WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 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 transaction of business between the hours of eight-thirty o'clock a.m., and five o'clock p.m., of each and every day excepting Saturdays, Sundays and legal holidays, and be in charge of his secretary or some other competent person.

2 All proceedings of the commissioner shall be shown on his record of proceedings, which shall be a public record and shall contain a record of each case considered and the award with respect thereto and of all salaries allowed to any employee of the commissioner or to any other person 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 agencies or departments created by it, including county boards of education, political subdivisions of the state, any duly incorporated volunteer fire department or company and emergency service organizations organized under article five, chapter fifteen of this code, and all persons, firms, associations and corporations regularly employing another person or persons for the purpose of carrying on any form of industry, service or business in this state, are employers within the meaning of this chap-
ter and are hereby required to subscribe to and pay pre-
miums into the workmen's compensation fund for the
protection of their employees and shall be subject to all
requirements of this chapter and all rules and regulations
prescribed by the commissioner with reference to rates,
classification and premium payment.

This chapter shall not apply to:

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

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

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

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

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

Any foreign corporation employer choosing to comply with the provisions of this chapter and to receive the benefits hereunder shall, at the time of making application to the commissioner, in addition to other requirements of this chapter, furnish such commissioner with a certificate from the secretary of state, where such certificate is necessary, showing that it has complied with all the requirements necessary to enable it legally to do business in this state and no application of such foreign corporation employer shall be accepted by the commissioner until such certificate is filed.
§23-2-1a. Employees subject to chapter.

Employees subject to this chapter are all persons in the service of employers and employed by them for the purpose of carrying on the industry, business, service or work in which they are engaged, including, but not limited to persons regularly employed in the state whose duties necessitate employment of a temporary or transitory nature by the same employer without the state, every executive officer of an association or of a corporation elected or appointed in accordance with the charter and by-laws of the association or corporation, every person in the service of the state or of any political subdivision or agency thereof, under any contract of hire, express or implied, and every official or officer thereof, whether elected or appointed, while performing his official duties, check-weighmen employed according to law, all members of rescue teams assisting in mine accidents with the consent of the owner who, in such case, shall be deemed the employer, or at the direction of the director of the department of mines and all forest fire fighters who, under the supervision of the director of the department of natural resources or his designated representative, assist in the prevention, confinement and suppression of any forest fire.

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

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

Every executive officer of an association or of a corporation defined as an employee elsewhere in this chapter and any member of a partnership or owner of a sole proprietorship which has elected coverage under this chapter for such member or owner shall pay premiums on each such person's annual income up to a maximum of fifteen thousand dollars per annum.

The premium and actual expenses in connection with governmental agencies and departments of the state of
West Virginia shall be paid out of the state treasury from appropriations made for such agencies and departments, in the same manner as other disbursements are made by such agencies and departments.

County commissions, municipalities, other political subdivisions of the state, county boards of education, emergency service organizations organized as aforesaid and duly incorporated volunteer fire departments or companies shall provide for the funds to pay their prescribed premiums into the fund and such premiums and premiums of state agencies and departments, including county boards of education, shall be paid into the fund in the same manner as herein provided for other employers subject to this chapter.

County commissions and municipalities are hereby authorized to pay all or any part of the premiums prescribed for such emergency service organizations organized as aforesaid and such duly incorporated volunteer fire departments or companies as may provide services within the county or municipality.

§23-2-lc. Extraterritorial coverage.

(a) Whenever, with respect to an employee of an employer who is a subscriber in good standing to the workmen's compensation fund or an employer who has elected to pay compensation directly, as provided in section nine of this article, there is a possibility of conflict with respect to the application of workmen's compensation laws because the contract of employment is entered into and all or some portion of the work is performed or is to be performed in a state of states other than this state, the employer and the employee may agree to be bound by the laws of this state or by the laws of such other state in which all or some portion of the work of the employee is to be performed. Such agreement shall be in writing and filed with the commissioner within ten days after execution thereof and shall remain in effect until terminated or modified by agreement of the parties similarly filed. If the parties agree to be bound by the laws of this state, an employee injured within the terms and provisions of this chapter
shall be entitled to benefits under this chapter regard-
less of the situs of the injury or exposure to occupational
pneumoconiosis or other occupational disease, and the
rights of the employee and his dependents under the
laws of this state shall be the exclusive remedy
against the employer on account of injury, disease
or death in the course of and as a result of the em-
ployment.

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

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

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

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

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

Unless and until the Congress of the United States has
by appropriate legislation established a rule of liability
or method of compensation governing employers and
employees engaged in commerce within the purview
of the commerce clause of the United States Constitu-
tion (article 1, section 8), section one of this article shall
apply without regard to the interstate or intrastate charac-
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-
men's compensation fund and all premiums, deposits or
other moneys paid thereto shall be deposited in the state
treasury to the credit of the workmen's compensation
fund in the manner prescribed in section five, article
two of this chapter. The workmen's compensation fund
shall consist of the premiums and deposits provided by
this chapter and all interest accruing thereto upon in-
vestments and deposits in the state depositories, and any
other moneys or funds which may be given, appropriated
or otherwise designated or accruing thereto. Said fund
shall be a separate and distinct fund and shall be so kept
upon the books and records of the auditor and treasurer
and the state depositories in which any part is deposited.
Disbursement therefrom shall be made upon requisitions
signed by the secretary and approved by the compensa-
tion commissioner.

The board of investments shall have authority to in-
vest the surplus, reserve or other moneys belonging to
the fund in the bonds of the United States, notes or
bonds of this state, bridge revenue bonds of this state
issued prior to January first, one thousand nine hundred
thirty-nine, or any bonds issued to refund the same,
bonds of any county, city, town, village or school district
of the state. No such investment shall be made, nor
any investment sold or otherwise disposed of without
the concurrence of a majority of all members of the
board of investments. It shall be the duty of every
county, school district or municipality issuing any bonds,
to offer the same in writing to the board of investments,
prior to advertising the same for sale, and the board of
investments shall, within fifteen days after receipt of
such offer, accept the same and purchase such bonds, or
any portion thereof at par and accrued interest, or reject
such offer. All securities purchased by the board of in-
vestments for investment for the workmen's compensation
fund shall be placed in the hands of the state treasurer
as the custodian thereof, and it shall be his duty to keep
and account for the same as he keeps and accounts for
other securities of the state, and collect the interest
thereon as this same becomes due and payable and the
principal when the same is due. No notes, bonds or other
securities shall be purchased by the board of investments
until and unless the attorney general shall investigate
the issuance of such notes, bonds or securities and shall
give a written opinion to the board that the same have
been regularly issued according to the constitution and
the laws of this state, which opinion, if such notes, bonds
or securities be purchased, shall be filed with the treasurer
with such bonds or securities.

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

Whenever there shall be in the state treasury any funds
belonging to the workmen's compensation fund not likely,
in the opinion of the commissioner, to be required for
immediate use, it shall be the duty of the board of invest-
ments to invest the same as prescribed in the preceding
section. Whenever it may become necessary or expedient
to use any of the funds so invested, the board of invest-
ments, at the direction of the compensation commissioner,
shall collect, sell or otherwise realize upon any invest-
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 in­
cluded in “injury” and “personal injury”; definition 
of occupational pneumoconiosis and other occupa­tional diseases.

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

For the purposes of this chapter the terms “injury” and 
“personal injury” shall include occupational pneumocon­ 
iosis and any other occupational disease, as hereinafter 
defined, and the commissioner shall likewise disburse the 
workmen’s compensation fund to the employees of such 
employers in whose employment such employees have 
been exposed to the hazards of occupational pneumocon­ 
iosis or other occupational disease and in this state have 
contracted occupational pneumoconiosis or other occupa­tional disease, or have suffered a perceptible aggra­ 
vation of an existing pneumoconiosis or other occupa­tional disease, or to the dependents, if any, of such 
employees, in case death has ensued, according to the 
provisions hereinafter made: Provided, That compensation 
shall not be payable for the disease of occupational pneu­ 
moconiosis, or death resulting therefrom, unless the em­ 
ployee has been exposed to the hazards of occupational 
pneumoconiosis in the state of West Virginia over a con­ 
tinuous period of not less than two years during the ten 
years immediately preceding the date of his last exposure 
to such hazards. An application for benefits on account of 
occupational pneumoconiosis shall set forth the name of 
the employer or employers and the time worked for each, 
and the commissioner may allocate to and divide any 
charges resulting from such claim among the employers
by whom the claimant was employed for as much as
sixty days during the period of three years immediately
preceding the date of last exposure to the hazards of oc-
cupational pneumoconiosis. The allocation shall be based
upon the time and degree of exposure with each em-
ployer.

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

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

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

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

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

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

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

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

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

Upon a finding by the commissioner that a claimant has sustained a compensable injury within the meaning of section one of this article, and upon proof by proper physician's report, or otherwise, that disability will last longer than three days as provided in section five of this article, the commissioner shall immediately commence payment of temporary total disability benefits to the claimant in the amounts provided for in sections six and fourteen of this article, without waiting for the expiration of the thirty-day period during which objections may be filed to such findings as provided in section one, article five of this chapter. The commissioner shall give immediate notice to the employer of his findings and of the commencement of such payments.

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

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

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

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

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

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

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

(a) Such sums for medicines, medical, surgical, dental and hospital treatment, crutches, artificial limbs and such other and additional approved mechanical appliances and devices, as may be reasonably required and as are, in the case of medical, surgical, dental or hospital treatment only, within the maximum amount provided for by schedule established by the commissioner as aforesaid, but not as to any one injured employee in excess of seven thousand five hundred dollars: Provided, That in special cases where the treatment required, in the opinion of competent medical authority, is such as to necessitate an expenditure in excess of said sum of seven thousand five hundred dollars, the commissioner may pay out of any available funds such additional sum as may be necessary, but such additional sum shall not be charged to the account of the employer.
(b) Payment for such medicine, medical, surgical, dental and hospital treatment, crutches, artificial limbs and such other and additional approved mechanical appliances and devices authorized under subdivision (a) hereof may be made to the injured employee, or to the person, firm or corporation who or which has rendered such treatment or furnished any of the items specified above, or who has advanced payment for same, as the commissioner may deem proper, but no such payments or disbursements shall be made or awarded by him unless duly verified statements on forms prescribed by the commissioner shall be filed with the commissioner within one year after the cessation of such treatment or the delivery of such appliances: Provided, That no payment hereunder shall be made unless such verified statement shows no charge for or with respect to such treatment or for or with respect to any of the items specified above has been or will be made against the injured employee or any other person, firm or corporation, and when an employee covered under the provisions of this chapter is injured in the course of and as a result of his employment and is accepted for medical, surgical, dental or hospital treatment, the person, firm or corporation rendering such treatment is hereby prohibited from making any charge or charges therefor or with respect thereto against the injured employee or any other person, firm or corporation which would result in a total charge for the treatment rendered in excess of the maximum amount set forth therefor in the commissioner's schedule established as aforesaid.

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

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

(e) The commissioner shall provide for the replacement of artificial limbs, crutches, hearing aids, eyeglasses and all other mechanical appliances provided in accordance with this section which later wear out, or which later need to be refitted because of the progression of the injury which caused the same to be originally furnished, or which are broken in the course of and as a result of the employee's employment. The fund or self-insured employer shall pay for these devices, when needed, notwithstanding any time limits provided by law.

§23-4-4. Funeral expenses.

In case the personal injury causes death, and disability is continuous from the date of such injury to date of death, reasonable funeral expenses, not to exceed fifteen hundred dollars, shall be paid from the fund, payment to be made to the persons who have furnished the services and supplies, or to the persons who have advanced payment for same, as the commissioner may deem proper, in addition to such award as may be made to the employee's dependents.
§23-4-6. Classification of disability benefits.

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

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

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

The minimum weekly benefits paid hereunder shall not be less than twenty-six dollars per week for injuries occurring on or after July one, one thousand nine hundred sixty-nine; not less than thirty-five dollars per week for injuries occurring on or after July one, one thousand nine hundred seventy-one; not less than forty dollars per week for injuries occurring on or after July one, one thousand nine hundred seventy-three and not less than forty-five dollars per week for injuries occurring on or after July one, one thousand nine hundred seventy-four.
(c) Subdivision (b) shall be limited as follows: Aggregate award for a single injury causing temporary disability shall be for a period not exceeding two hundred eight weeks.

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

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

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

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

The loss of a great toe shall be considered a ten percent disability.
The loss of a great toe (one phalanx) shall be considered a five percent disability.
The loss of other toes shall be considered a four percent disability.
The loss of other toes (one phalanx) shall be considered a two percent disability.
The loss of all toes shall be considered a twenty-five percent disability.
The loss of forepart of foot shall be considered a thirty percent disability.
The loss of foot shall be considered a thirty-five percent disability.
The loss of a leg shall be considered a forty-five percent disability.
The loss of thigh shall be considered a fifty percent disability.
The loss of thigh at hip joint shall be considered a sixty percent disability.
The loss of a little or fourth finger (one phalanx) shall be considered a three percent disability.
The loss of little or fourth finger shall be considered a five percent disability.
The loss of ring or third finger (one phalanx) shall be considered a three percent disability.
The loss of ring or third finger shall be considered a five percent disability.
The loss of middle or second finger (one phalanx) shall be considered a three percent disability.
The loss of middle or second finger shall be considered a seven percent disability.
The loss of index or first finger (one phalanx) shall be considered a six percent disability.
The loss of index or first finger shall be considered a ten percent disability.
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 con-
132 sidered 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. For the partial loss of vision in one, or both eyes, the
145 percentage of disability shall be determined by the
146 commissioner, using as a basis the total loss of one
147 eye.
148 The total and irrecoverable loss of the hearing of one
149 ear shall be considered a fifteen percent disability, and
150 the injured employee shall be entitled to compensation
151 for a period of sixty weeks. The total and irrecoverable
152 loss of hearing of both ears shall be considered a forty-
153 five percent disability, and the injured employee shall
be entitled to compensation for a period of one hundred eighty weeks.

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

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

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

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

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

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

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

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

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

- Loss of both eyes or the sight thereof.
- Loss of both hands or the use thereof.
- Loss of both feet or the use thereof.
- Loss of one hand and one foot or the use thereof.

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

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

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

1. The commissioner shall have authority, after due no-
tice to the employer and claimant, whenever in his
opinion it shall be necessary, to order a claimant of com-
pensation for a personal injury other than occupational
pneumoconiosis to appear for examination before a medi-
cal examiner or examiners selected by the commissioner;
and the claimant and employer, respectively, shall each
have the right to select a physician of his or its own
choosing and at his or its own expense to participate in
such examination. The claimant and employer shall,
respectively, be furnished with a copy of the report of
examination made by the medical examiner or examiners
selected by the commissioner. The respective physicians
selected by the claimant and employer shall have the
right to concur in any report made by the medical
examiner or examiners selected by the commissioner, or
each may file with the commissioner a separate report,
which separate report shall be considered by the commis-
sioner in passing upon the claim. If the compensation
claimed is for occupational pneumoconiosis, the commis-
sioner shall have the power, after due notice to the em-
ployer, and whenever in his opinion it shall be necessary
to order a claimant to appear for examination before the
occupational pneumoconiosis board hereinafter provided.
In any case the claimant shall be entitled to reimburse-
ment for loss of wages, and to reasonable traveling and
other expenses necessarily incurred by him in obeying
such order.

Where the claimant is required to undergo a medical
examination or examinations by a physician or physicians
selected by the employer, as aforesaid or in connection
with any claim which is in litigation, the employer shall
reimburse the claimant for loss of wages, and reasonable
traveling and other expenses in connection with such
examination or examinations, not to exceed the expenses
paid when a claimant is examined by a physician or
physicians selected by the commissioner.
§23-4-9. Physical and vocational rehabilitation.

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

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

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

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

(a) If there be no dependents, the disbursements shall
be limited to the expense provided for in sections three
and four of this article.
(b) If there be dependents as defined in subdivision (d) of this section, such dependents shall be paid for as long as their dependency shall continue in the same amount as was paid or would have been paid the deceased employee for total disability had he lived. The order of preference of payment and length of dependence shall be as follows:

1. A dependent widow or widower until death or remarriage of such widow or widower, and any child or children dependent upon the decedent until each such child shall reach eighteen years of age or where such child after reaching eighteen years of age continues as a full-time student in an accredited high school, college, university, business or trade school, until such child reaches the age of twenty-three years or if an invalid child to continue as long as such child remains an invalid.

All such persons shall be jointly entitled to the amount of benefits payable as a result of employee's death.

2. A wholly dependent father or mother until death.

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

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

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

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

ARTICLE 5. REVIEW.


There shall be a board to be known as the “Workmen’s Compensation Appeal Board”, which shall be referred to in this article as the “board”, to be composed of three members.

Two members of such board shall be of opposite politics to the third, and all three shall be citizens of this state who have resided therein for a period of at least five years. All members of the board shall be appointed by the governor for a term of six years. The governor is hereby vested with the power to remove any member of the board in accordance with the provisions of section four, article six, chapter six of this code. The members of the board shall receive an annual salary in accordance with the provisions of section two-a, article seven, chapter six of this code, payable in monthly installments, and shall also be entitled to all reasonable and necessary traveling and other expenses actually incurred while engaged in the performance of their duties. The governor shall designate one of the members of the board as chairman thereof, and the board shall meet at the capitol or at such other places throughout the state as it may deem proper at regular sessions commencing on the first Tuesday in February, April, June, August, October and December, and continuing as long as may be necessary for the proper and expeditious transaction
of the business before it. All clerical services required
by the board shall be paid for by the compensation com-
missioner from any funds at his disposal. The board shall,
from time to time, compile and promulgate such rules
of practice and procedure as to it shall appear proper
for the prompt and efficient discharge of its business and
such rules shall be submitted to the supreme court of
appeals for approval, and if approved by such court
shall have the same force and effect as the approved
rules of procedure of circuit courts. The board shall
employ such clerical staff as may be necessary for the
efficient conduct of its business but the number of such
employees shall not exceed two. Salaries of the board,
and its employees, and all of its necessary operating ex-
 pense shall be paid from the workmen's compensation
fund. The board shall submit its annual budget to the
state compensation commissioner for inclusion as a sep-
arate item in the budget estimates prepared by him an-
ually and within the limits of such budget, all expenses
of the board shall be by the requisition of the commis-
sioner. Salaries of the employees of the board shall be
fixed by the board.

§23-5-3h. 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
general subscriber to the compensation fund, or he is
3 connected with a contributor therein, or is a beneficiary
4 therein, or is connected with a beneficiary therein, he
5 shall be disqualified from participating in the hearing
6 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
to thousand nine hundred seventy-five: Provided, That the
interest on disability or dependent benefits as provided
for in this chapter shall not be considered as part of the
award in determining any such attorney's fee. How-
ever, any contract entered into in excess of twenty
percent of the benefits to be paid during a period of two
hundred eight weeks, as herein provided, shall be unlaw-
ful and unenforceable as contrary to the public policy
of this state and any fee charged or received by an at-
torney in violation thereof shall be deemed an unlawful
practice and render the attorney subject to disciplinary
action.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis
Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect July 1, 1975.

J. Willard Jr.
Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within Approved this the 25th

day of March, 1975.

Andr. B. Rawlings
Governor