WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1976

ENROLLED
Committee Substitute for
SENATE BILL NO. 371

(By Mr. [Signature], original sponsor)

PASSED April 13, 1976

In Effect July 1, 1976

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 3/31/76
AN ACT to repeal section seven, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, four and nine, article two; sections one, one-c, three, six, nine, fourteen and eighteen, article four; sections one, two, three and eight, article four-a, all of chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article four by adding thereto a new section, designated section one-d; relating to exemptions from compulsory coverage, charges to be assessed in fatal and total permanent disability cases, contributions to disabled workmen’s relief fund by self-insured employers; to whom compensation fund disbursed; initial payment of temporary total disability benefits, method and time of payments for permanent disability; charges to be assessed for medical benefits awarded, limitation on a period for filing bills for medical services, force and effect of a finding of the occupational pneumoconiosis board, dollar limitation on expenditures for rehabilitation services, and computation of benefits.

Be it enacted by the Legislature of West Virginia:

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

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 chapter and are hereby required to subscribe to and pay premiums into the workmen's compensation fund for the protection of their employees and shall be subject to all requirements of this chapter and all rules and regulations prescribed by the commissioner with reference to rates, classification and premium payment, provided that such rates will be adjusted by the commissioner to reflect the demand on the compensation fund by the covered employer.

This chapter shall not apply to:

(1) Employers of employees in domestic services; or

(2) Employers of five or fewer full-time employees 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 employees does not exceed three and the period of employment is temporary, intermittent and sporadic in nature and does not exceed ten calendar days in any calendar quarter.

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 within 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 churches 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 com-
missioner 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.

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

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

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

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

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

The commissioner may fix a rate of premiums ap-
licable alike to all subscribers forming a group or class,
and such rates shall be determined from the record of
such group or class shown upon the books of the com-
missioner: Provided, That if any group has a sufficient
number of employers with considerable difference in
their degrees of hazard, the commissioner may fix a rate
for each subscriber of such group, such rate to be based
upon the subscriber's record on the books of the com-
missioner for a period not to exceed three years
ending December thirty-first of the year preceding the
year in which the rate is to be effective; and the liability
part of such record shall include such cases as have been
acted upon by the commissioner during such three-year
period, irrespective of the date the injury was received;
and any subscriber in a group so rated, whose record
for such period cannot be obtained, shall be given a rate
based upon his record for any part of such period as
may be deemed just and equitable by the commissioner;
and the commissioner shall have authority to fix a rea-
sonable minimum and maximum for any group to which
this individual method of rating is applied, and to add to
the rate determined from the subscriber's record such
amount as is necessary to liquidate any deficit in the
schedule as to create a reasonable surplus.

It shall be the duty of the commissioner, when he
changes any rate, to notify every employer affected there-
by of that fact and of the new rate and when the same
takes effect. It shall also be his duty to furnish to each
employer yearly, or more often if requested by the em-
ployer, a statement giving the name of each of his em-
ployees who were paid for injury and the amounts so
paid during the period covered by the statement.

§23-2-9. Election of employer to provide own system of
compensation.

Notwithstanding anything contained in this chapter,
employers subject to this chapter who are of sufficient
financial responsibility to insure the payment of com-
penation to injured employees and the dependents of
fatally injured employees, whether in the form of pecu-
liar compensation or medical attention, funeral expenses
or otherwise as herein provided, of the value at least
equal to the compensation provided in this chapter, or em-
ployers of such financial responsibility who maintain their
own benefit funds, or system of compensation, to which
their employees are not required or permitted to contribute, or such employers as shall furnish bond or other security to insure such payments, may, upon a finding of such facts by the compensation commissioner, elect to pay individually and directly, or from such benefit funds, department or association, such compensation and expenses to injured employees or fatally injured employees' dependents. The compensation commissioner shall require security or bond from such employer, to be approved by him, and of such amount as is by him considered adequate and sufficient to compel or secure to such employees, or their dependents, payment of the compensation and expenses herein provided for, which shall in no event be less than the compensation paid or furnished out of the state workmen's compensation fund in similar cases to injured employees or the dependents of fatally injured employees whose employers contribute to such fund. Any employer electing under this section shall on or before the twentieth day of the first month of each quarter, for the preceding quarter, file with the commissioner a sworn statement of the total earnings of all his employees subject to this chapter for such preceding quarter, and shall pay into the workmen's compensation fund a sum sufficient to pay his proper proportion of the expenses of the administration of this chapter, and a sum sufficient to pay his proper portion of the expenses for claims for those employers who are delinquent in the payment of premiums, and a sum sufficient to pay his fair portion of the expenses of the disabled workmen's relief fund, as may be determined by the commissioner. The commissioner shall make and publish rules and regulations governing the mode and manner of making application, and the nature and extent of the proof required to justify the finding of facts by the commissioner, to consider and pass upon such election by employers subject to this chapter, which rules and regulations shall be general in their application. Any employer subject to this chapter who shall elect to carry his own risk and who has complied with the requirements of this section and the rules of the compensation commissioner shall not be liable to respond
in damages at common law or by statute for the injury or death of any employee, however occurring, after such election and during the period that he is allowed by the commissioner to carry his own risk.

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

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

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

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

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

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

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

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

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

Subject to the provisions and limitations elsewhere in this chapter set forth, the commissioner shall disburse the 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, according to the provisions hereinafter made; and also for the expenses of the administration of this chapter, as provided in section two, article one of this chapter.

For the purposes of this chapter the terms "injury" and "personal injury" shall include occupational pneumo-
coniosis 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 pneumoconiosis or other occupational disease and in this state have contracted occupational pneumoconiosis or other occupational disease, or have suffered a perceptible aggravation of an existing pneumoconiosis or other 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 pneumoconiosis, or death resulting therefrom, unless the employee has been exposed to the hazards of occupational pneumoconiosis in the state of West Virginia over a continuous period of not less than two years during the ten years immediately preceding the date of his last exposure to such hazards, or for any five of the fifteen years immediately preceding the date of such last exposure. An application of 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 occupational pneumoconiosis. The allocation shall be based upon the time and degree of exposure with each employer.

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 "occupational pneumoconiosis" shall include, but shall not be limited to, such diseases as silicosis, anthracosilicosis, coal worker's pneumoconiosis, commonly known as black
lung or miner's asthma, silico-tuberculosis (silicosis accompanied by active tuberculosis of the lungs), coal worker's pneumoconiosis accompanied by active tuberculosis of the lungs, asbestosis, siderosis, anthrax and any and all other dust diseases of the lungs and conditions and diseases caused by occupational pneumoconiosis which are not specifically designated herein meeting the definition of occupational pneumoconiosis set forth in the immediately preceding sentence.

In determining the presence of occupational pneumoconiosis, X-ray evidence may be considered but shall not be accorded greater weight than any other type of evidence 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 incident of occupational disease as defined in this chapter. Except in the case of occupational pneumoconiosis, a disease shall be deemed to have been incurred in the course of or to have resulted from the employment only if it is apparent to the rational mind, upon consideration of all the circumstances (1) that there is a direct causal connection between the conditions under which work is performed and the occupational disease, (2) that it can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment, (3) that it can be fairly traced to the employment as the proximate cause, (4) that it does not come from a hazard to which workmen would have been equally exposed outside of the employment, (5) that it is incidental to the character of the business and not independent of the relation of employer and employee, and (6) that it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a natural consequence, though it need not have been foreseen or expected before its contraction.

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

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

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

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

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

Upon receipt of the first report of injury in a claim, the commissioner shall request from the employer or employers any wage information necessary for determining the rate of benefits to which the employee is
entitled. If an employer does not furnish the commissioner with this information within fifteen days from the date the commissioner received the first report on injury in the case, the employee shall be paid total temporary disability benefits for lost time at the maximum rate. The commissioner shall adjust the rate prospectively upon receipt of proper information; however, notwithstanding any other provision of this section, the employer shall not be entitled to a credit or refund for previous overpayments caused by his failure to provide proper wage information. If the employee had more than one employer during the twelve months preceding the injury, any overpayment resulting from the provisions of this paragraph shall be charged only against the employer or employers who failed to supply wage information.

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 commissioner shall mail all workmen's compensation checks paying temporary total disability benefits directly to the claimant and not to the employer for delivery to the claimant.

Where the employer has elected to carry his own risk under section nine, article two of this chapter, and upon the findings aforesaid, the commissioner shall immediately issue a pay order directing the employer to pay such amounts as are due the claimant for temporary total disability benefits. The self-insured employer shall commence such payments by mailing or delivering the payments directly to the employee within ten days of the date of the receipt of the pay order by the employer. 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 benefits, or any part thereof, so paid, in which event the commissioner shall, where the employer is a subscriber to the fund, credit said employer's account with the amount of the overpayment; and, where the employer has elected to carry his own risk, the commissioner shall refund to such employer the amount of the overpayment. The amounts so credited to a subscriber or repaid to a self-insurer shall be charged by the commissioner to the surplus fund created by section one, article three of this chapter. If the final decision in any case determines that a claimant was not lawfully entitled to benefits paid to him pursuant to a prior decision, such amount of benefits so paid shall be deemed overpaid. The commissioner may recover such amount by civil action or in any manner provided in this code for the collection of past-due payment and shall withhold, in whole or in part, as determined by the commissioner, any future benefits payable to the individual and credit such amount against the overpayment until it is repaid in full.

§23-4-1d. Method and time of payments for permanent disability.

(a) If the commissioner makes an award for permanent partial or permanent total disability, the commissioner or self-insured employer shall start payment of benefits by mailing or delivering the amount due directly to the employee within fifteen days from the date of the award.

(b) If the employer files a timely protest to the award, as provided in section one of article five, the commissioner or self-insured employer 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 benefits, or any part thereof, so paid, in which event the commissioner shall, where the employer is a subscriber to the fund, credit said employer's account with the amount of the overpayment; and,
where the employer has elected to carry his own
risk, the commissioner shall refund to such employer
the amount of the overpayment. The amounts so cred-
ited to a subscriber or repaid to a self-insurer shall
be charged by the commissioner to the surplus fund
created by section one, article three of this chapter. If
the final decision in any case determines that a claim-
ant 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 man-
er 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; con­
tact 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 sched-
ule 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 ap-
pliances and devices, as may be reasonably required.

(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 two years 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 com-
missioner by the employer without protest, the com-
missioner may pay, or order an employer who or which 
made the election and who or which received the per-
mission mentioned in section nine, article two of this 
chapter to pay, within the maximum amount pro-
vided by schedule established by the commissioner 
as aforesaid, bills for medical or hospital services 
without requiring the injured employee to file an appli-
cation for benefits.

(e) The commissioner shall provide for the replace-
ment of artificial limbs, crutches, hearing aids, eye-
glasses 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 

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

Where compensation is due an employee under the 
provisions of this chapter for personal injury, such com-
ensation 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 there-
of 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 per-
cent; 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 in-
juries 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, not
less than forty-five dollars per week for injuries oc-
curring on or after July one, one thousand nine hundred
seventy-four, and for injuries occurring on or after July
one, one thousand nine hundred seventy-six, thirty-three
and one-third percent of the average weekly wage in
West Virginia.

(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 hun-
dred 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 pro-
vided 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 dis-
ability for the purpose of this section.

(e) If the injury causes permanent disability less
than permanent total disability, the percentage of dis-
ability to total disability shall be determined and the
award computed on the basis of four weeks compensa-
tion 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.
The loss of thumb (one phalanx) shall be considered a twelve percent disability.
The loss of thumb shall be considered a twenty percent disability.
The loss of thumb and index finger shall be considered a thirty-two percent disability.
The loss of index and middle finger shall be considered a twenty percent disability.
The loss of middle and ring finger shall be considered a fifteen percent disability.
The loss of ring and little finger shall be considered a ten percent disability.
The loss of thumb, index and middle finger shall be considered a forty percent disability.
The loss of index, middle and ring finger shall be considered a thirty percent disability.
The loss of middle, ring and little finger shall be considered a twenty percent disability.
The loss of four fingers shall be considered a thirty-two percent disability.
The loss of hand shall be considered a fifty percent disability.
The loss of forearm shall be considered a fifty-five percent disability.
The loss of arm shall be considered a sixty percent disability.
The total and irrecoverable loss of the sight of one eye shall be considered a thirty-three percent disability. For the partial loss of vision in one, or both eyes, the percentages of disability shall be determined by the commissioner, using as a basis the total loss of one eye.
The total and irrecoverable loss of the hearing of one ear shall be considered a fifteen percent disability, and the injured employee shall be entitled to compensation for a period of sixty weeks. The total and irrecoverable loss of hearing of both ears shall be considered a forty-five percent disability, and the injured employee shall be entitled to compensation for a period of one hundred eighty weeks.
For the partial loss of hearing in one, or both ears, the percentage of disability shall be determined by the commissioner, using as a basis the total loss of hearing in both ears.
Should a claimant sustain a compensable injury which results in the total loss by severance of any of the bodily members named in this subdivision, die from sickness or noncompensable injury before the commissioner makes the proper award for such injury, the commissioner shall make such award to claimant's dependents as defined in this chapter, if any; such payment to be made in the same installments that would have been paid to claimant if living: Provided, That no payment shall be made to any widow of such claimant after her remarriage, and that this liability shall not accrue to
the estate of such claimant and shall not be subject to
any debts of, or charges against, such estate.

(g) Should a claimant to whom has been made a
permanent partial award of from one percent to eighty-
four percent, both inclusive, die from sickness or non-
compensable 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 claim-
ant and shall not be subject to any debts of, or charges
against, such estate.

(h) For the purposes of this chapter, a finding of
the occupational pneumoconiosis board shall have the
force and effect of an award.

(i) The award for permanent disabilities interme-
iate to those fixed by the foregoing schedule and perma-
nent disability of from one percent to eighty-four per-
cent 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(e) or (f) 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 deter-
mining 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 disability.

§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 remunerative employment by vocational training, by the use of crutches, artificial limbs, or other approved mechanical appliances, or by medicines, medical, surgical, dental or hospital treatment, the commissioner shall forthwith, after due notice to the employer, expend such an amount as may be necessary for the aforesaid purposes: Provided,

That such expenditure for vocational rehabilitation shall not exceed ten 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 pro-
vided 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 dis-
ability basis for such period.


The average weekly wage earnings, wherever earned, of
the injured person at the date of injury, and the average
weekly wage in West Virginia as determined by the
commissioner of employment security, in effect at the date
of injury, shall be taken as the basis upon which to com-
pute the benefits.

In cases involving occupational pneumoconiosis or other
occupational diseases, the “date of injury” shall be the
date of the last exposure to the hazards of occupational
pneumoconiosis or other occupational diseases.

In computing benefits payable on account of occupa-
tional pneumoconiosis, the commissioner shall deduct the
amount of all prior workmen’s compensation benefits paid
to the same claimant on account of silicosis, but a prior
silicosis award shall not, in any event, preclude an award
for occupational pneumoconiosis otherwise payable under
this article.

The expression “average weekly wage earnings, where-
ever earned, of the injured person, at the date of injury,”
within the meaning of this chapter, shall be computed
based upon the daily rate of pay at the time of
the injury or upon the average pay received dur-
ing the two months, six months or twelve months
immediately preceding the date of the injury, whichever
is most favorable to the injured employee.

The expression “average weekly wage in West Vir-
ginia,” within the meaning of this chapter, shall be the
average weekly wage in West Virginia as determined by
the commissioner of employment security in accordance
with the provisions of sections ten and eleven, article six,
chapter twenty-one-a of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, and other
applicable provisions of said chapter twenty-one-a.

In any claim for injuries, including occupational pneu-
moconiosis and other occupational diseases, occurring on
or after July one, one thousand nine hundred seventy-one,
any award for temporary total, permanent partial or
permanent total disability benefits or for dependent bene-
fits, shall be paid at the weekly rates or in the monthly
amount in the case of dependent benefits applicable to
the claimant therein in effect on the date of such injury.
If during the life of such award for temporary total,
permanent partial or permanent total disability benefits
or for dependent benefits, the weekly rates or the monthly
amount in the case of dependent benefits are increased or
decreased, the claimant shall receive such increased or
decreased benefits beginning as of the effective date of
said increase or decrease.

§23-4-18. Mode of paying benefits generally; exemptions of
compensation from legal process.

Except by this section provided compensation shall be
paid only to such employees or their dependents, and
shall be exempt from all claims of creditors and from any
attachment, execution or assignment other than compen-
sation to counsel for legal services, under the provisions
of, and subject to the limitations contained in section five,
article five of this chapter. Payments may be made in
such periodical installments as may seem best to the
commissioner in each case but in no event less frequently
than semimonthly for any temporary award and monthly
for any permanent award. Payment for permanent disa-
bility shall be paid on or before the third day of the
month in which they are due. In all cases where compen-
sation is awarded or increased, the amount thereof shall
be calculated and paid from the date of disability.
ARTICLE 4A. DISABLED WORKMEN’S RELIEF FUND.

§23-4A-1. Disabled workmen’s relief fund created.

1 For the relief of persons who are receiving benefits pursuant to a permanent total disability award in amounts less than two hundred twenty-four dollars per month, and for the relief of widows who are receiving benefits on account of the death of an employee in amounts less than two hundred ten dollars per month, and for the relief of other persons who are receiving dependents’ benefits on account of the death of an employee in amounts less than the specific monetary amounts set forth in section ten of article four of this chapter and in effect as of July one, one thousand nine hundred seventy-three, there is hereby created a separate fund to be known as the “Disabled Workmen’s Relief Fund,” which fund shall consist of such sums as are from time to time made available to carry out the objects and purposes of this article. Said fund shall be in the custody of the state treasurer and disbursements therefrom shall be made upon requisition signed by the commissioner to those persons entitled to participate therein and in such amounts to each participant as is provided in section three of this article.

§23-4A-2. To whom benefits paid.

1 In order to participate in the disabled workmen’s relief fund, an individual must be receiving workmen’s compensation benefits by virtue of and under the laws of this state in amounts less than those set forth in section one of this article, and be receiving such benefits under a permanent total disability award or be receiving such benefits because of the death of an employee.


1 Each individual entitled to participate in the disabled workmen’s relief fund shall be entitled to receive payments without application (except that an application shall be required under section five of this article) from said fund of an amount equal to the difference between the amounts set forth in section one of this article, and the amount said individual is in fact receiving by vir-

8 True of and under the laws of this state. The first
9 such payment shall be made concurrently with the
10 payment to him of workmen's compensation on August
11 one, one thousand nine hundred seventy-six and subse-
12 quent payments shall be made during the period there-
13 after in which such participant shall be entitled to
14 workmen's compensation benefits by virtue of and under
15 the laws of this state.

§23-4A-8. Disabled workmen's relief fund; how funded.

1 For the purpose of carrying out the provisions of this
2 article, the commissioner shall transfer annually, out
3 of the interest earned during the previous year on in-
4 vestments held by the workmen's compensation fund,
5 and out of the amount assessed against self-insured em-
6 ployers pursuant to the provisions of article two,
7 section nine, an amount estimated by the commis-
8 sioner to be necessary to carry out the provisions of
9 this article for one year.
10 Such money shall be deposited by the commissioner
11 in the disabled workmen's relief fund, as required by
12 this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect July 1, 1976.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 29th day of March, 1976

Governor
PRESENTED TO THE
GOVERNOR
Date 3/24/76
Time 3:45 p.m.