

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1974

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ENROLLED

Committee Substitute for
HOUSE BILL No. 821

(By Mr. *Speaker, Mr. McManus* ^{*9/*})
Mr. Seibert

— ● —

PASSED March 9 1974

In Effect 90 days Passage



FILED IN THE OFFICE
ROGER E. NEISKELL II
SECRETARY OF STATE
THIS DATE 3/29/74

821

ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 821

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

[Passed March 9, 1974; in effect ninety days from 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.

1 Any person, firm, or corporation, which is required by the
2 provisions of this chapter to subscribe to the workmen's com-
3 pensation fund, and which knowingly fails to subscribe thereto,
4 or which knowingly fails to make any report or perform any
5 other act or duty required by the commissioner within the
6 time specified by the commissioner, shall be guilty of a mis-
7 demeanor, and, upon conviction thereof, shall be fined not
8 more than five thousand dollars. Any person or firm, or the
9 officer of any corporation, who knowingly makes a false report
10 or statement under oath, affidavit or certification respecting any
11 information required by the commissioner, or who shall know-
12 ingly testify falsely in any proceeding before the commissioner,
13 shall be deemed guilty of perjury, and, upon conviction there-
14 of, shall be punished as provided by law.

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

1 Annually, on or about the fifteenth day of September in
2 each year, the commissioner and the occupational pneu-
3 moconiosis board shall make a report as of the thirtieth day of
4 June addressed to the governor, which shall include a state-

5 ment of the causes of the injuries for which the awards were
6 made, an explanation of the diagnostic techniques used by the
7 occupational pneumoconiosis board and all examining physi-
8 cians to determine the presence of disease, the extent of im-
9 pairment attributable thereto, a description of the scientific
10 support for such techniques, and a summary of public and
11 private research relating to problems and prevention of occupa-
12 tional diseases. The report shall include a detailed statement
13 of all disbursements, and the condition of the fund, together
14 with any specific recommendations for improvements in the
15 workmen's compensation law and for more efficient and
16 responsive administration thereof, which the commissioner
17 may deem appropriate. Copies of all annual reports shall be
18 filed with the secretary of state and shall be made available
19 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.

1 The state of West Virginia and all governmental agencies or
2 departments created by it, including county boards of edu-
3 cation, political subdivisions of the state and emergency service
4 organizations organized under article five, chapter fifteen of
5 this code, and all persons, firms, associations and corporations
6 regularly employing another person or persons for the purpose
7 of carrying on any form of ^{o K} industry, service or business in
8 this state, are employers within the meaning of this chapter and
9 (except for employers of five or fewer full-time employees in
10 agricultural service) are hereby required to subscribe to and
11 pay premiums into the workmen's compensation fund for the
12 protection of their employees and shall be subject to all require-
13 ments of this chapter and all rules and regulations prescribed by
14 the commissioner with reference to rates, classification and
15 premium payment.

16 This chapter shall not apply to employers of employees in
17 domestic service or persons whose employment is prohibited by
18 law nor to employees of an employer while employed without
19 the state except in cases of temporary employment without
20 the state nor to employees of casual employers nor shall a
21 member of a firm of employers or any official of an association
22 or of a corporate employer, including a manager or any elec-

23 tive or appointive official of the state, county, county court,
24 board of education, municipality, other political subdivision of
25 the state or emergency service organization organized as afore-
26 said, whose term of office is definitely fixed by law, be deemed
27 an employee within the meaning of this chapter. An employer
28 is deemed to be a casual employer when the number of his
29 employees does not exceed three and the period of employment
30 is temporary, intermittent and sporadic in nature and does
31 not exceed ten calendar days in any calendar quarter.

32 Employers who are not required to subscribe to the work-
33 men's compensation fund may voluntarily elect to subscribe to
34 and pay premiums into the fund for the protection of their em-
35 ployees and in such case shall be subject to all requirements
36 of this chapter and all rules and regulations prescribed by the
37 commissioner with reference to rates, classifications and pre-
38 mium payments and shall afford to them the protection of this
39 chapter, including section six of this article, but the failure of
40 such employers to elect to subscribe to and to pay premiums
41 into the fund shall not impose any liability upon them other
42 than such liability as would exist notwithstanding the provisions
43 of this chapter.

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

58 The premium and actual expenses in connection with govern-
59 mental agencies and departments of the state of West Virginia
60 shall be paid out of the state treasury from appropriations made
61 for such agencies and departments, in the same manner as other
62 disbursements are made by such agencies and departments.

63 County courts, municipalities, other political subdivisions
64 of the state, county boards of education, emergency service or-
65 ganizations organized as aforesaid and duly incorporated
66 volunteer fire departments or companies shall provide for the
67 funds to pay their prescribed premiums into the fund and
68 such premiums and premiums of state agencies and depart-
69 ments, including county boards of education, shall be paid
70 into the fund in the same manner as herein provided for
71 other employers subject to this chapter. In addition to its
72 usual and ordinary meaning, the term "employer" or "em-
73 ployers," as used in this chapter, shall be taken to extend to and
74 include any duly incorporated volunteer fire department or
75 company or emergency service organization organized as
76 aforesaid and to individuals or organizations employing "volun-
77 teers" and, in addition to its usual and ordinary meaning, the
78 term "employee" or "employees," as used in this chapter,
79 shall be taken to extend to and include all of the members of
80 any such department, company or organization and to such
81 volunteers. All duly incorporated volunteer fire departments or
82 companies and emergency service organizations organized as
83 aforesaid shall be placed in a separate group or class of sub-
84 scribers to be established by the commissioner and such depart-
85 ments, companies or organizations shall pay into the fund such
86 premiums (computed, notwithstanding the provisions of section
87 five of this article, on such basis as to the commissioner shall
88 seem right and proper) as may be necessary to keep such group
89 or class entirely self-supporting. For the purposes of establish-
90 ing a premium rate for "volunteers," their rate of pay shall be
91 deemed to be equivalent to the state minimum wage.

92 Any employer whose employment in this state is to be for
93 a definite or limited period which could not be considered
94 "regularly employing" within the meaning of this section may
95 elect to pay into the workmen's compensation fund the pre-
96 miums herein provided for and, at the time of making applica-
97 tion to the commissioner, such employer shall furnish a state-
98 ment under oath showing the probable length of time the
99 employment will continue in this state, the character of the
100 work, an estimate of the monthly payroll and any other
101 information which may be required by the commissioner. At
102 the time of making application such employer shall deposit

103 with the state compensation commissioner to the credit of
104 the workmen's compensation fund the amount required by
105 section five of this article, which amount shall be returned
106 to such employer if his application be rejected by the com-
107 missioner. Upon notice to such employer of the acceptance
108 of his application by the commissioner, he shall be an em-
109 ployer within the meaning of this chapter and subject to all
110 of its provisions.

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

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

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

§23-2-3. Report blanks and other forms for use of employers.

1 The commissioner shall prepare report forms for the use of,
2 and furnish the same to, employers subject to this chapter.
3 Every employer receiving from the commissioner any form
4 or forms with direction for completion and returning the same
5 shall return the same, within the period fixed by the com-
6 missioner, completed so as to answer fully and correctly all
7 pertinent questions therein propounded, and if unable to do so,
8 shall give good and sufficient reasons for such failure. Every
9 employer subject to the provisions of this chapter, shall make
10 application to the commissioner on the forms prescribed by

11 the commissioner for such purpose; and any employer who shall
12 terminate his business or for any other reason is no longer
13 subject to this chapter shall so notify the commissioner on
14 forms to be furnished by the commissioner for that purpose.

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

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

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

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

26 It shall be the duty of the commissioner to fix and maintain
28 the lowest possible rates of premiums consistent with the main-
29 tenance of a solvent workmen's compensation fund and the
30 creation and maintenance of a reasonable surplus in each group
31 after providing for the payment to maturity of all liability incur-
32 red by reason of injury or death to employees entitled to bene-
33 fits under the provisions of this chapter. A readjustment of

34 rates shall be made yearly on the first day of July, or at any
35 time the same may be necessary. The determination of the low-
36 est possible rates of premiums within the meaning hereof and of
37 the existence of any surplus or deficit in the fund, shall be pre-
38 dicated solely upon the experience and statistical data compiled
39 from the records and files in the commissioner's office under
40 this and prior workmen's compensation laws of this state for the
41 period from the first day of June, one thousand nine hundred
42 thirteen, to the nearest practicable date prior to such adjust-
43 ment: *Provided*, That any expected future return, in the nature
44 of interest or income from invested funds shall be predicated
45 upon the average realization from investments to the credit of
46 the compensation fund for the two years next preceding. Any
47 reserves set up for future liabilities and any commutation of
48 benefits shall likewise be predicated solely upon prior exper-
49 ience under this and preceding workmen's compensation laws
50 and upon expected realization from investments determined by
51 the respective past periods, as aforesaid.

52 The commissioner may fix a rate of premiums applicable
53 alike to all subscribers forming a group or class, and such
54 rates shall be determined from the record of such group or
55 class shown upon the books of the commissioner: *Provided*,
56 That if any group has a sufficient number of employers with
57 considerable difference in their degrees of hazard, the com-
58 missioner may fix a rate for each subscriber of such group,
59 such rate to be based upon the subscriber's record on the
60 books of the commissioner for the twelve months last ending
61 June thirtieth of the year in which the rate is to become effec-
62 tive; and the liability part of such record shall include such
63 cases as have been acted upon by the commissioner during
64 such twelve months' period, irrespective of the date the in-
65 jury was received; and any subscriber in a group so rated,
66 whose record for such twelve months' period cannot be ob-
67 tained, shall be given a rate based upon his record for any
68 part of such period as may be deemed just and equitable by
69 the commissioner; and the commissioner shall have author-
70 ity to fix a reasonable minimum and maximum for any group
71 to which this individual method of rating is applied, and to
72 add to the rate determined from the subscriber's record such
73 amount as is necessary to liquidate any deficit in the schedule
74 or to create a reasonable surplus.

75 It shall be the duty of the commissioner, whenever he
76 changes any rate, to notify every employer affected thereby
77 of that fact and of the new rate and when the same takes
78 effect. It shall also be his duty to furnish to each employer
79 yearly, or oftener if requested by the employer, a statement
80 giving the name of each of his employees who were paid
81 for injury and the amounts so paid during the period covered
82 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.

1 For the purpose of creating a workmen's compensation
2 fund each employer subject to this chapter shall pay the
3 premiums of liabilities based upon and being such a percent-
4 age of the payroll of such employer as may have been
5 determined by the commissioner and be then in effect. The
6 premiums shall be paid quarterly on or before the last day
7 of the next succeeding month for the preceding quarter, and
8 shall be the prescribed percentage of the total earnings of
9 all employees within the meaning of this chapter, for such
10 preceding quarter. The minimum premium to be paid by
11 any employer for any quarter shall be one dollar and fifty
12 cents. The premiums and deposits provided for in this
13 chapter shall be paid by the employers to the state compensa-
14 tion commissioner, who shall issue receipts for all sums so
15 received to the state treasurer and retain a copy for his own
16 records. All sums received by the workmen's compensation
17 commissioner as herein provided shall be deposited in the
18 state treasury to the credit of the workmen's compensation
19 fund in the manner now prescribed by law for depositing
20 money in the state treasury. Each employer shall make a
21 payroll report to the commissioner for each quarter as
22 heretofore specified, and such report shall be on the form
23 or forms prescribed by the commissioner, and furnish all
24 information required by him.

25 No employee of an employer required by this chapter to
26 subscribe and pay premiums to the workmen's compensation

27 fund as herein prescribed shall be denied benefits provided by
28 this chapter because of the failure of his employer to sub-
29 scribe, or pay premiums into, the workmen's compensation
30 fund as herein provided, or because of the employer's failure
31 to make the quarterly payroll reports required by the com-
32 missioner: *Provided*, That any employer required by this
33 chapter to subscribe and pay premiums to the workmen's
34 compensation fund as herein provided and who fails to do
35 so shall be liable to the workmen's compensation fund for
36 all benefits paid from the fund to his employees, as well as
37 for all premiums otherwise due and owing to said fund as
38 herein provided: *Provided, however*, That any employer re-
39 quired by this chapter to subscribe and pay premiums to
40 the workmen's compensation fund, or to make the quarterly
41 payroll reports required by the commissioner, as herein pro-
42 vided, and who fails to comply with such requirements, shall
43 be deprived of the benefits and protection afforded by
44 this chapter, including section six of this article, and shall
45 be liable as provided in section eight of this article,
46 as well for all benefits paid to said employee as provided by this
47 chapter.

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

58 Failure by any employer not required by this chapter, but
59 voluntarily electing to subscribe and pay premiums to the
60 workmen's compensation fund as herein provided, to pay
61 premiums as herein provided, or to make the quarterly pay-
62 roll reports required by this chapter, shall deprive the em-
63 ployer so delinquent of the benefits and protection afforded
64 by this chapter, including section six of this article, and
65 shall automatically terminate the election of such employer
66 to pay into the workmen's compensation fund as here-

67 in provided, and such employer shall be liable for the
68 injury or death of any employee occurring after the ter-
69 mination of such election as herein provided, as pro-
70 vided in section eight of this article. The commissioner
71 shall not be required to notify the delinquent employer
72 of such termination, but he shall notify the employees
73 of such employer by written notice posted as herein-
74 after provided for in this section. The termination of
75 election of such delinquent employer shall date from
76 twelve o'clock p.m., of the last day of the month in
77 which he fails to pay the premiums or make a pay-
78 roll report, as above provided, for the preceeding quar-
79 ter.

80 The employer so delinquent may be reinstated upon
81 application under such terms as are prescribed by this
82 chapter and by the commissioner hereunder, after the pay-
83 ment into the workmen's compensation fund of all un-
84 paid premiums, penalties and charges. Such reinstatement
85 shall be in effect from and after the date that the new
86 application is accepted by the commissioner: *Provided,*
87 That such delinquent employer shall be entitled to the
88 benefits and protection of this chapter until twelve o'clock
89 p.m., of the last day of the month immediately succeeding
90 the month in which his election is terminated, and his
91 employees shall be entitled to compensation for injuries
92 received during such period.

93 Any employer required by this chapter to subscribe and
94 pay premiums to the workmen's compensation fund, or here-
95 after electing to avail himself of the benefits of this chapter
96 as herein provided, shall at the time of making application
97 to the commissioner deposit in the workmen's compensation
98 fund an amount estimated to be equal to the amount of the
99 premium which shall be paid by him for the next succeeding
100 quarter. Any employer whose deposit is less than the
101 amount of his premium for the last quarter shall, upon
102 written request from the commissioner mailed to his address
103 as carried upon the books of the commissioner by twelve
104 o'clock p.m., of the last day of the month in which request
105 is mailed, pay to the commissioner a sum sufficient to make
106 his deposit at least equal to the amount of his premium for

107 the last preceding quarter, and failure of any employer to
108 comply with such written request within the time specified
109 shall constitute a default in performance of the requirements
110 of this chapter and shall deprive him of the benefits and
111 protection afforded by this chapter, and shall automatically
112 terminate any voluntary election to pay into the workmen's
113 compensation fund as herein provided, and such employer
114 shall be liable to his employees as provided in section eight
115 of this article; and the commissioner shall not be required
116 to notify the delinquent employer of such termination or
117 default, but he shall notify the employees of such employer
118 by written notice posted as hereafter provided for in this
119 section. The termination of election of such employer shall
120 date from twelve o'clock p.m., of the last day of the month
121 in which he is notified by the commissioner that his deposit
122 is not equal to the sum of his premium for the last pre-
123 ceding quarter. Such employer may be reinstated upon
124 application under such terms as are prescribed by this
125 chapter and the rules of the commissioner. The deposit
126 hereinbefore described shall be credited to the employer's
127 account on the books of the commissioner and used to pay
128 premiums and any other sums due the fund when such em-
129 ployer becomes delinquent in the payment of same.

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

136 Notices to employees in this section provided for shall be
137 given by posting written notice that the employer is de-
138 linquent under the compensation law of West Virginia, and
139 in the case of employers required by this chapter to subscribe
140 and pay premiums to the fund, that the delinquent employer
141 is liable to his employees for injury or death, both in work-
142 men's compensation benefits and in damages at common
143 law or by statute; and, in the case of employers not required
144 by this chapter to subscribe and pay premiums to the fund,
145 but voluntarily electing to do so as herein provided, that

146 neither the employer nor the employees of such employer
147 are protected by said law as to any injury or death sustained
148 after the date specified in said notice. Such notice shall be
149 in the form prescribed by the commissioner and shall be
150 posted in a conspicuous place at the chief works of the
151 employer, as the same appear in records of the commissioner.
152 If the said chief works of the employer cannot be found or
153 identified, then said notices shall be posted at the front
154 door of the courthouse of the county in which said chief
155 works are located, according to the records in the commis-
156 sioner's office. Any person who shall, prior to the reinstate-
157 ment of the said employer, as hereinbefore provided for, or
158 prior to sixty days after the posting of said notice, whichever
159 shall first occur, remove, deface or render illegible the said
160 notice, shall be guilty of a misdemeanor, and, upon con-
161 viction thereof, shall be fined not to exceed five hundred
162 dollars, and the said notice shall state this provision upon
163 its face. The commissioner may require any sheriff, deputy
164 sheriff, constable, or other official of the state of West
165 Virginia, who may be authorized to serve civil process, to
166 post such notice and to make return thereof of the fact of
167 such posting to the commissioner, and any failure of such
168 officer to post any notice within ten days after he shall have
169 received the same from the commissioner, without just cause
170 or excuse, shall constitute a willful failure or refusal to
171 perform a duty required of him by law within the meaning
172 of section twenty-eight, article five, chapter sixty-one of
173 this code. Any person actually injured by reason of
174 such failure shall have an action against said official, and
175 upon any official bond he may have given, for such damages
176 as such person may actually have incurred, but not to
177 exceed, in the case of any surety upon said bond, the
178 amount of the penalty of said bond. Any official posting said
179 notice as herein required shall be entitled to the same fee
180 as is now or may hereafter be provided for the service of
181 process in suits instituted in courts of record in the state
182 of West Virginia, which fee shall be paid by the commissioner
183 out of any funds at his disposal, but shall be charged by him
184 against the account of the employer to whose delinquency
185 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
2 a civil action against an employer who, after due notice, de-
3 faults in any payment required by this chapter. If judgment is
4 against the employer he shall pay the costs of the action. Civil
5 actions under this section shall be given preference on the cal-
6 endar of the court over all other civil actions.

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

16 In addition to all other civil remedies prescribed herein the
17 commissioner may in the name of the state distrain upon any
18 personal property, including intangible property of any employ-
19 er delinquent for any payment and interest thereon. If the com-
20 missioner has good reason to believe that such property or a
21 substantial portion thereof is about to be removed from the
22 county in which it is situated, he may likewise distrain in the
23 name of the state before such delinquency occurs. For such pur-
24 pose, the commissioner may require the services of a sheriff of
25 any county in the state in levying such distress in the county in
26 which the sheriff is an officer and in which such personal prop-
27 erty is situated. A sheriff so collecting any payments and in-
28 terest thereon shall be entitled to such compensation as is pro-
29 vided by law for his services in the levy and enforcement of
30 executions.

31 In case a business subject to the payments and interests
32 thereon imposed under this chapter shall be operated in con-
33 nection with a receivership or insolvency proceeding in any
34 state court in this state, the court under whose direction such
35 business is operated shall, by the entry of a proper order or de-

36 cree in the cause, make provisions, so far as the assets in ad-
37 ministration will permit, for the regular payment of such pay-
38 ments as the same become due.

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

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

§23-2-6. Exemption of contributing employers from liability.

1 Any employer subject to this chapter who shall subscribe
2 and pay into the workmen's compensation fund the premiums
3 provided by this chapter or who shall elect to make direct pay-
4 ments of compensation as herein provided, shall not be liable
5 to respond in damages at common law or by statute for the
6 injury or death of any employee, however occurring, after
7 so subscribing or electing, and during any period in which such
8 employer shall not be in default in the payment of such pre-
9 miums or direct payments and shall have complied fully with
10 all other provisions of this chapter. The continuation in the
11 service of such employer shall be deemed a waiver by the em-
12 ployee and by the parents of any minor employee of the right
13 of action as aforesaid, which the employee or his or her par-

14 ents would otherwise have: *Provided*, That in case of em-
 15 ployers not required by this chapter to subscribe and pay
 16 premiums into the workmen's compensation fund, the injured
 17 employee has remained in such employer's service with no-
 18 tice that his employer has elected to pay into the workmen's
 19 compensation fund the premiums provided by this chapter, or
 20 has elected to make direct payments as aforesaid.

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

1 No employer or employee shall exempt himself from the
 2 burden or waive the benefits of this chapter by any contract,
 3 agreement, rule or regulation, and any such contract, agree-
 4 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.

1 All employers required by this chapter to subscribe to and
 2 pay premiums into the workmen's compensation fund, ex-
 3 cept the state of West Virginia, the governmental agencies or
 4 departments created by it, and municipalities and political sub-
 5 divisions of the state, and who do not subscribe to and pay
 6 premiums into the workmen's compensation fund as required
 7 by this chapter and have not elected to pay individually and
 8 directly or from benefit funds compensation and expenses to
 9 injured employees or fatally injured employees' dependents un-
 10 der the provisions of section nine of this article, or having so
 11 subscribed or elected, shall be in default in the payment of
 12 same, or not having otherwise fully complied with the pro-
 13 visions of section five or section nine of this article, shall be
 14 liable to their employees (within the meaning of this article)
 15 for all damages suffered by reason of personal injuries sus-
 16 tained in the course of employment caused by the wrongful
 17 act, neglect or default of the employer or any of the employer's
 18 officers, agents or employees while acting within the scope of
 19 their employment and in the course of their employment and
 20 also to the personal representatives of such employees where
 21 death results from such personal injuries, and in any action by
 22 any such employee or personal representative thereof, such de-
 23 fendant 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, municipi-
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 compensation.

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

28 quarter, file with the commissioner a sworn statement of the
29 total earnings of all his employees subject to this chapter for
30 such preceding quarter, and shall pay into the workmen's
31 compensation fund a sum sufficient to pay his proper propor-
32 tion of the expenses of the administration of this chapter, and
33 a sum sufficient to pay his proper portion of the expenses for
34 claims for those employers who are delinquent in the payment
35 of premiums, as may be determined by the commissioner. The
36 commissioner shall make and publish rules and regulations
37 governing the mode and manner of making application, and
38 the nature and extent of the proof required to justify the find-
39 ing of facts by the commissioner, to consider and pass upon
40 such election by employers subject to this chapter, which rules
41 and regulations shall be general in their application. Any
42 employer subject to this chapter who shall elect to carry his
43 own risk and who has complied with the requirements of this
44 section and the rules of the compensation commissioner shall
45 not be liable to respond in damages at common law or by
46 statute for the injury or death of any employee, however oc-
47 curring, after such election and during the period that he is
48 allowed by the commissioner to carry his own risk.

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

63 All employers who have heretofore elected, or shall here-
64 after elect, to pay compensation and expenses directly as pro-
65 vided in this section, shall, unless they give the catastrophe and
66 second injury security or bond hereinafter provided for, pay in-

67 to the surplus fund referred to in section one, article three of
68 this chapter, upon the same basis and in the same percentages,
69 subject to the limitations herein set forth, as funds are set
70 aside for the maintenance of the surplus fund out of payments
71 made by premium-paying subscribers, such payments to be
72 made at the same time as hereinbefore provided with respect
73 to payment of proportion of expenses of administration. In
74 case there be a catastrophe or second injury, as defined in
75 section one, article three of this chapter, to the employees of
76 any employer making such payments, the employer shall not
77 be liable to pay compensation or expenses arising from or
78 necessitated by the catastrophe or second injury, and such
79 compensation and expenses shall not be charged against such
80 employer, but such compensation and expenses shall be paid
81 from the surplus fund in the same manner and to the same
82 extent as in the case of premium-paying subscribers.

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

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

102 All employers hereafter making application to carry their
103 own risk under the provisions of this section, shall with such
104 application, make a written statement as to whether such em-
105 ployer elects to make payments as aforesaid into the surplus

106 fund or not to make such payments and to give catastrophe
 107 and second injury security or bond hereinbefore in such case
 108 provided for.

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

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

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

1 (a) In case any employer within the meaning of this
 2 chapter is also engaged in interstate or foreign commerce,
 3 and for whom a rule of liability or method of compensation
 4 has been established by the Congress of the United States,
 5 this chapter shall apply to him only to the extent that his
 6 mutual connection with work in this state is clearly separable

7 and distinguishable from his interstate work, and to the extent
8 that such work in this state is clearly separable and distinguish-
9 able from his interstate work, such employer shall be subject to
10 the terms and provisions of this chapter in like manner as all
11 other employers hereunder. Payments of premiums shall be on
12 the basis of the payroll of those employees who perform work
13 in this state only.

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

24 (b) Whenever, with respect to an employee of an employer
25 who is a subscriber in good standing to the workmen's com-
26 pensation fund or an employer who has elected to pay com-
27 pensation directly, as provided in section nine of this
28 article, there is a possibility of conflict with respect to
29 the application of workmen's compensation laws because
30 the contract of employment is entered into and all or some
31 portion of the work is performed or is to be performed in a
32 state or states other than this state, the employer and the
33 employee may agree to be bound by the laws of this state
34 or by the laws of such other state in which all or some
35 portion of the work of the employee is to be performed. Such
36 agreement shall be in writing and filed with the commissioner
37 within ten days after execution thereof and shall remain in
38 effect until terminated or modified by agreement of the parties
39 similarly filed. If the parties agree to be bound by the laws
40 of this state, an employee injured within the terms and pro-
41 visions of this chapter shall be entitled to benefits under this
42 chapter regardless of the situs of the injury or exposure to
43 occupational pneumoconiosis or other occupational disease,
44 and the rights of the employee and his dependents under
45 the laws of this state shall be the exclusive remedy against
46 the employer on account of injury, disease or death in the
47 course of and as a result of the employment.

48 If the parties agree to be bound by the laws of another
 49 state and the employer has complied with the laws of that
 50 state, the rights of the employee and his dependents under
 51 the laws of that state shall be the exclusive remedy against
 52 the employer on an account of injury, disease or death in the
 53 course of and as a result of the employment without regard
 54 to the situs of the injury or exposure to occupational pneumo-
 55 coniosis or other occupational disease.

56 If the employee is a resident of a state other than this
 57 state and is subject to the terms and provisions of the work-
 58 men's compensation law or similar laws of a state other than
 59 this state, such employee and his dependents shall not be
 60 entitled to the benefits payable under this chapter on account
 61 of injury, disease or death in the course of and as a result of
 62 employment temporarily within this state, and the rights of
 63 such employee and his dependents under the laws of such other
 64 state shall be the exclusive remedy against the employer on
 65 account of such injury, disease or death.

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

§23-2-13. Interest on past due payments.

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

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

**§23-4-1. To whom compensation fund disbursed; occupational
 pneumoconiosis and other occupational diseases in-
 cluded in "injury" and "personal injury"; definition of
 occupational pneumoconiosis and other occupational
 diseases.**

1 Subject to the provisions and limitations elsewhere in this

2 chapter set forth, the commissioner shall disburse the work-
3 men's compensation fund to the employees of employers sub-
4 ject to this chapter, which employees have received personal
5 injuries in the course of and resulting from their covered em-
6 ployment or to the dependents, if any, of such employees in
7 case death has ensued, according to the provisions hereinafter
8 made; and also for the expenses of the administration of this
9 chapter, as provided in section two, article one of this chapter.

10 For the purposes of this chapter the terms "injury" and "per-
11 sonal injury" shall include occupational pneumoconiosis and
12 any other occupational disease, as hereinafter defined, and
13 the commissioner shall likewise disburse the workmen's com-
14 pensation fund to the employees of such employers in whose
15 employment such employees have been exposed to the hazards
16 of occupational pneumoconiosis or other occupational disease
17 and in this state have contracted occupational pneumoconiosis
18 or other occupational disease, or have suffered a perceptible
19 aggravation of an existing pneumoconiosis or other occupa-
20 tional disease, or to the dependents, if any, of such employees,
21 in case death has ensued, according to the provisions herein-
22 after made: *Provided*, That compensation shall not be payable
23 for the disease of occupational pneumoconiosis, or death re-
24 sulting therefrom, unless the employee has been exposed to
25 the hazards of occupational pneumoconiosis in the state of
26 West Virginia over a continuous period of not less than two
27 years during the ten years immediately preceding the date of
28 his last exposure to such hazards. An application for bene-
29 fits on account of occupational pneumoconiosis shall set forth
30 the name of the employer or employers and the time worked
31 for each, and the commissioner may allocate to and divide any
32 charges resulting from such claim among the employers by
33 whom the claimant was employed for as much as sixty days
34 during the period of three years immediately preceding the
35 date of last exposure to the hazards of occupational pneumo-
36 coniosis. The allocation shall be based upon the time and de-
37 gree of exposure with each employer.

38 For the purposes of this chapter disability or death resulting
39 from occupational pneumoconiosis, as defined in the imme-
40 diately succeeding sentence, shall be treated and compensated
41 as an injury by accident.

42 Occupational pneumoconiosis is a disease of the lungs
43 caused by the inhalation of minute particles of dust over a
44 period of time due to causes and conditions arising out of and
45 in the course of the employment. The term "occupational
46 pneumoconiosis" shall include, but shall not be limited to such
47 diseases as silicosis, anthracosilicosis, coal worker's pneumo-
48 coniosis, commonly known as black lung or miner's asthma,
49 silico-tuberculosis (silicosis accompanied by active tubercu-
50 losis of the lungs), coal worker's pneumoconiosis accompanied
51 by active tuberculosis of the lungs, asbestosis, siderosis, an-
52 thrax and any and all other dust diseases of the lungs and
53 conditions and diseases caused by occupational pneumoconiosis
54 which are not specifically designated herein meeting the defini-
55 tion of occupational pneumoconiosis set forth in the im-
56 mediately preceding sentence.

57 X-ray evidence shall not necessarily be held conclusive inso-
58 far as it bears upon the absence of occupational pneumocon-
59 iosis.

60 For the purposes of this chapter, occupational disease means
61 a disease incurred in the course of and resulting from employ-
62 ment. No ordinary disease of life to which the general public
63 is exposed outside of the employment shall be compensable
64 except when it follows as an incident of occupational disease
65 as defined in this chapter. Except in the case of occupational
66 pneumoconiosis, a disease shall be deemed to have been in-
67 curred in the course of or to have resulted from the employ-
68 ment only if it is apparent to the rational mind, upon consi-
69 deration of all the circumstances (1) that there is a direct
70 causal connection between the conditions under which work
71 is performed and the occupational disease, (2) that it can
72 be seen to have followed as a natural incident of the work as
73 a result of the exposure occasioned by the nature of the em-
74 ployment, (3) that it can be fairly traced to the employment
75 as the proximate cause, (4) that it does not come from a
76 hazard to which workmen would have been equally exposed
77 outside of the employment, (5) that it is incidental to the
78 character of the business and not independent of the rela-
79 tion of employer and employee, and (6) that it must appear
80 to have had its origin in a risk connected with the employment
81 and to have flowed from that source as a natural consequence,

82 though it need not have been foreseen or expected before
83 its contraction.

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

91 Claims for occupational disease as hereinbefore defined,
92 except occupational pneumoconiosis, shall be processed in
93 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.**

1 Upon a finding by the commissioner that a claimant has sus-
2 tained a compensable injury within the meaning of section
3 one of this article, and upon proof by proper physician's
4 report, or otherwise, that disability will last longer than
5 three days as provided in section five of this article,
6 the commissioner shall immediately commence payment
7 of temporary total disability benefits to the claimant in
8 the amounts provided for in sections six and fourteen of
9 this article, without waiting for the expiration of the thirty-
10 day period during which objections may be filed to such
11 findings as provided in section one, article five of this chapter.
12 The commissioner shall give immediate notice to the em-
13 ployer of his findings and of the commencement of such pay-
14 ments.

15 The commissioner shall determine whether or not the
16 claimant has sustained a compensable injury within the meaning
17 of section one of this article, and shall commence pay-
18 ment of temporary total disability benefits as provided
19 herein within fifteen days of receipt of the employee's or
20 employer's report of injury, whichever is received sooner,
21 and receipt of either a proper physician's report or any other in-
22 formation necessary for a determination.

23 Where the employer is a subscriber to the workmen's com-
24 pensation fund under the provisions of article three of this

25 chapter, and upon the findings aforesaid, the commissioner
 26 shall mail all workmen's compensation checks paying tem-
 27 porary total disability benefits directly to the claimant and not
 28 to the employer for delivery to the claimant.

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

34 In the event that an employer files a timely objection to any
 35 finding or order of the commissioner, as provided in section
 36 one, article five of this chapter, with respect to the payment or
 37 continued payment of temporary total disability benefits, as
 38 provided herein, the commissioner shall continue to pay to the
 39 claimant such benefits during the period of such disability un-
 40 less it is subsequently found by the commissioner that the clai-
 41 mant was not entitled to receive the temporary total disability
 42 benefits, or any part thereof, so paid, in which event the com-
 43 missioner shall, where the employer is a subscriber to the fund,
 44 credit said employer's account with the amount of the overpay-
 45 ment; and, where the employer has elected to carry his own
 46 risk, the commissioner shall refund to such employer the
 47 amount of the overpayment. The amounts so credited to a sub-
 48 scriber or repaid to a self-insurer shall be charged by the com-
 49 missioner to the surplus fund created by section one, article
 50 three of this chapter. If the final decision in any case determines
 51 that a claimant was not lawfully entitled to benefits paid to him
 52 pursuant to a prior decision, such amount of benefits so paid
 53 shall be deemed overpaid. The commissioner may recover such
 54 amount by civil action or in any manner provided in this code
 55 for the collection of past-due payment and shall withhold, in
 56 whole or in part, as determined by the commissioner, any future
 57 benefits payable to the individual and credit such amount
 58 against the overpayment until it is repaid in full.

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

1 The commissioner shall establish, and alter from time to

2 time as he may determine to be appropriate a schedule of
3 the maximum reasonable amounts to be paid to physicians,
4 surgeons, hospitals or other persons, firms or corporations
5 for the rendering of treatment to injured employees under
6 this chapter.

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

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

25 (b) Payment for such medicine, medical, surgical, dental
26 and hospital treatment, crutches, artificial limbs and such
27 other and additional approved mechanical appliances and
28 devices authorized under subdivision (a) hereof may be made
29 to the injured employee, or to the person, firm or corporation
30 who or which has rendered such treatment or furnished any
31 of the items specified above, or who has advanced payment
32 for same, as the commissioner may deem proper, but no
33 such payments or disbursements shall be made or awarded
34 by him unless duly verified statements on forms prescribed
35 by the commissioner shall be filed with the commissioner
36 within one year after the cessation of such treatment or the
37 delivery of such appliances: *Provided*, That no payment here-
38 under shall be made unless such verified statement shows
39 no charge for or with respect to such treatment or for or
40 with respect to any of the items specified above has been or

41 will be made against the injured employee or any other
42 person, firm or corporation, and when an employee covered
43 under the provisions of this chapter is injured in the course
44 of and as a result of his employment and is accepted for
45 medical, surgical, dental or hospital treatment, the person,
46 firm or corporation rendering such treatment is hereby
47 prohibited from making any charge or charges therefor or
48 with respect thereto against the injured employee or any
49 other person, firm or corporation which would result in a
50 total charge for the treatment rendered in excess of the
51 maximum amount set forth therefor in the commissioner's
52 schedule established as aforesaid.

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

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

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

1 Where compensation is due an employee under the provi-

2 sions of this chapter for personal injury, such compensation
3 shall be as provided in the following schedule:

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

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

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

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

36 (d) If the injury causes permanent total disability, benefits
37 shall be payable during the remainder of life at the maximum
38 or minimum weekly benefits as provided in subdivision (b) of
39 this section for temporary total disability. A permanent dis-

40 ability of eighty-five percent or more shall be deemed a per-
41 manent total disability for the purpose of this section.

42 (e) If the injury causes permanent disability less than per-
43 manent total disability, the percentage of disability to total
44 disability shall be determined and the award computed on the
45 basis of four weeks compensation for each percent of disability
46 determined, at the following maximum or minimum benefit
47 rates: Sixty-six and two thirds percent of the average weekly
48 earnings, wherever earned, of the injured employee, at the
49 date of injury, not to exceed the percentage of the average
50 weekly wage in West Virginia, as follows: On or after July
51 one, one thousand nine hundred sixty-nine, forty-five percent;
52 on or after July one, one thousand nine hundred seventy,
53 fifty percent; on or after July one, one thousand nine hundred
54 seventy-one, fifty-five percent; on or after July one, one
55 thousand nine hundred seventy-three, sixty percent.

56 The minimum weekly benefit under this subdivision shall
57 be as provided in subdivision (b) of this section for temporary
58 total disability.

59 (f) If the injury results in the total loss by severance of any
60 of the members named in this subdivision, the percentage of
61 disability shall be determined by the commissioner, with the
62 following table establishing the minimum percentage of dis-
63 ability. In determining the percentage of disability, the
64 commissioner may be guided by but shall not be limited to
65 the disabilities enumerated in the following table, and in no
66 event shall the disability be less than that specified in the
67 following table:

68 The loss of a great toe shall be considered a ten percent
69 disability.

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

72 The loss of other toes shall be considered a four percent
73 disability.

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

76 The loss of all toes shall be considered a twenty-five percent
77 disability.

78 The loss of forepart of foot shall be considered a thirty
79 percent disability.

80 The loss of foot shall be considered a thirty-five percent
81 disability.

82 The loss of a leg shall be considered a forty-five percent
83 disability.

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

85 The loss of thigh at hip joint shall be considered a sixty per-
86 cent disability.

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

89 The loss of little or fourth finger shall be considered a
90 five percent disability.

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

93 The loss of ring or third finger shall be considered a five
94 percent disability.

95 The loss of middle or second finger (one phalanax) shall be
96 considered a three percent disability.

97 The loss of middle or second finger shall be considered a
98 seven percent disability.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

133 The total and irrecoverable loss of the hearing of one ear
134 shall be considered a fifteen percent disability, and the injured
135 employee shall be entitled to compensation for a period of
136 sixty weeks. The total and irrecoverable loss of hearing of
137 both ears shall be considered a forty-five percent disability,
138 and the injured employee shall be entitled to compensation for
139 a period of one hundred eighty weeks.

140 For the partial loss of hearing in one, or both ears, the
141 percentage of disability shall be determined by the commis-
142 sioner, using as a basis the total loss of hearing in both ears.

143 Should a claimant sustain a compensable injury which re-
144 sults in the total loss by severance of any of the bodily mem-
145 bers named in this subdivision, die from sickness or noncom-
146 pensable injury before the commissioner makes the proper
147 award for such injury, the commissioner shall make such
148 award to claimant's dependents as defined in this chapter, if
149 any; such payment to be made in the same installments that
150 would have been paid to claimant if living: *Provided*, That no
151 payment shall be made to any widow of such claimant after
152 her remarriage, and that this liability shall not accrue to the
153 estate of such claimant and shall not be subject to any debts
154 of, or charges against, such estate.

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

166 (h) For the purpose of the immediately preceding para-
167 graph, a finding of the occupational pneumoconiosis board shall
168 have the force and effect of an award.

169 (i) The award for permanent disabilities intermediate to
170 those fixed by the foregoing schedule and permanent disability
171 of from one percent to eighty-four percent shall be the same
172 proportion and shall be computed and allowed by the com-
173 missioner.

174 (j) The percentage of all permanent disabilities other than
175 those enumerated in subdivision (f) of this section shall be de-
176 termined by the commissioner, and awards made in accordance
177 with the provisions of subdivisions (d) or (e) of this section.
178 Where there has been an injury to a member as distinguished
179 from total loss by severance of that member, the commissioner
180 in determining the percentage of disability may be guided by

181 but shall not be limited to the disabilities enumerated in sub-
182 division (f) of this section.

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

186 (l) Temporary total disability benefits payable under sub-
187 division (b) of this section shall not be deductible from per-
188 manent partial disability awards payable under subdivision (e)
189 or (f) of this section. Compensation, either total temporary or
190 permanent partial, under this section shall be payable only to
191 the injured employee and the right thereto shall not vest in
192 his or her estate, except that any unpaid compensation which
193 would have been paid or payable to the employee up to the
194 time of his death, if he had lived, shall be paid to the de-
195 pendents of such injured employee if there be such dependents
196 at the time of death.

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

199 Loss of both eyes or the sight thereof.

200 Loss of both hands or the use thereof.

201 Loss of both feet or the use thereof.

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

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

207 (n) A disability which renders the injured employee unable
208 to engage in substantial gainful activity requiring skills or
209 abilities comparable to those of any gainful activity in which
210 he has previously engaged with some regularity and over a
211 substantial period of time shall be considered in determining
212 the issue of total disability.

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

1 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
4 determined by the commissioner in accordance with the facts
5 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.

**§23-4-8a. 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

14 act shall continue to serve until their terms expire and until
15 their successors have been appointed and have qualified. Any
16 member of the board may be appointed to any number of
17 terms. The function of the board shall be to determine all
18 medical questions relating to cases of compensation for occu-
19 pational pneumoconiosis under the direction and supervision
20 of the commissioner. Any three members of the board shall
21 constitute a quorum for the transaction of its business, if at
22 least one of the members present is a roentgenologist. The
23 commissioner, from time to time, shall fix the per diem salary,
24 computed on the basis of actual time devoted to the discharge
25 of their duties, to be paid each member of such board, and they
26 shall also be entitled to reasonable and necessary traveling and
27 other expenses incurred while actually engaged in the per-
28 formance of their duties.

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

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

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

24 to the time such rehabilitation is authorized by the commis-
25 sioner.

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

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

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

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

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

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

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

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

32 (c) If the deceased employee leaves no wholly dependent
33 person, but there are partially dependent persons at the time

34 of death, the payment shall be fifty dollars a month, to con-
 35 tinue for such portion of the period of six years after the
 36 death, as the commissioner may determine, but no such par-
 37 tially dependent person shall receive compensation payments
 38 as a result of the death of more than one employee.

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

43 (d) Dependent, as used in this chapter, shall mean a
 44 widow, invalid widower, child under eighteen years of age,
 45 or under twenty-three years of age when a full-time student
 46 as provided herein, invalid child or posthumous child, who,
 47 at the time of the injury causing death, is dependent in whole
 48 or in part for his or her support upon the earnings of the
 49 employee, stepchild under eighteen years of age, or under
 50 twenty-three years of age when a full-time student as provided
 51 herein, child under eighteen years of age legally adopted
 52 prior to the injury causing death, or under twenty-three years
 53 of age when a full-time student as provided herein, father,
 54 mother, grandfather or grandmother, who at the time of the
 55 injury causing death, is dependent in whole or in part for his
 56 or her support upon the earnings of the employee; and invalid
 57 brother or sister wholly dependent for his or her support upon
 58 the earnings of the employee at the time of the injury causing
 59 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.**

1 The power and jurisdiction of the commissioner over each
 2 case shall be continuing and he may from time to time, after
 3 due notice to the employer, make such modifications or changes
 4 with respect to former findings or orders as may be justified:
 5 *Provided*, That no further award may be made in fatal cases
 6 arising after March seventh, one thousand nine hundred
 7 twenty-nine, except within two years after the death of the
 8 employee, or in case of nonfatal injuries, on and after March
 9 seventh, one thousand nine hundred twenty-nine, except within
 10 three years after payments for temporary disability shall have

11 ceased or not more than two times within five years after the
12 commissioner shall have made the last payment in the original
13 award or any subsequent increase thereto in any permanent
14 disability case: *Provided, however,* That no such modification
15 or change may be made in any case in which no award has been
16 made, except within three years after the date of injury: *Pro-*
17 *vided further,* That a further award may be made for medical
18 benefits only at any time. In any case in which an injured
19 employee shall make application for a further adjustment
20 of his claim, if such application be in writing and filed within
21 the applicable time limit as prescribed herein, the commissioner
22 shall pass upon and determine the merits of such application
23 within thirty days after the filing thereof.

24 If such application is based on a report of any medical
25 examination made of the claimant and submitted by the
26 claimant to the commissioner in support of his application,
27 and the claim is opened for further consideration and additional
28 award is later made, the claimant shall be reimbursed for the
29 expenses of such examination. Such reimbursement shall be
30 made by the commissioner to the claimant, in addition to all
31 other benefits awarded, upon due proof of the amount thereof
32 being furnished the commissioner by the claimant, but shall in
33 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.

1 For the relief of persons who are receiving workmen's
2 compensation benefits by virtue of and under the laws of
3 this state in amounts less than the minimum amount payable
4 under the laws in effect on July one, one thousand nine
5 hundred seventy-three, there is hereby created a separate
6 fund to be known as the "Disabled Workmen's Relief Fund,"
7 which fund shall consist of such sums as are from time to time
8 made available to carry out the objects and purposes of
9 this article. Said fund shall be in the custody of the state
10 treasurer and disbursements therefrom shall be made upon
11 requisition signed by the commissioner to those persons
12 entitled to participate therein and in such amounts to each
13 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
2 fund, an individual must be receiving workmen's compensa-
3 tion benefits by virtue of and under the laws of this state
4 in amounts less than the minimum amount payable under
5 the laws in effect on July one, one thousand nine hundred
6 seventy-three, and be receiving such benefits under a perma-
7 nent total disability award or be receiving such benefits
8 because of the death of an employee.

§23-4A-3. Computation of benefits.

1 Each individual entitled to participate in the disabled
2 workmen's relief fund shall be entitled to receive payments
3 without application (except that an application shall be re-
4 quired under section five of this article) from said fund of
5 an amount equal to the difference between the minimum
6 amount payable under the rates in effect as of July one, one
7 thousand nine hundred seventy-three that is, the express
8 and specific monetary amounts set forth in sections six and
9 ten of article four of this chapter as of July one, one
10 thousand nine hundred seventy-three, and the amount said
11 individual is in fact receiving by virtue of and under the
12 laws of this state. The first such payment shall be made
13 concurrently with the payment to him of workmen's com-
14 pensation on August one, one thousand nine hundred seventy-
15 four and subsequent payments shall be made during the
16 period thereafter in which such participant shall be entitled
17 to workmen's compensation benefits by virtue of and under
18 the laws of this state.

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

H. Daniel Darby
Chairman Senate Committee

Clarence C. Christian Jr.
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Howard W. Carson
Clerk of the Senate

C. A. Blenkinship
Clerk of the House of Delegates

H. T. Brotherton Jr.
President of the Senate

Louis F. McManus
Speaker House of Delegates

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

Arch A. Shaw Jr.
Governor



PRESENTED TO THE
GOVERNOR

Date 3/21/74

Time 10:30 a.m.