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MARTINSBURG, 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 ~~\_\_\_\_\_~~



*[Handwritten scribbles on the left margin]*

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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 occu-  
 20 pational 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

Lawrence C. Christensen  
Chairman House Committee

Originated in the Senate.

In effect July 1, 1975.

J. C. Dillon Jr  
Clerk of the Senate

W. B. Blankenship  
Clerk of the House of Delegates

H. O. B. [Signature]  
President of the Senate

Lewis H. McManus  
Speaker House of Delegates

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

Richard [Signature]  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/20/75

Time 4:30 p.m.