shall be considered a sixty
percent disability.
The loss of a little or fourth finger (one phalanx) shall be
considered a three percent disability.
The loss of little or fourth finger shall be considered a
five percent disability.
The loss of ring or third finger (one phalanx) shall be
considered a three percent disability.
The loss of ring or third finger shall be considered a five
percent disability.
The loss of middle or second finger (one phalanx) shall be
considered a three percent disability.
The loss of middle or second finger shall be considered a
seven percent disability.
The loss of index or first finger (one phalanx) shall be
considered a six percent disability.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The total and irrecoverable loss of the hearing of one ear shall be considered a fifteen percent disability, and the injured employee shall be entitled to compensation for a period of sixty weeks. The total and irrecoverable loss of hearing of both ears shall be considered a forty-five percent disability, and the injured employee shall be entitled to compensation for a period of one hundred eighty weeks.
For the partial loss of hearing in one, or both ears, the percentage of disability shall be determined by the commissioner, using as a basis the total loss of hearing in both ears.

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

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

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

(h) The percentage of all permanent disabilities other than those enumerated in subdivision (e) of this section shall be determined by the commissioner, and awards made in accordance with the provisions of subdivision (d) of this section. Where there has been an injury to a member as distinguished from total loss by severance of that member, the commissioner in determining the percentage of dis-
ability may be guided by but shall not be limited to the
disabilities enumerated in subdivision (e) of this section.

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

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

(k) The following permanent disabilities shall be con-
elusively presumed to be total in character:
Loss of both eyes or the sight thereof.
Loss of both hands or the use thereof.
Loss of both feet or the use thereof.
Loss of one hand and one foot or the use thereof.
In all other cases permanent disability shall be deter-
mined by the commissioner in accordance with the facts
in the case, and award made in accordance with the pro-
visions of subdivision (d).

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


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

In cases involving occupational pneumoconiosis or other
occupational diseases, the "date of injury" shall be the date
of the last exposure to the hazards of occupational pneumo-
coniosis or other occupational diseases.
In computing benefits payable on account of occupational
pneumoconiosis, the commissioner shall deduct the amount of
all prior workmen's compensation benefits paid to the same
claimant on account of silicosis, but a prior silicosis award
shall not, in any event, preclude an award for occupational
pneumoconiosis otherwise payable under this article.
The expression "average weekly wage earnings, wherever
earned, of the injured person, at the date of injury," within
the meaning of this chapter, shall be two months, six or twelve
months immediately preceding the date of the injury, which-
ever is most favorable to the injured employee.
The expression "average weekly wage in West Virginia,"
within the meaning of this chapter, shall be the average weekly
wage in West Virginia as determined by the commissioner of
employment security in accordance with the provisions of sec-
tions ten and eleven, article six, chapter twenty-one-a of the
code of West Virginia, one thousand nine hundred thirty-one,
as amended, and other applicable provisions of said chapter
twenty-one-a.
In any claim for injuries, including occupational pneumo-
coniosis and other occupational diseases, occurring on or after
July one, one thousand nine hundred seventy-one, any award
for temporary total, permanent partial or permanent total dis-
ability benefits or for dependent benefits, shall be paid at the
weekly rates or in the monthly amount in the case of depen-
dent benefits applicable to the claimant therein in effect on the
date of such injury. If during the life of such award for tempor-
ary total, permanent partial or permanent total disability bene-
fits or for dependent benefits, the weekly rates or the monthly
amount in the case of dependent benefits are increased or de-
creased, the claimant shall receive such increased or decreased
benefits beginning as of the effective date of said increase or
decrease.
To entitle any employee or dependent of a deceased em-
ployee to compensation under this chapter, other than for oc-
cupational pneumoconiosis or other occupational disease, the
application therefore must be made on the form or forms pre-
scribed by the commissioner and filed in the office of the com-
missioner within two years from and after the injury or death,
as the case may be, and all proofs of dependency in fatal cases
must likewise be filed with the commissioner within two years
from and after the death. In case the employee is mentally or
physically incapable of filing such application, it may be filed
by his attorney or by a member of his family.

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

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

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

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

ARTICLE 4A. DISABLED WORKMEN'S RELIEF FUND.

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

For the relief of persons who are receiving workmen's compensation benefits by virtue of and under the laws of this state in amounts less than the minumum amount payable under the laws in effect on July one, one thousand nine hundred sixty-seven, there is hereby created a separate fund to be known as the “Disabled Workmen's Relief Fund,” which fund shall consist of such sums as are from time to time made available to carry out the objects and purposes of this article. Said fund shall be in the custody of the state treasurer and disbursements therefrom shall be made upon requisition signed by the commissioner to those persons entitled to participate therein and in such amounts to each participant as is provided in section three of this article.

§23-4A-2. To whom benefits paid.

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


Each individual entitled to participate in the disabled workmen's relief fund shall be entitled to receive payments without application (except that an application shall be re-
quired under section five of this article) from said fund of an
amount equal to the difference between the minimum amount
payable under the rates in effect as of July one, one thousand
nine hundred sixty-seven, and the amount said individual is in
fact receiving by virtue of and under the laws of this state.
The first such payment shall be made concurrently with the
payment to him of workmen's compensation for the period next
following the expiration of the twelfth calendar week after this
section, as amended, becomes effective and subsequent pay-
ments shall be made during the period thereafter in which such
participant shall be entitled to workmen's compensation benefits
by virtue of and under the laws of this state.

ARTICLE 5. REVIEW.
§23-5-1. Notice by commissioner of decision; objections and hear-
ing; appeal.
The commissioner shall have full power and authority to
hear and determine all questions within his jurisdiction, but
upon the making or refusing to make any award, or upon the
making of any modification or change with respect to former
findings or orders, as provided by section sixteen, article four
of this chapter, the commissioner shall give notice, in writing,
to the employer, employee, claimant or dependent, as the case
may be, of his action, which notice shall state the time allow-
ed for filing an objection to such finding, and such action of
the commissioner shall be final unless the employer, employee,
claimant or dependent shall, within thirty days after the re-
ceipt of such notice, object, in writing, to such finding. Upon
receipt of such objection the commissioner shall, within fif-
teen days from receipt thereof, set a time and place for the
hearing of evidence. Any such hearing may be conducted by
the commissioner or his duly authorized representative at the
county seat of the county wherein the injury occurred, or at
any other place which may be agreed upon by the interested
parties, and in the event the interested parties cannot agree,
and it appears in the opinion of the commissioner that the
ends of justice require the taking of evidence elsewhere, then
at such place as the commissioner may direct, having due re-
gard for the convenience of witnesses. Both the employer and
claimant shall be notified of such hearing at least ten days in
advance, and the hearing shall be held within thirty days after
the filing of objection to the commissioner's findings as herein-
above provided, unless such hearing be postponed by agree-
ment of the parties or by the commissioner for good cause.
The evidence taken at such hearing shall be transcribed and
become part of the record of the proceedings, together with the
other records thereof in the commissioner's office. At any
time within thirty days after hearing, if the commissioner is
of the opinion that the facts have not been adequately develop-
ed at such hearing, he may order supplemental hearing upon
due notice to the parties. After final hearing the commissioner
shall, within thirty days, render his decision affirming, revers-
ing or modifying, his former action, which shall be final:
Provided, That the claimant or the employer may apply to the
appeal board herein created for a review of such decision; but
no appeal or review shall lie unless application therefor be
made within thirty days of receipt of notice of the commis-
sioner's final action, or in any event within sixty days of the
date of such final action, regardless of notice.

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

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

On or after the first day of July, one thousand nine hundred
seventy-one, no attorney's fee in excess of twenty-five percent
of any award granted shall be charged or received by an
attorney for a claimant or dependent. In no case shall the
fee received by the attorney of such claimant or dependent be
in excess of twenty-five percent of the benefits to be paid
during a period of two hundred eight weeks. This paragraph
shall not apply to awards made prior to the first day of July,
one thousand nine hundred seventy-one: Provided, That the
interest on disability or dependent benefits as provided for
in this chapter shall not be considered as part of the award
in determining any such attorney's fee. However, any con-
tract entered into in excess of twenty-five percent of the
benefits to be paid during a period of two hundred eight
weeks, as herein provided, shall be unlawful and unenforce-
able as contrary to the public policy of this state and any
fee charged or received by an attorney in violation thereof
shall be deemed an unlawful practice and render the attorney
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

Chairman House Committee

Originated in the House.

Howard W. Carson
Clerk of the Senate

Clerk of the House of Delegates

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

Speaker House of Delegates

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

G. A. Brown
Governor