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OFFICE OF
SECRETARY OF STATE
CHARLOTTE, WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1975

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ENROLLED
Committee Substitute
FOR
SENATE BILL NO. 302

(By Mr. Rogerson and Mr. Palumbo, original sponsors)

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PASSED March 8, 1975

In Effect July 1, 1975 ~~_____~~



ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 302

(By MR. ROGERSON and MR. PALUMBO, *original sponsors*)

[Passed March 8, 1975; in effect July 1, 1975.]

AN ACT to amend and reenact section four, article one; sections one and ten, article two; sections two and three, article three; sections one, one-b, one-c, three, four, six eight, nine and ten, article four; and sections two and five, article five, all of chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article two, by adding thereto three new sections, designated sections one-a, one-b and one-c; and to further amend said article five, by adding thereto a new section, designated section three-b, all relating to workmen's compensation generally; relating to the office hours and records of the workmen's compensation commissioner; relating to employers subject to said chapter twenty-three; providing special provisions with respect to partnerships, sole proprietorships and churches; relating to protection afforded by said chapter twenty-three; relating to mandatory and elective coverage; relating to foreign corporations and coverage under said chapter twenty-three; relating to employees, officers and others subject to said chapter twenty-three; relating to unlawful employment; providing special provisions as to premiums on the earnings of officers, partners and owners and the payment of premiums by certain employers; authorizing county commissions and municipalities to pay premiums for emergency service organizations and volunteer fire departments; relating to extraterritorial coverage under said chapter twenty-three and agreements in con-

nection therewith; providing for set off of benefits under certain circumstances; relating to the application of said chapter twenty-three to interstate commerce; relating to the custody, investment and disbursements of the workmen's compensation fund and all surpluses, reserves and other moneys belonging thereto; relating to the board of investments relating to the investment of surplus funds; relating to disability and death benefits; specifying to whom compensation shall be disbursed; relating to injuries, occupational pneumoconiosis and other occupational diseases; defining injuries, occupational pneumoconiosis and occupational diseases; relating to certain requirements as to compensability; relating to charges; relating to the significance of x-ray evidence in occupational pneumoconiosis claims; relating to injury reports by employers and failure to object to compensability or temporary total disability benefits; relating to the payment of temporary total disability benefits; establishing a time frame within which a self-insurer must make payments of temporary total disability benefits; relating to overpayments; relating to fee schedules and disbursements for medical, surgical, dental and hospital treatment and other related matters; relating to the replacement of artificial limbs, crutches, hearing aids, eyeglasses and all other mechanical appliances; relating to the allowance for funeral expenses; relating to classification and amount of disability benefits; relating to physical examinations of claimants and payment for loss of wages and for traveling and other expenses in connection with certain of such examinations; relating to physical and vocational rehabilitation; increasing the dollar limitation on vocational rehabilitation; relating to death benefits and those entitled thereto; defining the term "dependent"; relating to the West Virginia workmen's compensation appeal board, the members thereof and their qualifications, terms, removal, salary and expenses; relating to the chairman and terms of such board; relating to clerical services for and the clerical staff of such board; relating to rules and regulations of and fiscal matters pertaining to such board; relating to the disqualification of the members of such board; relating to the fees of attorneys who represent claimants or dependents in workmen's compensation claims; establishing a limitation

upon the amount which may be paid as a fee to any such attorney; and providing criminal offenses and penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

§23-1-4. Office hours; records.

1 The offices of the commissioner shall be open for the
2 transaction of business between the hours of eight-thirty
3 o'clock a.m., and five o'clock p.m., of each and every day
4 excepting Saturdays, Sundays and legal holidays, and be
5 in charge of his secretary or some other competent person.
6 All proceedings of the commissioner shall be shown on
7 his record of proceedings, which shall be a public record
8 and shall contain a record of each case considered and the
9 award with respect thereto and of all salaries allowed to
10 any employee of the commissioner or to any other person
11 for services.

**ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER;
EXTRATERRITORIAL COVERAGE.**

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

1 The state of West Virginia and all governmental
2 agencies or departments created by it, including county
3 boards of education, political subdivisions of the state,
4 any duly incorporated volunteer fire department or com-
5 pany and emergency service organizations organized
6 under article five, chapter fifteen of this code, and all
7 persons, firms, associations and corporations regularly
8 employing another person or persons for the purpose of
9 carrying on any form of industry, service or business in
10 this state, are employers within the meaning of this chap-

11 ter and are hereby required to subscribe to and pay pre-
12 miums into the workmen's compensation fund for the
13 protection of their employees and shall be subject to all
14 requirements of this chapter and all rules and regulations
15 prescribed by the commissioner with reference to rates,
16 classification and premium payment.

17 This chapter shall not apply to:

- 18 (1) Employers of employees in domestic service; or
- 19 (2) Employers of five or fewer full-time employ-
20 ees in agricultural service; or
- 21 (3) Employers of employees while said employees
22 are employed without the state except in cases
23 of temporary employment without the state; or
- 24 (4) Casual employers. An employer is deemed to be
25 a casual employer when the number of his em-
26 ployees does not exceed three and the period of
27 employment is temporary, intermittent and
28 sporadic in nature and does not exceed ten cal-
29 endar days in any calendar quarter.

30 If an employer is a partnership, or sole proprietorship,
31 such employer may elect to include as an "employee"
32 within this chapter, any member of such partnership, or
33 the owner of the sole proprietorship. In the event of such
34 election, the employer shall serve upon the commissioner
35 written notice naming the persons to be covered and
36 shall include such "employee's" remuneration for premium
37 purposes in all future payroll reports, and no such
38 partner or proprietor shall be deemed an employee with-
39 in the meaning of this chapter until such notice has been
40 served.

41 Notwithstanding any other provision of this chapter
42 to the contrary, whenever there are churches in a
43 circuit which employ one individual clergyman and
44 the payments to such clergyman from such churches
45 constitute his full salary, such circuit or group of church-
46 es shall be considered a single employer for purposes of
47 premium payment into the workmen's compensation
48 fund.

49 Employers who are not required to subscribe to the
50 workmen's compensation fund may voluntarily choose
51 to subscribe to and pay premiums into the fund for the

52 protection of their employees and in such case shall be
53 subject to all requirements of this chapter and all rules
54 and regulations prescribed by the commissioner with
55 reference to rates, classifications and premium payments
56 and shall afford to them the protection of this chapter,
57 including section six of this article, but the failure of such
58 employers to choose to subscribe to and to pay premiums
59 into the fund shall not impose any liability upon them
60 other than such liability as would exist notwithstanding
61 the provisions of this chapter.

62 Any foreign corporation employer whose employment
63 in this state is to be for a definite or limited period which
64 could not be considered "regularly employing" within
65 the meaning of this section may choose to pay into the
66 workmen's compensation fund the premiums herein pro-
67 vided for and, at the time of making application to the
68 commissioner, such employer shall furnish a statement
69 under oath showing the probable length of time the em-
70 ployment will continue in this state, the character of the
71 work, an estimate of the monthly payroll and any other
72 information which may be required by the commissioner.
73 At the time of making application such employer shall
74 deposit with the state compensation commissioner to the
75 credit of the workmen's compensation fund the amount
76 required by section five of this article, which amount shall
77 be returned to the employer if his application be rejected
78 by the commissioner. Upon notice to such employer of the
79 acceptance of his application by the commissioner, he
80 shall be an employer within the meaning of this chapter
81 and subject to all of its provisions.

82 Any foreign corporation employer choosing to comply
83 with the provisions of this chapter and to receive the
84 benefits hereunder shall, at the time of making applica-
85 tion to the commissioner, in addition to other require-
86 ments of this chapter, furnish such commissioner with a
87 certificate from the secretary of state, where such cer-
88 tificate is necessary, showing that it has complied with all
89 the requirements necessary to enable it legally to do
90 business in this state and no application of such foreign
91 corporation employer shall be accepted by the commis-
92 sioner until such certificate is filed.

§23-2-1a. Employees subject to chapter.

1 Employees subject to this chapter are all persons in
2 the service of employers and employed by them for the
3 purpose of carrying on the industry, business, service
4 or work in which they are engaged, including, but not
5 limited to persons regularly employed in the state whose
6 duties necessitate employment of a temporary or transi-
7 tory nature by the same employer without the state,
8 every executive officer of an association or of a corpo-
9 ration elected or appointed in accordance with the char-
10 ter and by-laws of the association or corporation, every
11 person in the service of the state or of any political sub-
12 division or agency thereof, under any contract of hire,
13 express or implied, and every official or officer thereof,
14 whether elected or appointed, while performing his of-
15 ficial duties, check-weighmen employed according to law,
16 all members of rescue teams assisting in mine accidents
17 with the consent of the owner who, in such case, shall
18 be deemed the employer, or at the direction of the direc-
19 tor of the department of mines and all forest fire fighters
20 who, under the supervision of the director of the
21 department of natural resources or his designated
22 representative, assist in the prevention, confinement
23 and suppression of any forest fire.

24 The right to receive compensation under this act shall
25 not be affected by the fact that a minor is employed
26 or is permitted to be employed in violation of the laws
27 of this state relating to the employment of minors, or
28 that he obtained his employment by misrepresenting his
29 age.

§23-2-1b. Special provisions as to premiums.

1 Every executive officer of an association or of a cor-
2 poration defined as an employee elsewhere in this chap-
3 ter and any member of a partnership or owner of a
4 sole proprietorship which has elected coverage under
5 this chapter for such member or owner shall pay
6 premiums on each such person's annual income up
7 to a maximum of fifteen thousand dollars per annum.

8 The premium and actual expenses in connection with
9 governmental agencies and departments of the state of

10 West Virginia shall be paid out of the state treasury
11 from appropriations made for such agencies and de-
12 partments, in the same manner as other disbursements
13 are made by such agencies and departments.

14 County commissions, municipalities, other political
15 subdivisions of the state, county boards of education,
16 emergency service organizations organized as aforesaid
17 and duly incorporated volunteer fire departments or
18 companies shall provide for the funds to pay their pre-
19 scribed premiums into the fund and such premiums and
20 premiums of state agencies and departments, including
21 county boards of education, shall be paid into the fund
22 in the same manner as herein provided for other em-
23 ployers subject to this chapter.

24 County commissions and municipalities are hereby
25 authorized to pay all or any part of the premiums pre-
26 scribed for such emergency service organizations orga-
27 nized as aforesaid and such duly incorporated volunteer
28 fire departments or companies as may provide services
29 within the county or municipality.

§23-2-1c. Extraterritorial coverage.

1 (a) Whenever, with respect to an employee of an
2 employer who is a subscriber in good standing to the
3 workmen's compensation fund or an employer who has
4 elected to pay compensation directly, as provided in
5 section nine of this article, there is a possibility of con-
6 flict with respect to the application of workmen's com-
7 pensation laws because the contract of employment is
8 entered into and all or some portion of the work is per-
9 formed or is to be performed in a state of states other
10 than this state, the employer and the employee may
11 agree to be bound by the laws of this state or by the
12 laws of such other state in which all or some portion
13 of the work of the employee is to be performed. Such
14 agreement shall be in writing and filed with the com-
15 missioner within ten days after execution thereof and
16 shall remain in effect until terminated or modified by
17 agreement of the parties similarly filed. If the parties
18 agree to be bound by the laws of this state, an employee
19 injured within the terms and provisions of this chapter

20 shall be entitled to benefits under this chapter regard-
21 less of the situs of the injury or exposure to occupational
22 pneumoconiosis or other occupational disease, and the
23 rights of the employee and his dependents under the
24 laws of this state shall be the exclusive remedy
25 against the employer on account of injury, disease
26 or death in the course of and as a result of the em-
27 ployment.

28 If the parties agree to be bound by the laws of an-
29 other state and the employer has complied with the laws
30 of that state, the rights of the employee and his de-
31 pendents under the laws of that state shall be the ex-
32 clusive remedy against the employer on account of in-
33 jury, disease or death in the course of and as a result
34 of the employment without regard to the situs of the
35 injury or exposure to occupational pneumoconiosis or
36 other occupational disease.

37 If the employee is a resident of a state other than this
38 state and is subject to the terms and provisions of the
39 workmen's compensation law or similar laws of a state
40 other than this state, such employee and his dependents
41 shall not be entitled to the benefits payable under this
42 chapter on account of injury, disease or death in the
43 course of and as a result of employment temporarily
44 within this state, and the rights of such employee
45 and his dependents under the laws of such other
46 state shall be the exclusive remedy against the em-
47 ployer on account of such injury, disease or death.

48 If any employee or his dependents be awarded work-
49 men's compensation benefits or recover damages from
50 the employer under the laws of another state for an
51 injury received in the course of and resulting from
52 the employment, the amount so awarded or recovered,
53 whether paid or to be paid in future installments,
54 shall be credited against the amount of any benefits pay-
55 able under this chapter for the same injury.

§23-2-10. Application of chapter to interstate commerce.

1 In case any employer within the meaning of this chap-
2 ter is also engaged in interstate or foreign commerce,
3 and for whom a rule of liability or method of compen-

4 sation has been established by the Congress of the United
 5 States, this chapter shall apply to him only to the ex-
 6 tent that his mutual connection with work in this state
 7 is clearly separable and distinguishable from his inter-
 8 state work, and to the extent that such work in this
 9 state is clearly separable and distinguishable from his
 10 interstate work, such employer shall be subject to the
 11 terms and provisions of this chapter in like manner
 12 as all other employers hereunder. Payments of premiums
 13 shall be on the basis of the payroll of those employees
 14 who perform work in this state only.

15 Unless and until the Congress of the United States has
 16 by appropriate legislation established a rule of liability
 17 or method of compensation governing employers and
 18 employees engaged in commerce within the purview
 19 of the commerce clause of the United States Constitu-
 20 tion (article 1, section 8), section one of this article shall
 21 apply without regard to the interstate or intrastate charac-
 22 ter or nature of the work or business engaged in.

ARTICLE 3. WORKMEN'S COMPENSATION FUND.

§23-3-2. Custody, investment and disbursement of fund.

1 The state treasurer shall be the custodian of the work-
 2 men's compensation fund and all premiums, deposits or
 3 other moneys paid thereto shall be deposited in the state
 4 treasury to the credit of the workmen's compensation
 5 fund in the manner prescribed in section five, article
 6 two of this chapter. The workmen's compensation fund
 7 shall consist of the premiums and deposits provided by
 8 this chapter and all interest accruing thereto upon in-
 9 vestments and deposits in the state depositories, and any
 10 other moneys or funds which may be given, appropriated
 11 or otherwise designated or accruing thereto. Said fund
 12 shall be a separate and distinct fund and shall be so kept
 13 upon the books and records of the auditor and treasurer
 14 and the state depositories in which any part is deposited.
 15 Disbursement therefrom shall be made upon requisitions
 16 signed by the secretary and approved by the compensa-
 17 tion commissioner.

18 The board of investments shall have authority to in-
 19 vest the surplus, reserve or other moneys belonging to
 20 the fund in the bonds of the United States, notes or

21 bonds of this state, bridge revenue bonds of this state
22 issued prior to January first, one thousand nine hundred
23 thirty-nine, or any bonds issued to refund the same,
24 bonds of any county, city, town, village or school district
25 of the state. No such investment shall be made, nor
26 any investment sold or otherwise disposed of without
27 the concurrence of a majority of all members of the
28 board of investments. It shall be the duty of every
29 county, school district or municipality issuing any bonds,
30 to offer the same in writing to the board of investments,
31 prior to advertising the same for sale, and the board of
32 investments shall, within fifteen days after receipt of
33 such offer, accept the same and purchase such bonds, or
34 any portion thereof at par and accrued interest, or reject
35 such offer. All securities purchased by the board of in-
36 vestments for investment for the workmen's compensation
37 fund shall be placed in the hands of the state treasurer
38 as the custodian thereof, and it shall be his duty to keep
39 and account for the same as he keeps and accounts for
40 other securities of the state, and collect the interest
41 thereon as this same becomes due and payable and the
42 principal when the same is due. No notes, bonds or other
43 securities shall be purchased by the board of investments
44 until and unless the attorney general shall investigate
45 the issuance of such notes, bonds or securities and shall
46 give a written opinion to the board that the same have
47 been regularly issued according to the constitution and
48 the laws of this state, which opinion, if such notes, bonds
49 or securities be purchased, shall be filed with the treasurer
50 with such bonds or securities.

§23-3-3. Investment of surplus funds required.

1 Whenever there shall be in the state treasury any funds
2 belonging to the workmen's compensation fund not likely,
3 in the opinion of the commissioner, to be required for
4 immediate use, it shall be the duty of the board of invest-
5 ments to invest the same as prescribed in the preceding
6 section. Whenever it may become necessary or expedient
7 to use any of the funds so invested, the board of invest-
8 ments, at the direction of the compensation commissioner,
9 shall collect, sell or otherwise realize upon any invest-
10 ment to the amount deemed necessary or expedient to use.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

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

1 Subject to the provisions and limitations elsewhere in
2 this chapter set forth, the commissioner shall disburse
3 the workmen's compensation fund to the employees of
4 employers subject to this chapter, which employees have
5 received personal injuries in the course of and resulting
6 from their covered employment or to the dependents, if
7 any, of such employees in case death has ensued, accord-
8 ing to the provisions hereinafter made; and also for the
9 expenses of the administration of this chapter, as pro-
10 vided in section two, article one of this chapter.

11 For the purposes of this chapter the terms "injury" and
12 "personal injury" shall include occupational pneumocon-
13 iosis and any other occupational disease, as hereinafter
14 defined, and the commissioner shall likewise disburse the
15 workmen's compensation fund to the employees of such
16 employers in whose employment such employees have
17 been exposed to the hazards of occupational pneumocon-
18 iosis or other occupational disease and in this state have
19 contracted occupational pneumoconiosis or other occupa-
20 tional disease, or have suffered a perceptible aggra-
21 vation of an existing pneumoconiosis or other occupa-
22 tional disease, or to the dependents, if any, of such
23 employees, in case death has ensued, according to the
24 provisions hereinafter made: *Provided*, That compensation
25 shall not be payable for the disease of occupational pneu-
26 moconiosis, or death resulting therefrom, unless the em-
27 ployee has been exposed to the hazards of occupational
28 pneumoconiosis in the state of West Virginia over a con-
29 tinuous period of not less than two years during the ten
30 years immediately preceding the date of his last exposure
31 to such hazards. An application for benefits on account of
32 occupational pneumoconiosis shall set forth the name of
33 the employer or employers and the time worked for each,
34 and the commissioner may allocate to and divide any
35 charges resulting from such claim among the employers

36 by whom the claimant was employed for as much as
37 sixty days during the period of three years immediately
38 preceding the date of last exposure to the hazards of oc-
39 cupational pneumoconiosis. The allocation shall be based
40 upon the time and degree of exposure with each em-
41 ployer.

42 For the purposes of this chapter disability or death
43 resulting from occupational pneumoconiosis, as defined in
44 the immediately succeeding sentence, shall be treated and
45 compensated as an injury by accident.

46 Occupational pneumoconiosis is a disease of the lungs
47 caused by the inhalation of minute particles of dust over
48 a period of time due to causes and conditions arising out
49 of and in the course of the employment. The term "occu-
50 pational pneumoconiosis" shall include, but shall not be
51 limited to, such diseases as silicosis, anthracosilicosis,
52 coal worker's pneumoconiosis, commonly known as black
53 lung or miner's asthma, silico-tuberculosis (silicosis ac-
54 companied by active tuberculosis of the lungs), coal
55 worker's pneumoconiosis accompanied by active tubercu-
56 losis of the lungs, asbestosis, siderosis, anthrax and any
57 and all other dust diseases of the lungs and conditions
58 and diseases caused by occupational pneumoconiosis
59 which are not specifically designated herein meeting the
60 definition of occupational pneumoconiosis set forth in
61 the immediately preceding sentence.

62 In determining the presence of occupational pneumo-
63 coniosis, x-ray evidence may be considered but shall not
64 be accorded greater weight than any other type of evi-
65 dence demonstrating occupational pneumoconiosis.

66 For the purposes of this chapter, occupational disease
67 means a disease incurred in the course of and resulting
68 from employment. No ordinary disease of life to which
69 the general public is exposed outside of the employment
70 shall be compensable except when it follows as an inci-
71 dent of occupational disease as defined in this chapter.
72 Except in the case of occupational pneumoconiosis, a
73 disease shall be deemed to have been incurred in the
74 course of or to have resulted from the employment only if
75 it is apparent to the rational mind, upon consideration

76 of all the circumstances (1) that there is a direct casual
77 connection between the conditions under which work is
78 performed and the occupational disease, (2) that it can
79 be seen to have followed as a natural incident of the work
80 as a result of the exposure occasioned by the nature of the
81 employment, (3) that it can be fairly traced to the em-
82 ployment as the proximate cause, (4) that it does not
83 come from a hazard to which workmen would have been
84 equally exposed outside of the employment, (5) that it is
85 incidental to the character of the business and not inde-
86 pendent of the relation of employer and employee, and
87 (6) that it must appear to have had its origin in a risk
88 connected with the employment and to have flowed from
89 that source as a natural consequence, though it need not
90 have been foreseen or expected before its contraction.

91 No award shall be made under the provisions of this
92 chapter for any occupational disease contracted prior to
93 the first day of July, one thousand nine hundred forty-
94 nine. An employee shall be deemed to have contracted an
95 occupational disease within the meaning of this para-
96 graph if the disease or condition has developed to such
97 an extent that it can be diagnosed as an occupational
98 disease.

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

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

1 It shall be the duty of every employer to report to the
2 commissioner every injury sustained by any person in
3 his employ. Such report shall be on forms prescribed by
4 the commissioner; and shall be made within five days of
5 the employer's receipt of the employee's notice of injury,
6 required by section one-a of this article, or within five
7 days after the employer has been notified by the com-
8 missioner that a claim for benefits has been filed on
9 account of such injury, whichever is sooner, and, not-
10 withstanding any other provision of this chapter to the
11 contrary, such five-day period may not be extended by
12 the commissioner, but the employer shall have the right
13 to file a supplemental report at a later date. The em-

14 ployer's report of injury shall include a statement as to
15 whether or not, on the basis of the information then
16 available, the employer disputes the compensability of
17 the injury or objects to the payment of temporary total
18 disability benefits in connection therewith. Such state-
19 ments by the employer shall not prejudice the employer's
20 right thereafter to contest the compensability of the in-
21 jury, or to object to any subsequent finding or award, in
22 accordance with article five of this chapter; but an em-
23 ployer's failure to make timely report of an injury as
24 required herein, or statements in such report to the
25 effect that the employer does not dispute the compensa-
26 bility of the injury or object to the payment of temporary
27 total disability benefits for such injury, shall be deemed
28 to be a waiver of the employer's right to object to any
29 interim payment of temporary total disability benefits
30 paid by the commissioner with respect to any period
31 from the date of injury to the date of the commissioner's
32 receipt of any objection made thereto by the employer.

**§23-4-1c. Payment of temporary total disability benefits di-
rectly to claimant; payments of benefits during pro-
test; right of commissioner to collect payments
improperly made.**

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

15 The commissioner shall determine whether or not the
16 claimant has sustained a compensable injury within the
17 meaning of section one of this article, and shall commence
18 payment of temporary total disability benefits as provided

19 herein within fifteen days of receipt of the employee's
20 or employer's report of injury, whichever is received
21 sooner, and receipt of either a proper physician's report
22 or any other information necessary for a determination.

23 Where the employer is a subscriber to the workmen's
24 compensation fund under the provisions of article three
25 of this chapter, and upon the findings aforesaid, the com-
26 missioner shall mail all workmen's compensation checks
27 paying temporary total disability benefits directly to
28 the claimant and not to the employer for delivery to the
29 claimant.

30 Where the employer has elected to carry his own risk
31 under section nine, article two of this chapter, and upon
32 the findings aforesaid, the commissioner shall immedi-
33 ately issue a pay order directing the employer to pay
34 such amounts as are due the claimant for temporary
35 total disability benefits. The self-insured employer shall
36 commence such payments by mailing or delivering the
37 payments directly to the employee within ten days of
38 receiving the pay order. If the self-insured employer
39 believes that his employee is entitled to benefits, he may
40 start payments before receiving a pay order from the
41 commissioner.

42 In the event that an employer files a timely objection
43 to any finding or order of the commissioner, as provided
44 in section one, article five of this chapter, with respect
45 to the payment or continued payment of temporary total
46 disability benefits, as provided herein, the commissioner
47 shall continue to pay to the claimant such benefits during
48 the period of such disability unless it is subsequently
49 found by the commissioner that the claimant was not
50 entitled to receive the temporary total disability bene-
51 fits, or any part thereof, so paid, in which event the com-
52 missioner shall, where the employer is a subscriber to
53 the fund, credit said employer's account with the amount
54 of the overpayment; and, where the employer has elected
55 to carry his own risk, the commissioner shall refund to
56 such employer the amount of the overpayment. The
57 amounts so credited to a subscriber or repaid to a self-
58 insurer shall be charged by the commissioner to the sur-
59 plus fund created by section one, article three of this
60 chapter. If the final decision in any case determines that

61 a claimant was not lawfully entitled to benefits paid to
62 him pursuant to a prior decision, such amount of benefits
63 so paid shall be deemed overpaid. The commissioner may
64 recover such amount by civil action or in any manner
65 provided in this code for the collection of past-due pay-
66 ment and shall withhold, in whole or in part, as de-
67 termined by the commissioner, any future benefits pay-
68 able to the individual and credit such amount against the
69 overpayment until it is repaid in full.

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

1 The commissioner shall establish, and alter from time
2 to time as he may determine to be appropriate a sched-
3 ule of the maximum reasonable amounts to be paid to
4 physicians, surgeons, hospitals or other persons, firms
5 or corporations for the rendering of treatment to in-
6 jured employees under this chapter.

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

10 (a) Such sums for medicines, medical, surgical, dental
11 and hospital treatment, crutches, artificial limbs and
12 such other and additional approved mechanical appli-
13 ances and devices, as may be reasonably required and
14 as are, in the case of medical, surgical, dental or hos-
15 pital treatment only, within the maximum amount pro-
16 vided for by schedule established by the commissioner
17 as aforesaid, but not as to any one injured em-
18 ployee in excess of seven thousand five hundred dol-
19 lars: *Provided*, That in special cases where the treat-
20 ment required, in the opinion of competent medical au-
21 thority, is such as to necessitate an expenditure in ex-
22 cess of said sum of seven thousand five hundred dol-
23 lars, the commissioner may pay out of any available
24 funds such additional sum as may be necessary, but
25 such additional sum shall not be charged to the ac-
26 count of the employer.

27 (b) Payment for such medicine, medical, surgical,
28 dental and hospital treatment, crutches, artificial limbs
29 and such other and additional approved mechanical ap-
30 pliances and devices authorized under subdivision (a)
31 hereof may be made to the injured employee, or to the
32 person, firm or corporation who or which has rendered
33 such treatment or furnished any of the items specified
34 above, or who has advanced payment for same, as the
35 commissioner may deem proper, but no such payments
36 or disbursements shall be made or awarded by him
37 unless duly verified statements on forms prescribed by
38 the commissioner shall be filed with the commissioner
39 within one year after the cessation of such treatment
40 or the delivery of such appliances: *Provided*, That no
41 payment hereunder shall be made unless such verified
42 statement shows no charge for or with respect to such
43 treatment or for or with respect to any of the items
44 specified above has been or will be made against the
45 injured employee or any other person, firm or corpora-
46 tion, and when an employee covered under the provi-
47 sions of this chapter is injured in the course of and as
48 a result of his employment and is accepted for medical,
49 surgical, dental or hospital treatment, the person, firm
50 or corporation rendering such treatment is hereby pro-
51 hibited from making any charge or charges therefor or
52 with respect thereto against the injured employee or
53 any other person, firm or corporation which would re-
54 sult in a total charge for the treatment rendered in
55 excess of the maximum amount set forth therefor
56 in the commissioner's schedule established as afore-
57 said.

58 (c) No employer shall enter into any contracts with
59 any hospital, its physicians, officers, agents or employ-
60 ees to render medical, dental or hospital service or to
61 give medical or surgical attention therein to any em-
62 ployee for injury compensable within the purview of
63 this chapter, and no employer shall permit or require
64 any employee to contribute, directly or indirectly, to
65 any fund for the payment of such medical, surgical,
66 dental or hospital service within such hospital for such

67 compensable injury. Any employer violating this sec-
 68 tion shall be liable in damages to his employees as pro-
 69 vided in section eight, article two of this chapter, and
 70 any employer or hospital or agent or employee thereof
 71 violating the provisions of this section shall be guilty
 72 of a misdemeanor, and, upon conviction thereof, shall
 73 be sentenced to pay a fine not exceeding one thou-
 74 sand dollars or undergo imprisonment not exceeding one
 75 year, or both.

76 (d) When an injury has been reported to the com-
 77 missioner by the employer without protest, the com-
 78 missioner may pay, or order an employer who or which
 79 made the election and who or which received the per-
 80 mission mentioned in section nine, article two of this
 81 chapter to pay, within the maximum amount provided
 82 by schedule established by the commissioner as afore-
 83 said, bills for medical or hospital services without re-
 84 quiring the injured employee to file an application for
 85 benefits.

86 (e) The commissioner shall provide for the replace-
 87 ment of artificial limbs, crutches, hearing aids, eye-
 88 glasses and all other mechanical appliances provided in
 89 accordance with this section which later wear out, or
 90 which later need to be refitted because of the progres-
 91 sion of the injury which caused the same to be orig-
 92 inally furnished, or which are broken in the course of
 93 and as a result of the employee's employment. The fund
 94 or self-insured employer shall pay for these devices,
 95 when needed, notwithstanding any time limits provided
 96 by law.

§23-4-4. Funeral expenses.

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

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

1 Where compensation is due an employee under the
2 provisions of this chapter for personal injury, such com-
3 pensation shall be as provided in the following sched-
4 ule:

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

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

28 The minimum weekly benefits paid hereunder shall not
29 be less than twenty-six dollars per week for injuries
30 occurring on or after July one, one thousand nine hun-
31 dred sixty-nine; not less than thirty-five dollars per
32 week for injuries occurring on or after July one, one
33 thousand nine hundred seventy-one; not less than forty
34 dollars per week for injuries occurring on or after July
35 one, one thousand nine hundred seventy-three and not
36 less than forty-five dollars per week for injuries oc-
37 ccurring on or after July one, one thousand nine hun-
38 dred seventy-four.

39 (c) Subdivision (b) shall be limited as follows: Ag-
40 gregate award for a single injury causing temporary
41 disability shall be for a period not exceeding two hun-
42 dred eight weeks.

43 (d) If the injury causes permanent total disability,
44 benefits shall be payable during the remainder of life
45 at the maximum or minimum weekly benefits as pro-
46 vided in subdivision (b) of this section for temporary
47 total disability. A permanent disability of eighty-five
48 percent or more shall be deemed a permanent total
49 disability for the purpose of this section.

50 (e) If the injury causes permanent disability less
51 than permanent total disability, the percentage of dis-
52 ability to total disability shall be determined and the
53 award computed on the basis of four weeks compen-
54 sation for each percent of disability determined, at the
55 following maximum or minimum benefit rates: Sixty-
56 six and two-thirds percent of the average weekly earn-
57 ings, wherever earned, of the injured employee, at the
58 date of injury, not to exceed the percentage of the
59 average weekly wage in West Virginia, as follows: On
60 or after July one, one thousand nine hundred sixty-
61 nine, forty-five percent; on or after July one, one thou-
62 sand nine hundred seventy, fifty percent; on or after
63 July one, one thousand nine hundred seventy-one, fifty-
64 five percent; on or after July one, one thousand nine
65 hundred seventy-three, sixty percent; on or after July
66 one, one thousand nine hundred seventy-five, sixty-six
67 and two-thirds percent.

68 The minimum weekly benefit under this subdivision
69 shall be as provided in subdivision (b) of this section
70 for temporary total disability.

71 (f) If the injury results in the total loss by sever-
72 ance of any of the members named in this subdivision,
73 the percentage of disability shall be determined by the
74 commissioner, with the following table establishing the
75 minimum percentage of disability. In determining the
76 percentage of disability, the commissioner may be
77 guided by but shall not be limited to the disabilities
78 enumerated in the following table, and in no event

79 shall the disability be less than that specified in the
80 following table:

81 The loss of a great toe shall be considered a ten per-
82 cent disability.

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

85 The loss of other toes shall be considered a four per-
86 cent disability.

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

89 The loss of all toes shall be considered a twenty-five
90 percent disability.

91 The loss of forepart of foot shall be considered a thirty
92 percent disability.

93 The loss of foot shall be considered a thirty-five per-
94 cent disability.

95 The loss of a leg shall be considered a forty-five per-
96 cent disability.

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

99 The loss of thigh at hip joint shall be considered a
100 sixty percent disability.

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

103 The loss of little or fourth finger shall be considered
104 a five percent disability.

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

107 The loss of ring or third finger shall be considered a
108 five percent disability.

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

111 The loss of middle or second finger shall be considered
112 a seven percent disability.

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

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

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

119 The loss of thumb shall be considered a twenty per-
120 cent disability.

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

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

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

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

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

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

133 The loss of middle, ring and little finger shall be con-
134 sidered a twenty percent disability.

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

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

139 The loss of forearm shall be considered a fifty-five per-
140 cent disability.

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

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

149 The total and irrecoverable loss of the hearing of one
150 ear shall be considered a fifteen percent disability, and
151 the injured employee shall be entitled to compensation
152 for a period of sixty weeks. The total and irrecoverable
153 loss of hearing of both ears shall be considered a forty-
154 five percent disability, and the injured employee shall

155 be entitled to compensation for a period of one hundred
156 eighty weeks.

157 For the partial loss of hearing in one, or both ears,
158 the percentage of disability shall be determined by the
159 commissioner, using as a basis the total loss of hearing
160 in both ears.

161 Should a claimant sustain a compensable injury which
162 results in the total loss by severance of any of the bodily
163 members named in this subdivision, die from sickness
164 or noncompensable injury before the commissioner makes
165 the proper award for such injury, the commissioner
166 shall make such award to claimant's dependents as de-
167 fined in this chapter, if any; such payment to be made
168 in the same installments that would have been paid to
169 claimant if living: *Provided*, That no payment shall be
170 made to any widow of such claimant after her remar-
171 riage, and that this liability shall not accrue to the es-
172 tate of such claimant and shall not be subject to any
173 debts of, or charges against, such estate.

174 (g) Should a claimant to whom has been made a
175 permanent partial award of from one percent to eighty-
176 four percent, both inclusive, die from sickness or non-
177 compensable injury, the unpaid balance of such award
178 shall be paid to claimant's dependents as defined in this
179 chapter, if any; such payment to be made in the same
180 installments that would have been paid to claimant if
181 living: *Provided*, That no payment shall be made to
182 any widow of such claimant after her remarriage, and
183 that this liability shall not accrue to the estate of such
184 claimant and shall not be subject to any debts of, or
185 charges against, such estate.

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

189 (i) The award for permanent disabilities intermediate
190 to those fixed by the foregoing schedule and per-
191 manent disability of from one percent to eighty-
192 four percent shall be the same proportion and shall
193 be computed and allowed by the commissioner.

194 (j) The percentage of all permanent disabilities
195 other than those enumerated in subdivision (f) of this

196 section shall be determined by the commissioner, and
197 awards made in accordance with the provisions of sub-
198 divisions (d) or (e) of this section. Where there has
199 been an injury to a member as distinguished from total
200 loss by severance of that member, the commissioner in
201 determining the percentage of disability may be guided
202 by but shall not be limited to the disabilities enumerated
203 in subdivision (f) of this section.

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

208 (l) Temporary total disability benefits payable under
209 subdivision (b) of this section shall not be deductible
210 from permanent partial disability awards payable un-
211 der subdivision (e) or (f) of this section. Compensa-
212 tion, either total temporary or permanent partial, un-
213 der this section shall be payable only to the injured
214 employee and the right thereto shall not vest in his
215 or her estate, except that any unpaid compensation which
216 would have been paid or payable to the employee up
217 to the time of his death, if he had lived, shall be paid
218 to the dependents of such injured employee if there be
219 such dependents at the time of death.

220 (m) The following permanent disabilities shall be
221 conclusively presumed to be total in character:

222 Loss of both eyes or the sight thereof.

223 Loss of both hands or the use thereof.

224 Loss of both feet or the use thereof.

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

226 In all other cases permanent disability shall be de-
227 termined by the commissioner in accordance with the
228 facts in the case, and award made in accordance with
229 the provisions of subdivision (d) or (e).

230 (n) A disability which renders the injured employee
231 unable to engage in substantial gainful activity requir-
232 ing skills or abilities comparable to those of any gainful
233 activity in which he has previously engaged with some
234 regularity and over a substantial period of time shall

235 be considered in determining the issue of total dis-
236 ability.

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

1 The commissioner shall have authority, after due no-
2 tice to the employer and claimant, whenever in his
3 opinion it shall be necessary, to order a claimant of com-
4 pensation for a personal injury other than occupational
5 pneumoconiosis to appear for examination before a medi-
6 cal examiner or examiners selected by the commissioner;
7 and the claimant and employer, respectively, shall each
8 have the right to select a physician of his or its own
9 choosing and at his or its own expense to participate in
10 such examination. The claimant and employer shall,
11 respectively, be furnished with a copy of the report of
12 examination made by the medical examiner or examiners
13 selected by the commissioner. The respective physicians
14 selected by the claimant and employer shall have the
15 right to concur in any report made by the medical
16 examiner or examiners selected by the commissioner, or
17 each may file with the commissioner a separate report,
18 which separate report shall be considered by the commis-
19 sioner in passing upon the claim. If the compensation
20 claimed is for occupational pneumoconiosis, the commis-
21 sioner shall have the power, after due notice to the em-
22 ployer, and whenever in his opinion it shall be necessary
23 to order a claimant to appear for examination before the
24 occupational pneumoconiosis board hereinafter provided.
25 In any case the claimant shall be entitled to reimburse-
26 ment for loss of wages, and to reasonable traveling and
27 other expenses necessarily incurred by him in obeying
28 such order.

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

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

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

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

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

1 In case a personal injury, other than occupational pneu-
2 moconiosis or other occupational disease, suffered by an
3 employee in the course of and resulting from his employ-
4 ment, causes death and disability is continuous from date
5 of such injury until date of death, or if death results from
6 occupational pneumoconiosis or from any other occupa-
7 tional disease, the benefits shall be in the amounts and to
8 the persons as follows:

9 (a) If there be no dependents, the disbursements shall
10 be limited to the expense provided for in sections three
11 and four 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
 14 as their dependency shall continue in the same amount as
 15 was paid or would have been paid the deceased employee
 16 for total disability had he lived. The order of preference
 17 of payment and length of dependence shall be as follows:

18 (1) A dependent widow or widower until death or
 19 remarriage of such widow or widower, and any
 20 child or children dependent upon the decedent
 21 until each such child shall reach eighteen years of
 22 age or where such child after reaching eighteen
 23 years of age continues as a full-time student in an
 24 accredited high school, college, university, busi-
 25 ness or trade school, until such child reaches the
 26 age of twenty-three years or if an invalid child to
 27 continue as long as such child remains an invalid.
 28 All such persons shall be jointly entitled to the
 29 amount of benefits payable as a result of em-
 30 ployee's death.

31 (2) A wholly dependent father or mother until death.

32 (3) Any other wholly dependent person for a period
 33 of six years after the death of the deceased em-
 34 ployee.

35 (c) If the deceased employee leaves no wholly depend-
 36 ent person, but there are partially dependent persons at
 37 the time of death, the payment shall be fifty dollars a
 38 month, to continue for such portion of the period of six
 39 years after the death, as the commissioner may determine,
 40 but no such partially dependent person shall receive com-
 41 pensation payments as a result of the death of more than
 42 one employee.

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

47 (d) Dependent, as used in this chapter, shall mean a
 48 widow, widower, child under eighteen years of age, or
 49 under twenty-three years of age when a full-time student
 50 as provided herein, invalid child or posthumous child,
 51 who, at the time of the injury causing death, is dependent

52 in whole or part for his or her support upon the earnings
53 of the employee, stepchild under eighteen years of age, or
54 under twenty-three years of age when a full-time student
55 as provided herein, child under eighteen years of age
56 legally adopted prior to the injury causing death, or under
57 twenty-three years of age when a full-time student as
58 provided herein, father, mother, grandfather or grand-
59 mother, who at the time of the injury causing death, is
60 dependent in whole or in part for his or her support upon
61 the earnings of the employee; and invalid brother or sis-
62 ter wholly dependent for his or her support upon the
63 earnings of the employee at the time of the injury causing
64 death.

ARTICLE 5. REVIEW.

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

1 There shall be a board to be known as the "Work-
2 men's Compensation Appeal Board", which shall be re-
3 ferred to in this article as the "board", to be composed
4 of three members.

5 Two members of such board shall be of opposite politics
6 to the third, and all three shall be citizens of this state
7 who have resided therein for a period of at least five
8 years. All members of the board shall be appointed
9 by the governor for a term of six years. The governor
10 is hereby vested with the power to remove any member
11 of the board in accordance with the provisions of section
12 four, article six, chapter six of this code. The members
13 of the board shall receive an annual salary in accordance
14 with the provisions of section two-a, article seven, chap-
15 ter six of this code, payable in monthly installments,
16 and shall also be entitled to all reasonable and
17 necessary traveling and other expenses actually in-
18 curred while engaged in the performance of their duties.
19 The governor shall designate one of the members of the
20 board as chairman thereof, and the board shall meet at
21 the capitol or at such other places throughout the state
22 as it may deem proper at regular sessions commencing
23 on the first Tuesday in February, April, June, August,
24 October and December, and continuing as long as may
25 be necessary for the proper and expeditious transaction

26 of the business before it. All clerical services required
 27 by the board shall be paid for by the compensation com-
 28 missioner from any funds at his disposal. The board shall,
 29 from time to time, compile and promulgate such rules
 30 of practice and procedure as to it shall appear proper
 31 for the prompt and efficient discharge of its business and
 32 such rules shall be submitted to the supreme court of
 33 appeals for approval, and if approved by such court
 34 shall have the same force and effect as the approved
 35 rules of procedure of circuit courts. The board shall
 36 employ such clerical staff as may be necessary for the
 37 efficient conduct of its business but the number of such
 38 employees shall not exceed two. Salaries of the board,
 39 and its employees, and all of its necessary operating ex-
 40 pense shall be paid from the workmen's compensation
 41 fund. The board shall submit its annual budget to the
 42 state compensation commissioner for inclusion as a sep-
 43 arate item in the budget estimates prepared by him an-
 44 nually and within the limits of such budget, all expenses
 45 of the board shall be by the requisition of the commis-
 46 sioner. Salaries of the employees of the board shall be
 47 fixed by the board.

§23-5-3b. Disqualification of board members.

1 In any appeal wherein a board member is a party, or
 2 is interested in the results thereof otherwise than as a
 3 general subscriber to the compensation fund, or he is
 4 connected with a contributor therein, or is a beneficiary
 5 therein, or is connected with a beneficiary therein, he
 6 shall be disqualified from participating in the hearing
 7 and determination of such appeal.

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

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

9 for legal services made prior to the first day of July, one
10 thousand nine hundred seventy-five: *Provided*, That the
11 interest on disability or dependent benefits as provided
12 for in this chapter shall not be considered as part of the
13 award in determining any such attorney's fee. How-
14 ever, any contract entered into in excess of twenty
15 percent of the benefits to be paid during a period of two
16 hundred eight weeks, as herein provided, shall be unlaw-
17 ful and unenforceable as contrary to the public policy
18 of this state and any fee charged or received by an at-
19 torney in violation thereof shall be deemed an unlawful
20 practice and render the attorney subject to disciplinary
21 action.

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

James L. Davis
Chairman Senate Committee

Clarence C. Christensen
Chairman House Committee

Originated in the Senate.

In effect July 1, 1975.

John S. Dillon Jr.
Clerk of the Senate

W. B. Blankenship
Clerk of the House of Delegates

W. O. Bristow
President of the Senate

Lewis H. McManus
Speaker House of Delegates

The within approved this the 25th
day of March, 1975.

Arthur A. Phares Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 3/20/75

Time 4:30 p.m.