WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1974

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ENROLLED
Committee Substitute for
HOUSE BILL No. 821

(By Mr. Speaker, pro tempore)

Mr. Sickler

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PASSED March 9, 1974

In Effect 90 Days Passage
AN ACT to repeal section one-a, article three, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections sixteen and seventeen, article one of said chapter; to amend and reenact sections one, three, four, five, six, seven, eight, nine and ten, article two of said chapter; to further amend said article two by adding thereto two new sections, designated sections five-a and thirteen; to amend and reenact sections one, one-c, three, six, six-a, eight-a, nine, ten and sixteen, article four of said chapter; and to amend and reenact sections one, two and three, article four-a of said chapter, all relating to workmen's compensation generally; providing that all employers in this state, with certain limited exceptions, must provide workmen's compensation coverage; providing criminal offenses and penalties for employers required to cover their employees who fail to do so; removing certain obsolete provisions relating to the silicosis fund and the occupational diseases medical board; relating to the annual report of the commissioner and occupational pneumoconiosis board; relating to elective coverage for employers not required to provide coverage; relating to classification of employments and establishing accounts for employers and the rate of pre-
miums to be paid by such employers; relating to charges to be made to an employer's account; relating to the effect of failure to pay premiums or to make payroll reports; providing that no employee of an employer required to provide coverage shall be denied benefits because of the default of his employer; relating to reinstatement of certain employers to the fund; providing civil remedies against defaulting employers; providing liens; providing for injunctive relief; requiring the secretary of state to withhold certificates of dissolution or withdrawal where premiums are unpaid; exempting employers from common law or other statutory liability for injuries or death; providing that the benefits of the chapter may not be waived; relating to the civil liability of certain employers required to provide coverage who fail to do so or who are in default and depriving such employers of certain common law defenses; permitting certain employers to provide their own system of compensation; specifying that such employers shall pay their proportionate share of losses due to delinquent employers; authorizing rules and regulations relating thereto; relating to the application of the chapter to interstate commerce and extraterritorial coverage; relating to interest on past due premium payments; relating to benefits to be paid and persons to whom such benefits are to be paid; providing for the continuance of payments of temporary total disability benefits following employer's protest and providing for the collection from a claimant of benefits paid to him which it is ultimately determined he was not entitled to; increasing the maximum payable as medical benefits; increasing the maximum and minimum benefits payable for certain disability awards; specifying that certain scheduled awards shall be minimums only; relating to findings of occupational pneumoconiosis board being an award for certain purpose; providing that payments for occupational pneumoconiosis shall be made in the same manner as in any other case of permanent disability; increasing the number of members on the occupational pneumoconiosis board; relating to their qualifications; relating to quorum of such board; providing limitation on amount to be spent for vocational rehabilitation; increasing and extending death benefits; defining terms; relating to the continuing jurisdiction of the commissioner over cases generally and the time limitation upon awards; increasing benefits payable under the disabled workmen's relief fund to the minimum dollar amounts payable as of July one,
one thousand nine hundred seventy-three; and providing criminal offenses and penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

§23-1-16. Omission to subscribe to workmen's compensation fund or to perform duty required by commissioner; perjury.

Any person, firm, or corporation, which is required by the provisions of this chapter to subscribe to the workmen's compensation fund, and which knowingly fails to subscribe thereto, or which knowingly fails to make any report or perform any other act or duty required by the commissioner within the time specified by the commissioner, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five thousand dollars. Any person or firm, or the officer of any corporation, who knowingly makes a false report or statement under oath, affidavit or certification respecting any information required by the commissioner, or who shall knowingly testify falsely in any proceeding before the commissioner, shall be deemed guilty of perjury, and, upon conviction thereof, shall be punished as provided by law.

§23-1-17. Annual report by commissioner and occupational pneumoconiosis board.

Annually, on or about the fifteenth day of September in each year, the commissioner and the occupational pneumoconiosis board shall make a report as of the thirtieth day of June addressed to the governor, which shall include a state-
ment of the causes of the injuries for which the awards were made, an explanation of the diagnostic techniques used by the occupational pneumoconiosis board and all examining physicians to determine the presence of disease, the extent of impairment attributable thereto, a description of the scientific support for such techniques, and a summary of public and private research relating to problems and prevention of occupational diseases. The report shall include a detailed statement of all disbursements, and the condition of the fund, together with any specific recommendations for improvements in the workmen's compensation law and for more efficient and responsive administration thereof, which the commissioner may deem appropriate. Copies of all annual reports shall be filed with the secretary of state and shall be made available to the Legislature and to the public at large.

ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER; PREMIUMS.

§23-2-1. Employers and employees subject to chapter.

The state of West Virginia and all governmental agencies or departments created by it, including county boards of education, political subdivisions of the state and emergency service organizations organized under article five, chapter fifteen of this code, and all persons, firms, associations and corporations regularly employing another person or persons for the purpose of carrying on any form of industry, service or business in this state, are employers within the meaning of this chapter and (except for employers of five or fewer full-time employees in agricultural service) are hereby required to subscribe to and pay premiums into the workmen's compensation fund for the protection of their employees and shall be subject to all requirements of this chapter and all rules and regulations prescribed by the commissioner with reference to rates, classification and premium payment.

This chapter shall not apply to employers of employees in domestic service or persons whose employment is prohibited by law nor to employees of an employer while employed without the state except in cases of temporary employment without the state nor to employees of casual employers nor shall a member of a firm of employers or any official of an association or of a corporate employer, including a manager or any elec-
An employee within the meaning of this chapter. An employer is deemed to be a casual employer when the number of his employees does not exceed three and the period of employment is temporary, intermittent and sporadic in nature and does not exceed ten calendar days in any calendar quarter.

Employers who are not required to subscribe to the workmen's compensation fund may voluntarily elect to subscribe to and pay premiums into the fund for the protection of their employees and in such case shall be subject to all requirements of this chapter and all rules and regulations prescribed by the commissioner with reference to rates, classifications and premium payments and shall afford to them the protection of this chapter, including section six of this article, but the failure of such employers to elect to subscribe to and to pay premiums into the fund shall not impose any liability upon them other than such liability as would exist notwithstanding the provisions of this chapter.

Employees subject to this chapter are all persons in the service of employers and employed by them for the purpose of carrying on the industry, business, service or work in which they are engaged, including persons regularly employed in the state whose duties necessitate employment of a temporary or transitory nature by the same employer without the state, check-weight-men employed according to law, all members of rescue teams assisting in mine accidents with the consent of the owner who, in such case, shall be deemed the employer, or at the direction of the director of the department of mines and all forest fire fighters who, under the supervision of the director of the department of natural resources or his designated representative, assist in the prevention, confinement and suppression of any forest fire.

The premium and actual expenses in connection with governmental agencies and departments of the state of West Virginia shall be paid out of the state treasury from appropriations made for such agencies and departments, in the same manner as other disbursements are made by such agencies and departments.
County courts, municipalities, other political subdivisions of the state, county boards of education, emergency service organizations organized as aforesaid and duly incorporated volunteer fire departments or companies shall provide for the funds to pay their prescribed premiums into the fund and such premiums and premiums of state agencies and departments, including county boards of education, shall be paid into the fund in the same manner as herein provided for other employers subject to this chapter. In addition to its usual and ordinary meaning, the term "employer" or "employees," as used in this chapter, shall be taken to extend to and include any duly incorporated volunteer fire department or company or emergency service organization organized as aforesaid and to individuals or organizations employing "volunteers" and, in addition to its usual and ordinary meaning, the term "employee" or "employees," as used in this chapter, shall be taken to extend to and include all of the members of any such department, company or organization and to such volunteers. All duly incorporated volunteer fire departments or companies and emergency service organizations organized as aforesaid shall be placed in a separate group or class of subscribers to be established by the commissioner and such departments, companies or organizations shall pay into the fund such premiums (computed, notwithstanding the provisions of section five of this article, on such basis as to the commissioner shall seem right and proper) as may be necessary to keep such group or class entirely self-supporting. For the purposes of establishing a premium rate for "volunteers," their rate of pay shall be deemed to be equivalent to the state minimum wage.

Any employer whose employment in this state is to be for a definite or limited period which could not be considered "regularly employing" within the meaning of this section may elect to pay into the workmen's compensation fund the premiums herein provided for and, at the time of making application to the commissioner, such employer shall furnish a statement under oath showing the probable length of time the employment will continue in this state, the character of the work, an estimate of the monthly payroll and any other information which may be required by the commissioner. At the time of making application such employer shall deposit
with the state compensation commissioner to the credit of
the workmen's compensation fund the amount required by
section five of this article, which amount shall be returned
to such employer if his application be rejected by the com-
missioner. Upon notice to such employer of the acceptance
of his application by the commissioner, he shall be an em-
ployer within the meaning of this chapter and subject to all
of its provisions.

Any foreign corporation employer elected to comply with
the provisions of this chapter and to receive the benefits
hereunder shall, at the time of making application to the com-
missioner, in addition to other requirements of this chapter,
furnish such commissioner with a certificate from the secretary
of state showing that it has complied with all the require-
ments necessary to enable it legally to do business in this state
and no application of such foreign corporation employer shall
be accepted by the commissioner until such certificate is filed.

For the purpose of this chapter, a mine shall be adjudged
within this state when the main opening, drift, shaft or slope
is located wholly within this state.

Any employee within the meaning of this chapter whose em-
ployment necessitates his temporary absence from this state
in connection with such employment, and such absence is
directly incidental to carrying on an industry in this state,
who shall have received injury during such absence in the
course of and resulting from his employment shall not be denied
the right to participate in the workmen's compensation fund.


The commissioner shall prepare report forms for the use of,
and furnish the same to, employers subject to this chapter.
Every employer receiving from the commissioner any form
or forms with direction for completion and returning the same
shall return the same, within the period fixed by the com-
missioner, completed so as to answer fully and correctly all
pertinent questions therein propounded, and if unable to do so,
shall give good and sufficient reasons for such failure. Every
employer subject to the provisions of this chapter, shall make
application to the commissioner on the forms prescribed by
the commissioner for such purpose; and any employer who shall
terminate his business or for any other reason is no longer
subject to this chapter shall so notify the commissioner on
forms to be furnished by the commissioner for that purpose.

§23-2-4. Classification of industries; accounts; rate of premiums.

The commissioner shall distribute into groups or classes the
employments subject to this chapter, in accordance with the
nature of the business and the degree of hazard incident
thereto. And the commissioner shall have power, in like man-
ner, to reclassify such industries into groups or classes at any
time, and to create additional groups or classes. The com-
missoner may make necessary expenditures to obtain statis-
tical and other information to establish the classes provided
for in this section.

The commissioner shall keep an accurate account of all
money or moneys paid or credited to the compensation fund,
and of the liability incurred and disbursements made against
same; and an accurate account of all money or moneys re-
ceived from each individual subscriber, and of the liability in-
curred and disbursements made on account of injuries and
death of the employees of each subscriber, and of the re-
cipts and incurred liability of each group or class.

In compensable fatal and total permanent disability cases,
other than occupational pneumoconiosis, the amount charged
against the employer's account shall be such sum as is esti-
mated to be the average cost of such cases to the fund. The
amount charged against the employer's account in compensable
occupational pneumoconiosis claims for total permanent dis-
ability or for death shall be such sum as is estimated to be the
average cost of such occupational pneumoconiosis cases to the
fund.

It shall be the duty of the commissioner to fix and maintain
the lowest possible rates of premiums consistent with the main-
tenance of a solvent workmen's compensation fund and the
creation and maintenance of a reasonable surplus in each group
after providing for the payment to maturity of all liability incur-
red by reason of injury or death to employees entitled to bene-
fits under the provisions of this chapter. A readjustment of
rates shall be made yearly on the first day of July, or at any
time the same may be necessary. The determination of the low-
est possible rates of premiums within the meaning hereof and of
the existence of any surplus or deficit in the fund, shall be pre-
dicated solely upon the experience and statistical data compiled
from the records and files in the commissioner's office under
this and prior workmen's compensation laws of this state for the
period from the first day of June, one thousand nine hundred
thirteen, to the nearest practicable date prior to such adjust-
ment: Provided, That any expected future return, in the nature
of interest or income from invested funds shall be predicated
upon the average realization from investments to the credit of
the compensation fund for the two years next preceding. Any
reserves set up for future liabilities and any commutation of
benefits shall likewise be predicated solely upon prior exper-
ience under this and preceding workmen's compensation laws
and upon expected realization from investments determined by
the respective past periods, as aforesaid.

The commissioner may fix a rate of premiums applicable
alike to all subscribers forming a group or class, and such
rates shall be determined from the record of such group or
class shown upon the books of the commissioner: Provided,
That if any group has a sufficient number of employers with
considerable difference in their degrees of hazard, the com-
mis sioner may fix a rate for each subscriber of such group,
such rate to be based upon the subscriber's record on the
books of the commissioner for the twelve months last ending
June thirtieth of the year in which the rate is to become effec-
tive; and the liability part of such record shall include such
cases as have been acted upon by the commissioner during
such twelve months' period, irrespective of the date the in-
jury was received; and any subscriber in a group so rated,
whose record for such twelve months' period cannot be ob-
tained, shall be given a rate based upon his record for any
part of such period as may be deemed just and equitable by
the commissioner; and the commissioner shall have author-
ity to fix a reasonable minimum and maximum for any group
to which this individual method of rating is applied, and to
add to the rate determined from the subscriber's record such
amount as is necessary to liquidate any deficit in the schedule
or to create a reasonable surplus.
It shall be the duty of the commissioner, whenever he changes any rate, to notify every employer affected thereby of that fact and of the new rate and when the same takes effect. It shall also be his duty to furnish to each employer yearly, or oftener if requested by the employer, a statement giving the name of each of his employees who were paid for injury and the amounts so paid during the period covered by the statement.

§23-2-5. Payment of premiums; payroll report; effect of failure to pay premiums or make payroll report; reinstatement; application for benefits; deposit to insure payment of premiums; refund of deposit; notice to employees.

For the purpose of creating a workmen's compensation fund each employer subject to this chapter shall pay the premiums of liabilities based upon and being such a percentage of the payroll of such employer as may have been determined by the commissioner and be then in effect. The premiums shall be paid quarterly on or before the last day of the next succeeding month for the preceding quarter, and shall be the prescribed percentage of the total earnings of all employees within the meaning of this chapter, for such preceding quarter. The minimum premium to be paid by any employer for any quarter shall be one dollar and fifty cents. The premiums and deposits provided for in this chapter shall be paid by the employers to the state compensation commissioner, who shall issue receipts for all sums so received to the state treasurer and retain a copy for his own records. All sums received by the workmen's compensation commissioner as herein provided shall be deposited in the state treasury to the credit of the workmen's compensation fund in the manner now prescribed by law for depositing money in the state treasury. Each employer shall make a payroll report to the commissioner for each quarter as heretofore specified, and such report shall be on the form or forms prescribed by the commissioner, and furnish all information required by him.

No employee of an employer required by this chapter to subscribe and pay premiums to the workmen’s compensation
fund as herein prescribed shall be denied benefits provided by this chapter because of the failure of his employer to subscribe, or pay premiums into, the workmen's compensation fund as herein provided, or because of the employer's failure to make the quarterly payroll reports required by the commissioner: Provided, That any employer required by this chapter to subscribe and pay premiums to the workmen's compensation fund as herein provided and who fails to do so shall be liable to the workmen's compensation fund for all benefits paid from the fund to his employees, as well as for all premiums otherwise due and owing to said fund as herein provided: Provided, however, That any employer required by this chapter to subscribe and pay premiums to the workmen's compensation fund, or to make the quarterly payroll reports required by the commissioner, as herein provided, and who fails to comply with such requirements, shall be deprived of the benefits and protection afforded by this chapter, including section six of this article, and shall be liable, as provided in section eight of this article, as well as for all benefits paid to said employee as provided by this chapter.

An employer required by this chapter to subscribe and pay premiums to the workmen's compensation fund, and to make the quarterly payroll reports required by the commissioner as herein provided, and who defaults or fails to comply with any of said requirements shall be restored to the benefits and protection of this chapter only upon the payment into the workmen's compensation fund of all unpaid premiums, penalties, and charges, provided herein, and the making of all delinquent quarterly payroll and other reports required by the commissioner.

Failure by any employer not required by this chapter, but voluntarily electing to subscribe and pay premiums to the workmen's compensation fund as herein provided, to pay premiums as herein provided, or to make the quarterly payroll reports required by this chapter, shall deprive the employer so delinquent of the benefits and protection afforded by this chapter, including section six of this article, and shall automatically terminate the election of such employer to pay into the workmen's compensation fund as here-
in provided, and such employer shall be liable for the injury or death of any employee occurring after the termination of such election as herein provided, as provided in section eight of this article. The commissioner shall not be required to notify the delinquent employer of such termination, but he shall notify the employees of such employer by written notice posted as herein-after provided for in this section. The termination of election of such delinquent employer shall date from twelve o'clock p.m., of the last day of the month in which he fails to pay the premiums or make a pay-roll report, as above provided, for the preceding quarter.

The employer so delinquent may be reinstated upon application under such terms as are prescribed by this chapter and by the commissioner hereunder, after the payment into the workmen's compensation fund of all unpaid premiums, penalties and charges. Such reinstatement shall be in effect from and after the date that the new application is accepted by the commissioner: Provided, That such delinquent employer shall be entitled to the benefits and protection of this chapter until twelve o'clock p.m., of the last day of the month immediately succeeding the month in which his election is terminated, and his employees shall be entitled to compensation for injuries received during such period.

Any employer required by this chapter to subscribe and pay premiums to the workmen's compensation fund, or hereafter electing to avail himself of the benefits of this chapter as herein provided, shall at the time of making application to the commissioner deposit in the workmen's compensation fund an amount estimated to be equal to the amount of the premium which shall be paid by him for the next succeeding quarter. Any employer whose deposit is less than the amount of his premium for the last quarter shall, upon written request from the commissioner mailed to his address as carried upon the books of the commissioner by twelve o'clock p.m., of the last day of the month in which request is mailed, pay to the commissioner a sum sufficient to make his deposit at least equal to the amount of his premium for
the last preceding quarter, and failure of any employer to comply with such written request within the time specified shall constitute a default in performance of the requirements of this chapter and shall deprive him of the benefits and protection afforded by this chapter, and shall automatically terminate any voluntary election to pay into the workmen's compensation fund as herein provided, and such employer shall be liable to his employees as provided in section eight of this article; and the commissioner shall not be required to notify the delinquent employer of such termination or default, but he shall notify the employees of such employer by written notice posted as hereafter provided for in this section. The termination of election of such employer shall date from twelve o'clock p.m., of the last day of the month in which he is notified by the commissioner that his deposit is not equal to the sum of his premium for the last preceding quarter. Such employer may be reinstated upon application under such terms as are prescribed by this chapter and the rules of the commissioner. The deposit hereinbefore described shall be credited to the employer's account on the books of the commissioner and used to pay premiums and any other sums due the fund when such employer becomes delinquent in the payment of same.

Upon withdrawal from the fund or termination of election of any employer, he shall be refunded the balance due him of his deposit, after deducting all amounts owed by him to the workmen's compensation fund, and the commissioner shall notify the employees of such employer of said termination in such manner as he may deem best and sufficient.

Notices to employees in this section provided for shall be given by posting written notice that the employer is delinquent under the compensation law of West Virginia, and in the case of employers required by this chapter to subscribe and pay premiums to the fund, that the delinquent employer is liable to his employees for injury or death, both in workmen's compensation benefits and in damages at common law or by statute; and, in the case of employers not required by this chapter to subscribe and pay premiums to the fund, but voluntarily electing to do so as herein provided, that
neither the employer nor the employees of such employer 
are protected by said law as to any injury or death sustained 
after the date specified in said notice. Such notice shall be 
in the form prescribed by the commissioner and shall be 
posted in a conspicuous place at the chief works of the 
employer, as the same appear in records of the commissioner. 
If the said chief works of the employer cannot be found or 
identified, then said notices shall be posted at the front 
door of the courthouse of the county in which said chief 
works are located, according to the records in the commis-
sioner's office. Any person who shall, prior to the reinstate-
ment of the said employer, as hereinbefore provided for, or 
prior to sixty days after the posting of said notice, whichever 
shall first occur, remove, deface or render illegible the said 
notice, shall be guilty of a misdemeanor, and, upon con-
viction thereof, shall be fined not to exceed five hundred 
dollars, and the said notice shall state this provision upon 
its face. The commissioner may require any sheriff, deputy 
sheriff, constable, or other official of the state of West 
Virginia, who may be authorized to serve civil process, to 
post such notice and to make return thereof of the fact of 
such posting to the commissioner, and any failure of such 
officer to post any notice within ten days after he shall have 
received the same from the commissioner, without just cause 
or excuse, shall constitute a willful failure or refusal to 
perform a duty required of him by law within the meaning 
of section twenty-eight, article five, chapter sixty-one of 
this code. Any person actually injured by reason of 
such failure shall have an action against said official, and 
upon any official bond he may have given, for such damages 
as such person may actually have incurred, but not to 
exceed, in the case of any surety upon said bond, the 
amount of the penalty of said bond. Any official posting said 
notice as herein required shall be entitled to the same fee 
as is now or may hereafter be provided for the service of 
process in suits instituted in courts of record in the state 
of West Virginia, which fee shall be paid by the commissioner 
out of any funds at his disposal, but shall be charged by him 
against the account of the employer to whose delinquency 
such notice relates.
§23-2-5a. Collection of premiums from defaulting employers; civil remedies; injunctive relief; secretary of state to withhold certificates of dissolution.

1 The commissioner in the name of the state may commence a civil action against an employer who, after due notice, defaults in any payment required by this chapter. If judgment is against the employer he shall pay the costs of the action. Civil actions under this section shall be given preference on the calendar of the court over all other civil actions.

2 Any payment and interest thereon due and unpaid under this chapter shall be a personal obligation of the employer and shall, in addition thereto, be a lien enforceable against all the property of the employer: Provided, That no such lien shall be enforceable as against a purchaser (including a lien creditor) of real estate or personal property for a valuable consideration without notice, unless docketed as provided in chapter ninety-nine, acts of the Legislature, regular session, one thousand nine hundred forty-three.

3 In addition to all other civil remedies prescribed herein the commissioner may in the name of the state distraint upon any personal property, including intangible property of any employer delinquent for any payment and interest thereon. If the commissioner has good reason to believe that such property or a substantial portion thereof is about to be removed from the county in which it is situated, he may likewise distraint in the name of the state before such delinquency occurs. For such purpose, the commissioner may require the services of a sheriff of any county in the state in levying such distress in the county in which the sheriff is an officer and in which such personal property is situated. A sheriff so collecting any payments and interest thereon shall be entitled to such compensation as is provided by law for his services in the levy and enforcement of executions.

4 In case a business subject to the payments and interests thereon imposed under this chapter shall be operated in connection with a receivership or insolvency proceeding in any state court in this state, the court under whose direction such business is operated shall, by the entry of a proper order or de-
cree in the cause, make provisions, so far as the assets in admin-
istration will permit, for the regular payment of such pay-
ments as the same become due.

The secretary of state of this state shall withhold the is-
suance of any certificate of dissolution or withdrawal in the
case of any corporation organized under the laws of this state,
or organized under the laws of any other state and admitted
to do business in this state, until notified by the commissioner
that all payments and interest thereon against any such cor-
poration which is an employer under this chapter have been
paid or that provision satisfactory to the commissioner has
been made for payment.

In any case when an employer defaults in payments, or in-
terest thereon, for as many as two calendar quarters, which
quarters need not be consecutive, and remains delinquent after
due notice, and the commissioner has been unable to collect
such payments by any of the other civil remedies prescribed
herein, the commissioner may bring action in the circuit court
of Kanawha County to enjoin such employer from continuing
to carry on the business in which such liability was incurred:
Provided, That the commissioner may as an alternative to this
action require such delinquent employer to file a bond in the
form prescribed by the commissioner with satisfactory surety
in an amount not less than fifty percent more than the pay-
ments and interest due.


Any employer subject to this chapter who shall subscribe
and pay into the workmen's compensation fund the premiums
provided by this chapter or who shall elect to make direct pay-
ments of compensation as herein provided, shall not be liable
to respond in damages at common law or by statute for the
injury or death of any employee, however occurring, after
so subscribing or electing, and during any period in which such
employer shall not be in default in the payment of such pre-
miums or direct payments and shall have complied fully with
all other provisions of this chapter. The continuation in the
service of such employer shall be deemed a waiver by the em-
ployee and by the parents of any minor employee of the right
of action as aforesaid, which the employee or his or her par-
ents would otherwise have: Provided, That in case of em-
ployers not required by this chapter to subscribe and pay
premiums into the workmen's compensation fund, the injured
employee has remained in such employer's service with no-
tice that his employer has elected to pay into the workmen's
compensation fund the premiums provided by this chapter, or
has elected to make direct payments as aforesaid.

§23-2-7. Benefits of chapter may not be waived by contract or
regulation.

No employer or employee shall exempt himself from the
burden or waive the benefits of this chapter by any contract,
agreement, rule or regulation, and any such contract, agree-
ment, rule or regulation shall be pro tanto void.

§23-2-8. Liability of employer electing not to pay or defaulting in
payment of premiums; certain common-law defenses
prohibited; exceptions.

All employers required by this chapter to subscribe to and
pay premiums into the workmen's compensation fund, ex-
ccept the state of West Virginia, the governmental agencies or
departments created by it, and municipalities and political sub-
divisions of the state, and who do not subscribe to and pay
premiums into the workmen's compensation fund as required
by this chapter and have not elected to pay individually and
directly or from benefit funds compensation and expenses to
injured employees or fatally injured employees' dependents un-
der the provisions of section nine of this article, or having so
subscribed or elected, shall be in default in the payment of
same, or not having otherwise fully complied with the pro-
visions of section five or section nine of this article, shall be
liable to their employees (within the meaning of this article)
for all damages suffered by reason of personal injuries sus-
tained in the course of employment caused by the wrongful
act, neglect or default of the employer or any of the employer's
officers, agents or employees while acting within the scope of
their employment and in the course of their employment and
also to the personal representatives of such employees where
death results from such personal injuries, and in any action by
any such employee or personal representative thereof, such de-
defendant shall not avail himself of the following common-law de-
24 fenses: The defense of the fellow-servant rule; the defense of
25 the assumption of risk; or the defense of contributory negli-
26 gence; and further shall not avail himself of any defense that the
27 negligence in question was that of someone whose duties are
28 prescribed by statute: Provided, That such provision depriving
29 a defendant employer of certain common-law defenses under
30 the circumstances therein set forth shall not apply to an action
31 brought against a county court, board of education, munici-
32 pality, or other political subdivision of the state or against any
33 employer not required to cover his employees under the pro-
34 visions of this chapter.

§23-2-9. Election of employer to provide own system of compen-
1 saion.

1 Notwithstanding anything contained in this chapter, em-
2 ployers subject to this chapter who are of sufficient financial
3 responsibility to insure the payment of compensation to in-
4 jured employees and the dependents of fatally injured em-
5 ployees, whether in the form of pecuniary compensation or
6 medical attention, funeral expenses or otherwise as herein pro-
7 vided, of the value at least equal to the compensation provided
8 in this chapter, or employers of such financial responsibility
9 who maintain their own benefit funds, or system of compen-
10 sation, to which their employees are not required or permitted
11 to contribute, or such employers as shall furnish bond or other
12 security to insure such payments, may, upon a finding of such
13 facts by the compensation commissioner, elect to pay indi-
14 vidually and directly, or from such benefit funds, department
15 or association, such compensation and expenses to injured em-
16 ployees or fatally injured employees' dependents. The compen-
17 sation commissioner shall require security or bond from such
18 employer, to be approved by him, and of such amount as is
19 by him considered adequate and sufficient to compel or secure
20 to such employees, or their dependents, payment of the com-
21 pensation and expenses herein provided for, which shall in no
22 event be less than the compensation paid or furnished out of
23 the state workmen's compensation fund in similar cases to in-
24 jured employees or the dependents of fatally injured em-
25 ployees whose employers contribute to such fund. Any em-
26 ployer electing under this section shall on or before the twen-
27 tieth day of the first month of each quarter, for the preceding
quarter, file with the commissioner a sworn statement of the
total earnings of all his employees subject to this chapter for
such preceding quarter, and shall pay into the workmen's
compensation fund a sum sufficient to pay his proper propor-
tion of the expenses of the administration of this chapter, and
a sum sufficient to pay his proper portion of the expenses for
claims for those employers who are delinquent in the payment
of premiums, as may be determined by the commissioner. The
commissioner shall make and publish rules and regulations
governing the mode and manner of making application, and
the nature and extent of the proof required to justify the find-
ing of facts by the commissioner, to consider and pass upon
such election by employers subject to this chapter, which rules
and regulations shall be general in their application. Any
employer subject to this chapter who shall elect to carry his
own risk and who has complied with the requirements of this
section and the rules of the compensation commissioner shall
not be liable to respond in damages at common law or by
statute for the injury or death of any employee, however oc-
curring, after such election and during the period that he is
allowed by the commissioner to carry his own risk.

Any employer whose record upon the books of the compen-
sation commissioner shows a liability against the workmen's
compensation fund incurred on account of injury to or death
of any of his employees, in excess of premiums paid by such
employer, shall not be granted the right, individually and di-
rectly or from such benefit funds, department or association,
to compensate his injured employees and the dependents of
his fatally injured employees until he has paid into the work-
men's compensation fund the amount of such excess of liability
over premiums paid, including his proper proportion of the
liability incurred on account of explosions, catastrophes or
second injuries as defined in section one, article three of this
chapter, occurring within the state and charged against such
fund.

All employers who have heretofore elected, or shall here-
after elect, to pay compensation and expenses directly as pro-
vided in this section, shall, unless they give the catastrophe and
second injury security or bond hereinafter provided for, pay in-
to the surplus fund referred to in section one, article three of
this chapter, upon the same basis and in the same percentages,
subject to the limitations herein set forth, as funds are set
aside for the maintenance of the surplus fund out of payments
made by premium-paying subscribers, such payments to be
made at the same time as hereinbefore provided with respect
to payment of proportion of expenses of administration. In
case there be a catastrophe or second injury, as defined in
section one, article three of this chapter, to the employees of
any employer making such payments, the employer shall not
be liable to pay compensation or expenses arising from or
necessitated by the catastrophe or second injury, and such
compensation and expenses shall not be charged against such
employer, but such compensation and expenses shall be paid
from the surplus fund in the same manner and to the same
extent as in the case of premium-paying subscribers.

If an employer elect to make payments into the surplus fund
as aforesaid, then the bond or other security required by this
section shall be of such amount as the commissioner considers
adequate and sufficient to compel or secure to the employees
or their dependents payment of compensation and expenses,
extcept any compensation and expenses that may arise from, or
be necessitated by, any catastrophe or second injury, as de-
dined in section one, article three of this chapter, which last
are secured by and shall be paid from the surplus fund as
hereinbefore provided.

If any employer elect not to make payments into the sur-
plus fund, as hereinbefore provided, then, in addition to bond
or security in the amount hereinbefore set forth, such employer
shall furnish catastrophe and second injury security or bond,
approved by the commissioner, in such additional amount as
the commissioner shall consider adequate and sufficient to
compel or secure payment of all compensation and expenses
arising from, or necessitated by, any catastrophe or second
injury that might thereafter ensue.

All employers hereafter making application to carry their
own risk under the provisions of this section, shall with such
application, make a written statement as to whether such em-
ployer elects to make payments as aforesaid into the surplus
fund or not to make such payments and to give catastrophe
and second injury security or bond hereinbefore in such case
provided for.

All employers who have heretofore elected to carry their
own risk under the provisions of this section shall be deemed
to have elected to make payments into the surplus fund un-
less, within thirty days after the effective date of this act, they
notify the commissioner in writing to the contrary: Provided,
That such employers, as have heretofore elected, under the
rules heretofore promulgated by the commissioner, not to
make payments into the surplus fund, shall be deemed to
have elected to give the catastrophe and second injury security
or bond hereinbefore provided for and not to make payments
into the surplus fund. Any catastrophe and second injury
security or bond heretofore given under rules and regulations
promulgated by the commissioner and approved by him shall
be valid under this section, and any election heretofore made
under rules and regulations of the commissioner to make pay-
ments into the surplus fund shall be valid and protective to the
person so electing from and after the date of such election.

In any case under the provisions of this section that shall
require the payment of compensation or benefits by an em-
ployer in periodical payments, and the nature of the case
makes it possible to compute the present value of all future
payments, the commissioner may, in his discretion, at any
time compute and permit or require to be paid into the work-
men's compensation fund an amount equal to the present value
of all unpaid compensation for which liability exists, in trust;
and thereupon such employer shall be discharged from any
further liability upon such award, and payment of the same
shall be assumed by the workmen's compensation fund.

§23-2-10. Application of chapter to interstate commerce; extra-
territorial coverage.

(a) In case any employer within the meaning of this
chapter is also engaged in interstate or foreign commerce,
and for whom a rule of liability or method of compensation
has been established by the Congress of the United States,
this chapter shall apply to him only to the extent that his
mutual connection with work in this state is clearly separable
and distinguishable from his interstate work, and to the extent that such work in this state is clearly separable and distinguishable from his interstate work, such employer shall be subject to the terms and provisions of this chapter in like manner as all other employers hereunder. Payments of premiums shall be on the basis of the payroll of those employees who perform work in this state only.

Unless and until the Congress of the United States has by appropriate legislation established a rule of liability or method of compensation governing employers and employees engaged in commerce within the purview of the commerce clause of the federal Constitution (article I, section 8), section one of this article shall apply without regard to the interstate or intrastate character or nature of the work or business engaged in: Provided, That this chapter shall not apply to employees of steam railroads, or steam railroads partly electrified, or express companies, engaged in interstate commerce.

(b) Whenever, with respect to an employee of an employer who is a subscriber in good standing to the workmen's compensation fund or an employer who has elected to pay compensation directly, as provided in section nine of this article, there is a possibility of conflict with respect to the application of workmen's compensation laws because the contract of employment is entered into and all or some portion of the work is performed or is to be performed in a state or states other than this state, the employer and the employee may agree to be bound by the laws of this state or by the laws of such other state in which all or some portion of the work of the employee is to be performed. Such agreement shall be in writing and filed with the commissioner within ten days after execution thereof and shall remain in effect until terminated or modified by agreement of the parties similarly filed. If the parties agree to be bound by the laws of this state, an employee injured within the terms and provisions of this chapter shall be entitled to benefits under this chapter regardless of the situs of the injury or exposure to occupational pneumoconiosis or other occupational disease, and the rights of the employee and his dependents under the laws of this state shall be the exclusive remedy against the employer on account of injury, disease or death in the course of and as a result of the employment.
If the parties agree to be bound by the laws of another state and the employer has complied with the laws of that state, the rights of the employee and his dependents under the laws of that state shall be the exclusive remedy against the employer on an account of injury, disease or death in the course of and as a result of the employment without regard to the situs of the injury or exposure to occupational pneumoconiosis or other occupational disease.

If the employee is a resident of a state other than this state and is subject to the terms and provisions of the workmen's compensation law or similar laws of a state other than this state, such employee and his dependents shall not be entitled to the benefits payable under this chapter on account of injury, disease or death in the course of and as a result of employment temporarily within this state, and the rights of such employee and his dependents under the laws of such other state shall be the exclusive remedy against the employer on account of such injury, disease or death.

If any employee or his dependents be awarded workmen's compensation benefits or recover damages from the employer under the laws of another state for an injury received in the course of and resulting from the employment, the amount so awarded or recovered, whether paid or to be paid in future installments, shall be credited against the amount of any benefits payable under this chapter for the same injury.

Payments unpaid on the date on which due and payable, as prescribed by the commissioner, shall after the first fifteen days bear interest at the rate of one percent per month until payment plus accrued interest is received by the commissioner. Interest collected pursuant to this section shall be paid into the workmen's compensation fund.

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.
Subject to the provisions and limitations elsewhere in this
chapter set forth, the commissioner shall disburse the work-
mens compensation fund to the employees of employers sub-
ject to this chapter, which employees have received personal
injuries in the course of and resulting from their covered em-
ployment or to the dependents, if any, of such employees in
case death has ensued, according to the provisions hereinafter
made; and also for the expenses of the administration of this
chapter, as provided in section two, article one of this chapter.

For the purposes of this chapter the terms “injury” and “per-
sonal injury” shall include occupational pneumoconiosis and
any other occupational disease, as hereinafter defined, and
the commissioner shall likewise disburse the workmen’s com-
pensation fund to the employees of such employers in whose
employment such employees have been exposed to the hazards
of occupational pneumoconiosis or other occupational disease
and in this state have contracted occupational pneumoconiosis
or other occupational disease, or have suffered a perceptible
aggravation of an existing pneumoconiosis or other occupa-
tional disease, or to the dependents, if any, of such employees,
in case death has ensued, according to the provisions herein-
after made: Provided, That compensation shall not be payable
for the disease of occupational pneumoconiosis, or death re-
sulting therefrom, unless the employee has been exposed to
the hazards of occupational pneumoconiosis in the state of
West Virginia over a continuous period of not less than two
years during the ten years immediately preceding the date of
his last exposure to such hazards. An application for bene-
fits on account of occupational pneumoconiosis shall set forth
the name of the employer or employers and the time worked
for each, and the commissioner may allocate to and divide any
charges resulting from such claim among the employers by
whom the claimant was employed for as much as sixty days
during the period of three years immediately preceding the
date of last exposure to the hazards of occupational pneumo-
coniosis. The allocation shall be based upon the time and de-
gree of exposure with each employer.

For the purposes of this chapter disability or death resulting
from occupational pneumoconiosis, as defined in the imme-
diately succeeding sentence, shall be treated and compensated
as an injury by accident.
Occupational pneumoconiosis is a disease of the lungs caused by the inhalation of minute particles of dust over a period of time due to causes and conditions arising out of and in the course of the employment. The term "occupational pneumoconiosis" shall include, but shall not be limited to such diseases as silicosis, anthracosilicosis, coal worker's pneumoconiosis, commonly known as black lung or miner's asthma, silico-tuberculosis (silicosis accompanied by active tuberculosis of the lungs), coal worker's pneumoconiosis accompanied by active tuberculosis of the lungs, asbestosis, siderosis, anthrax and any and all other dust diseases of the lungs and conditions and diseases caused by occupational pneumoconiosis which are not specifically designated herein meeting the definition of occupational pneumoconiosis set forth in the immediately preceding sentence.

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

For the purposes of this chapter, occupational disease means a disease incurred in the course of and resulting from employment. No ordinary disease of life to which the general public is exposed outside of the employment shall be compensable except when it follows as an incident of occupational disease as defined in this chapter. Except in the case of occupational pneumoconiosis, a disease shall be deemed to have been incurred in the course of or to have resulted from the employment only if it is apparent to the rational mind, upon consideration of all the circumstances (1) that there is a direct causal connection between the conditions under which work is performed and the occupational disease, (2) that it can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment, (3) that it can be fairly traced to the employment as the proximate cause, (4) that it does not come from a hazard to which workmen would have been equally exposed outside of the employment, (5) that it is incidental to the character of the business and not independent of the relation of employer and employee, and (6) that it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a natural consequence,
though it need not have been foreseen or expected before its contraction.

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

Claims for occupational disease as hereinbefore defined, except occupational pneumoconiosis, shall be processed in like manner as claims for all other personal injuries.

§23-4-1c. Payment of temporary total disability benefits directly to claimant; payments of benefits during protest; right of commissioner to collect payments improperly made.

Upon a finding by the commissioner 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, the commissioner 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.

The commissioner shall determine whether or not the claimant has sustained a compensable injury within the meaning of section one of this article, and shall commence payment of temporary total disability benefits as provided herein within fifteen days of receipt of the employee’s or employer’s report of injury, whichever is received sooner, and receipt of either a proper physician’s report or any other information necessary for a determination.

Where the employer is a subscriber to the workmen’s compensation fund under the provisions of article three of this chapter...
chapter, and upon the findings aforesaid, the commissioner shall mail all workmen's compensation checks paying 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.

In the event that an employer files a 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 continue to pay to the claimant such benefits during the period of such disability unless it is subsequently found by the commissioner that the claimant was not entitled to receive the temporary total disability benefits, or any part thereof, so paid, in which event the commissioner shall, where the employer is a subscriber to the fund, credit said employer's account with the amount of the overpayment; and, where the employer has elected to carry his own risk, the commissioner shall refund to such employer the amount of the overpayment. The amounts so credited to a subscriber or repaid to a self-insurer shall be charged by the commissioner to the surplus fund created by section one, article three of this chapter. If the final decision in any case determines that a claimant was not lawfully entitled to benefits paid to him pursuant to a prior decision, such amount of benefits so paid shall be deemed overpaid. The commissioner may recover such amount by civil action or in any manner provided in this code for the collection of past-due payment and shall withhold, in whole or in part, as determined by the commissioner, any future benefits payable to the individual and credit such amount against the overpayment until it is repaid in full.

§23-4-3. Schedule of maximum disbursements for medical, surgical, dental and hospital treatment; charges in excess of scheduled amounts not to be made; contract by employer with hospital, physician, etc., prohibited; penalties.

The commissioner shall establish, and alter from time to
time as he may determine to be appropriate a schedule of
the maximum reasonable amounts to be paid to physicians,
surgeons, hospitals or other persons, firms or corporations
for the rendering of treatment to injured employees under
this chapter.

The commissioner shall disburse and pay from the funds
for such personal injuries to such employees as may be
entitled thereto hereunder as follows:

(a) Such sums for medicines, medical, surgical, dental
and hospital treatment, crutches, artificial limbs and such
other and additional approved mechanical appliances and
devices, as may be reasonably required and as are, in the case
of medical, surgical, dental or hospital treatment only, within
the maximum amount provided for by schedule established by
the commissioner as aforesaid, but not as to any one injured
employee in excess of seven thousand five hundred dollars:

Provided, That in special cases where the treatment required,
in the opinion of competent medical authority, is such as to
necessitate an expenditure in excess of said sum of seven
thousand five hundred dollars, the commissioner may pay out
of any available funds such additional sum as may be
necessary, but such additional sum shall not be charged to
the account of the employer.

(b) Payment for such medicine, medical, surgical, dental
and hospital treatment, crutches, artificial limbs and such
other and additional approved mechanical appliances and
devices authorized under subdivision (a) hereof may be made
to the injured employee, or to the person, firm or corporation
who or which has rendered such treatment or furnished any
of the items specified above, or who has advanced payment
for same, as the commissioner may deem proper, but no
such payments or disbursements shall be made or awarded
by him unless duly verified statements on forms prescribed
by the commissioner shall be filed with the commissioner
within one year after the cessation of such treatment or the
delivery of such appliances: Provided, That no payment here-
under shall be made unless such verified statement shows
no charge for or with respect to such treatment or for or
with respect to any of the items specified above has been or
will be made against the injured employee or any other
person, firm or corporation, and when an employee covered
under the provisions of this chapter is injured in the course
of and as a result of his employment and is accepted for
medical, surgical, dental or hospital treatment, the person,
firm or corporation rendering such treatment is hereby
prohibited from making any charge or charges therefor or
with respect thereto against the injured employee or any
other person, firm or corporation which would result in a
total charge for the treatment rendered in excess of the
maximum amount set forth therefor in the commissioner's
schedule established as aforesaid.

(c) No employer shall enter into any contracts with any
hospital, its physicians, officers, agents or employees to
render medical, dental or hospital service or to give medical
or surgical attention therein to any employee for injury
compensable within the purview of this chapter, and no
employer shall permit or require any employee to contribute,
directly or indirectly, to any fund for the payment of such
medical, surgical, dental or hospital service within such
hospital for such compensable injury. Any employer violat-
ing this section shall be liable in damages to his employees as
provided in section eight, article two of this chapter, and
any employer or hospital or agent or employee thereof violating
the provisions of this section shall be guilty of a misde-
meanor, and, upon conviction thereof, shall be sentenced to
pay a fine not exceeding one thousand dollars or undergo
imprisonment not exceeding one year, or both.

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

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

Where compensation is due an employee under the provi-
sions 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-one, fifty percent; on or after July one, one thousand nine hundred seventy-three, sixty percent; on or after July one, one thousand nine hundred seventy-four, eighty percent; on or after July one, one thousand nine hundred seventy-five, one hundred 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; not less than forty dollars per week for injuries occurring on or after July one, one thousand nine hundred seventy-three and not less than forty-five dollars per week for injuries occurring on or after July one, one thousand nine hundred seventy-four.

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

(d) If the injury causes permanent total disability, 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. A permanent dis-
(e) If the injury causes permanent disability less than permanent total 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, at the following maximum or minimum benefit rates: 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 benefit under this subdivision shall be as provided in subdivision (b) of this section for temporary total disability.

(f) 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 by the commissioner, with the following table establishing the minimum percentage of disability. In determining the percentage of disability, the commissioner may be guided by but shall not be limited to the disabilities enumerated in the following table, and in no event shall the disability be less than that specified in the following table:

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.

(g) 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, 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.

(h) For the purpose of the immediately preceding paragraph, a finding of the occupational pneumoconiosis board shall have the force and effect of an award.

(i) 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 the same proportion and shall be computed and allowed by the commissioner.

(j) The percentage of all permanent disabilities other than those enumerated in subdivision (f) of this section shall be determined by the commissioner, and awards made in accordance with the provisions of subdivisions (d) or (e) 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 disability may be guided by
but shall not be limited to the disabilities enumerated in sub-
division (f) of this section.

(k) Compensation payable under any subdivision of this
section shall not exceed the maximum nor be less than the
weekly benefits specified in subdivision (b) of this section.

(l) Temporary total disability benefits payable under sub-
division (b) of this section shall not be deductible from per-
manent partial disability awards payable under subdivision (e)
or (f) 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 de-
pendents of such injured employee if there be such dependents
at the time of death.

(m) The following permanent disabilities shall be conclu-
sively presumed to be total in character:

Loss of both eyes or the sight thereof.

Loss of both hands or the use thereof.

Loss of both feet or the use thereof.

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

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

(n) 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 determining
the issue of total disability.

§23-4-6a. Benefits and mode of payment to employees and depend-
dents for occupational pneumoconiosis; further ad-
justment of claim for occupational pneumoconiosis.

If an employee is found to be permanently disabled due to
2 occupational pneumoconiosis, as defined in section one of
3 this article, the percentage of permanent disability shall be
determined by the commissioner in accordance with the facts
in the case and with the advice and recommendation of the
6 occupational pneumoconiosis board. Compensation shall be
7 paid therefor in the same manner and at the same rate as is
8 provided for permanent disability under the provisions of
9 subdivisions (d), (e), (g), (h), (i), (j), (k), (m) and (n) of
10 the preceding section of this article.

11 If the employee dies from occupational pneumoconiosis,
12 the benefits shall be as provided for in section ten of
13 this article; as to such benefits sections eleven to fourteen
14 inclusive, of this article shall apply.

15 In cases of permanent disability or death due to oc-
16 cupational pneumonconiosis, as defined in section one
17 of this article, accompanied by active tuberculosis of
18 the lungs, compensation shall be payable as for disability
19 or death due to occupational pneumoconiosis alone.

20 The provisions of section sixteen, article four and sections
21 one-a, one-b, one-c and one-d, article five of this chapter
22 providing for the further adjustment of claims shall be ap-
23 plicable to the claim of any claimant who receives a permanent
24 partial disability award for occupational pneumoconiosis.

23-4-Sa. Occupational pneumoconiosis board—Composition; term
of office; duties; quorum; remuneration.

1 The occupational pneumoconiosis board shall consist of
2 five licensed physicians, who shall be appointed by the com-
3 missioner. No person shall be appointed as a member of
4 such board, or as a consultant thereto, who has not by special
5 study or experience, or both, acquired special knowledge of
6 pulmonary diseases. All members of the occupational pneumo-
7 coniosis board shall be physicians of good professional stand-
8 ing, admitted to practice medicine and surgery in this state,
9 and two of them shall be roentgenologists. One of the
10 board shall be designated annually as chairman by the com-
11 missioner. The term of office of each member of such board
12 shall be six years. The three members of the existing board,
13 as redesignated herein, in office on the effective date of this
act shall continue to serve until their terms expire and until
their successors have been appointed and have qualified. Any
member of the board may be appointed to any number of
terms. The function of the board shall be to determine all
medical questions relating to cases of compensation for occu-
pational pneumoconiosis under the direction and supervision
of the commissioner. Any three members of the board shall
constitute a quorum for the transaction of its business, if at
least one of the members present is a roentgenologist. The
commissioner, from time to time, shall fix the per diem salary,
computed on the basis of actual time devoted to the discharge
of their duties, to be paid each member of such board, and they
shall also be entitled to reasonable and necessary traveling and
other expenses incurred while actually engaged in the per-
formance of their duties.

§23-4-9. Physical and vocational rehabilitation.

In cases where an employee has sustained a permanent dis-
ability, or has sustained injuries likely to result in permanent
disability, and such fact has been determined by the com-
missioner, and the employee can be physically and vocation-
ally rehabilitated and returned to remunerative employment
by vocational training, by the use of crutches, artificial limbs,
or other approved mechanical appliances, or by medicines,
medical, surgical, dental or hospital treatment, the commis-
sioner shall forthwith, after due notice to the employer, ex-
pend such an amount as may be necessary for the aforesaid
purposes: Provided, That such expenditure for vocational re-
habilitation shall not exceed two thousand dollars for any one
injured employee: Provided, however, That no payment shall
be made for such purposes as provided by this section unless
authorized by the commissioner prior to the rendering of such
physical or vocational rehabilitation.

In every case in which the commissioner shall order physical
or vocational rehabilitation of a claimant as provided herein,
the claimant shall, during the time he is receiving any voca-
tional rehabilitation or rehabilitative treatment that renders
him totally disabled during the period thereof, be compensated
on a temporary total disability basis for such period, unless
he is being paid compensation under an award granted prior
to the time such rehabilitation is authorized by the commis-

§23-4-10. Classification of death benefits; "dependent" defined.

In case a personal injury, other than occupational pneumo-
coniosis or other occupational disease, suffered by an em-
ployee in the course of and resulting from his employment,
causes death and disability is continuous from date of such
injury until date of death, or if death results from occupa-
tional pneumoconiosis or from any other occupational dis-
ease, the benefits shall be in the amounts and to the per-
sons as follows:

(a) If there be no dependents, the disbursements shall be
limited to the expense provided for in sections three and four
of this article.

(b) If there be dependents as defined in subdivision (d)
of this section, such dependents shall be paid for as long as
their dependency shall continue in the same amount as was
paid or would have been paid the deceased employee for total
disability had he lived. The order of preference of payment and
length of dependence shall be as follows:

(1) A dependent widow or invalid widower until death or
remarriage of such widow or widower.

(2) A dependent child or children until each such child
shall reach eighteen years of age or where such child after
reaching eighteen years of age continues as a full-time student
in an accredited high school, college, university, business or
trade school, until such child reaches the age of twenty-three
years or if an invalid child to continue as long as such child
remains an invalid. The commissioner has the discretion to
distribute the payments to the children in more than one
household as he may deem just and equitable.

(3) A wholly dependent father or mother until death.

(4) Any other wholly dependent person for a period of
six years after the death of the deceased employee.

(c) If the deceased employee leaves no wholly dependent
person, but there are partially dependent persons at the time
of death, the payment shall be fifty dollars a month, to con-
tinue for such portion of the period of six years after the
death, as the commissioner may determine, but no such par-
tially dependent person shall receive compensation payments
as a result of the death of more than one employee.

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

(d) Dependent, as used in this chapter, shall mean a
widow, invalid widower, child under eighteen years of age,
or under twenty-three years of age when a full-time student
as provided herein, invalid child or posthumous child, who,
at the time of the injury causing death, is dependent in whole
or in part for his or her support upon the earnings of the
employee, stepchild under eighteen years of age, or under
twenty-three years of age when a full-time student as provided
herein, child under eighteen years of age legally adopted
prior to the injury causing death, or under twenty-three years
of age when a full-time student as provided herein, father,
mother, grandfather or grandmother, who at the time of the
injury causing death, is dependent in whole or in part for his
or her support upon the earnings of the employee; and invalid
brother or sister wholly dependent for his or her support upon
the earnings of the employee at the time of the injury causing
death.

§23-4-16. Commissioner’s jurisdiction over case continuous; modi-
cation of finding or order; time limitation on awards;
reimbursement of claimant for expenses.

The power and jurisdiction of the commissioner over each
case shall be continuing and he may from time to time, after
due notice to the employer, make such modifications or changes
with respect to former findings or orders as may be justified:
Provided, That no further award may be made in fatal cases
arising after March seventh, one thousand nine hundred
twenty-nine, except within two years after the death of the
employee, or in case of nonfatal injuries, on and after March
seventh, one thousand nine hundred twenty-nine, except within
three years after payments for temporary disability shall have
ceased or not more than two times within five years after the commissioner shall have made the last payment in the original award or any subsequent increase thereto in any permanent disability case: Provided, however, That no such modification or change may be made in any case in which no award has been made, except within three years after the date of injury: Provided further, That a further award may be made for medical benefits only at any time. In any case in which an injured employee shall make application for a further adjustment of his claim, if such application be in writing and filed within the applicable time limit as prescribed herein, the commissioner shall pass upon and determine the merits of such application within thirty days after the filing thereof.

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

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 minimum amount payable under the laws in effect on July one, one thousand nine hundred seventy-three, 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.

1 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 seventy-three, and be receiving such benefits because of the death of an employee.


1 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 required 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 seventy-three that is, the express and specific monetary amounts set forth in sections six and ten of article four of this chapter as of July one, one thousand nine hundred seventy-three, 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 on August one, one thousand nine hundred seventy-four and subsequent payments 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

I. Daniel Harvey
Chairman Senate Committee

Clarence C. Christie, Jr.
Chairman House Committee

Originated in the House.
Takes effect ninety days from passage.

Howard W. Cassan
Clerk of the Senate

C. A. Brownaleyski
Clerk of the House of Delegates

J. T. Brotherton
President of the Senate

Louis T. Mann
Speaker House of Delegates

The within approved this the 26th day of March, 1974.

Aubrey B. Birney
Governor
PRESENTED TO THE
GOVERNOR

Date 3/21/74

Time 10:30 a.m.