

MAR 31 11 22 AM '76

OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1976



ENROLLED

Committee Substitute for
SENATE BILL NO. 371

(By Mr. *Layton, original sponsor*)



PASSED *March 13* 1976

In Effect *July 1, 1976* ~~Passage~~

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 3/31/76

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 371

(MR. ROGERSON, *original sponsor*)

[Passed March 13, 1976; in effect July 1, 1976.]

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 thereto 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
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
5 company 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
9 of carrying on any form of industry, service or busi-
10 ness in this state, are employers within the meaning
11 of this chapter and are hereby required to subscribe to
12 and pay premiums into the workmen's compensation
13 fund for the protection of their employees and shall
14 be subject to all requirements of this chapter and all
15 rules and regulations prescribed by the commissioner
16 with reference to rates, classification and premium pay-
17 ment, provided that such rates will be adjusted by the
18 commissioner to reflect the demand on the compensa-
19 tion fund by the covered employer.

20 This chapter shall not apply to:

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

32 If an employer is a partnership, or sole proprietorship,
33 such employer may elect to include as an "employee"
34 within this chapter, any member of such partnership, or

35 the owner of the sole proprietorship. In the event of
36 such election, the employer shall serve upon the com-
37 missioner written notice naming the persons to be covered
38 and shall include such "employee's" remuneration for
39 premium purposes in all future payroll reports, and no
40 such partner or proprietor shall be deemed an employee
41 within the meaning of this chapter until such notice
42 has been served.

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

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

63 Any foreign corporation employer whose employment
64 in this state is to be for a definite or limited period which
65 could not be considered "regularly employing" within the
66 meaning of this section may choose to pay into the
67 workmen's compensation fund the premiums herein pro-
68 vided for and, at the time of making application to the
69 commissioner, such employer shall furnish a statement
70 under oath showing the probable length of time the
71 employment will continue in this state, the character
72 of the work, an estimate of the monthly payroll and any
73 other information which may be required by the com-
74 missioner. At the time of making application such em-
75 ployer shall deposit with the state compensation com-

76 missioner to the credit of the workmen's compensation
77 fund the amount required by section five of this article,
78 which amount shall be returned to the employer if his
79 application be rejected by the commissioner. Upon
80 notice to such employer of the acceptance of his appli-
81 cation by the commissioner, he shall be an employer
82 within the meaning of this chapter and subject to all of
83 its provisions.

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

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

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

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

19 In compensable fatal and total permanent disability
20 cases, other than occupational pneumoconiosis, the amount

21 charged against the employer's account shall be such
22 sum as is estimated to be the average incurred loss of
23 such cases to the fund. The amount charged against the
24 employer's account in compensable occupational pneumo-
25 coniosis claims for total permanent disability or for death
26 shall be such sum as is estimated to be the average in-
27 curred loss of such occupational pneumoconiosis cases to
28 the fund.

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

57 The commissioner may fix a rate of premiums ap-
58 plicable alike to all subscribers forming a group or class,
59 and such rates shall be determined from the record of
60 such group or class shown upon the books of the com-
61 missioner: *Provided*, That if any group has a sufficient

62 number of employers with considerable difference in
63 their degrees of hazard, the commissioner may fix a rate
64 for each subscriber of such group, such rate to be based
65 upon the subscriber's record on the books of the com-
66 missioner for a period not to exceed three years
67 ending December thirty-first of the year preceding the
68 year in which the rate is to be effective; and the liability
69 part of such record shall include such cases as have been
70 acted upon by the commissioner during such three-year
71 period, irrespective of the date the injury was received;
72 and any subscriber in a group so rated, whose record
73 for such period cannot be obtained, shall be given a rate
74 based upon his record for any part of such period as
75 may be deemed just and equitable by the commissioner;
76 and the commissioner shall have authority to fix a rea-
77 sonable minimum and maximum for any group to which
78 this individual method of rating is applied, and to add to
79 the rate determined from the subscriber's record such
80 amount as is necessary to liquidate any deficit in the
81 schedule as to create a reasonable surplus.

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

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

1 Notwithstanding anything contained in this chapter,
2 employers subject to this chapter who are of sufficient
3 financial responsibility to insure the payment of com-
4 pensation to injured employees and the dependents of
5 fatally injured employees, whether in the form of pecu-
6 niary compensation or medical attention, funeral expenses
7 or otherwise as herein provided, of the value at least
8 equal to the compensation provided in this chapter, or em-
9 ployers of such financial responsibility who maintain their
10 own benefit funds, or system of compensation, to which

11 their employees are not required or permitted to contrib-
12 ute, or such employers as shall furnish bond or other
13 security to insure such payments, may, upon a finding of
14 such facts by the compensation commissioner, elect to pay
15 individually and directly, or from such benefit funds, de-
16 partment or association, such compensation and expenses
17 to injured employees or fatally injured employees' de-
18 pendents. The compensation commissioner shall require
19 security or bond from such employer, to be approved by
20 him, and of such amount as is by him considered adequate
21 and sufficient to compel or secure to such employees, or
22 their dependents, payment of the compensation and ex-
23 penses herein provided for, which shall in no event be
24 less than the compensation paid or furnished out of the
25 state workmen's compensation fund in similar cases to
26 injured employees or the dependents of fatally injured
27 employees whose employers contribute to such fund. Any
28 employer electing under this section shall on or before
29 the twentieth day of the first month of each quarter, for
30 the preceding quarter, file with the commissioner a
31 sworn statement of the total earnings of all his employees
32 subject to this chapter for such preceding quarter, and
33 shall pay into the workmen's compensation fund a sum
34 sufficient to pay his proper proportion of the expenses of
35 the administration of this chapter, and a sum sufficient
36 to pay his proper portion of the expenses for claims for
37 those employers who are delinquent in the payment of
38 premiums, and a sum sufficient to pay his fair portion of
39 the expenses of the disabled workmen's relief fund, as
40 may be determined by the commissioner. The commis-
41 sioner shall make and publish rules and regulations gov-
42 erning the mode and manner of making application, and
43 the nature and extent of the proof required to justify the
44 finding of facts by the commissioner, to consider and pass
45 upon such election by employers subject to this chapter,
46 which rules and regulations shall be general in their
47 application. Any employer subject to this chapter who
48 shall elect to carry his own risk and who has complied
49 with the requirements of this section and the rules of the
50 compensation commissioner shall not be liable to respond

51 in damages at common law or by statute for the injury or
52 death of any employee, however occurring, after such
53 election and during the period that he is allowed by the
54 commissioner to carry his own risk.

55 Any employer whose record upon the books of the
56 compensation commissioner shows a liability against the
57 workmen's compensation fund incurred on account of in-
58 jury to or death of any of his employees, in excess of pre-
59 miums paid by such employer, shall not be granted the
60 right, individually and directly or from such benefit funds,
61 department or association, to compensate his injured
62 employees and the dependents of his fatally injured
63 employees until he has paid into the workmen's compen-
64 sation fund the amount of such excess of liability over
65 premiums paid, including his proper proportion of the
66 liability incurred on account of explosions, catastrophes or
67 second injuries as defined in section one, article three of
68 this chapter, occurring within the state and charged
69 against such fund.

70 All employers who have heretofore elected, or shall
71 hereafter elect, to pay compensation and expenses directly
72 as provided in this section, shall, unless they give the
73 catastrophe and second injury security or bond herein-
74 after provided for, pay into the surplus fund referred to in
75 section one, article three of this chapter, upon the same
76 basis and in the same percentages, subject to the limita-
77 tions herein set forth, as funds are set aside for the main-
78 tenance of the surplus fund out of payments made by
79 premium-paying subscribers, such payments to be made
80 at the same time as hereinbefore provided with respect to
81 payment of proportion of expenses of administration. In
82 case there be a catastrophe or second injury, as defined in
83 section one, article three of this chapter, to the employees
84 of any employer making such payments, the employer
85 shall not be liable to pay compensation or expenses aris-
86 ing from or necessitated by the catastrophe or second in-
87 jury, and such compensation and expenses shall not be
88 charged against such employer, but such compensation
89 and expenses shall be paid from the surplus fund in the

90 same manner and to the same extent as in the case of
91 premium-paying subscribers.

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

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

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

120 All employers who have heretofore elected to carry
121 their own risk under the provisions of this section shall be
122 deemed to have elected to make payments into the surplus
123 fund unless, within thirty days after the effective date of
124 this act, they notify the commissioner in writing to the
125 contrary: *Provided*, That such employers, as have hereto-
126 fore elected, under the rules heretofore promulgated by
127 the commissioner, not to make payments into the surplus
128 fund, shall be deemed to have elected to give the catas-
129 trophe and second injury security or bond hereinbefore

130 provided for and not to make payments into the surplus
131 fund. Any catastrophe and second injury security or bond
132 heretofore given under rules and regulations promulgated
133 by the commissioner and approved by him shall be valid
134 under this section, and any election heretofore made
135 under rules and regulations of the commissioner to make
136 payments into the surplus fund shall be valid and protec-
137 tive to the person so electing from and after the date of
138 such election.

139 In any case under the provisions of this section that
140 shall require the payment of compensation or benefits by
141 an employer in periodical payments, and the nature of the
142 case makes it possible to compute the present value of all
143 future payments, the commissioner may, in his discretion,
144 at any time compute and permit or require to be paid into
145 the workmen's compensation fund an amount equal to the
146 present value of all unpaid compensation for which lia-
147 bility exists, in trust; and thereupon such employer shall
148 be discharged from any further liability upon such award,
149 and payment of the same shall be assumed by the work-
150 men'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.

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,
7 if any, of such employees in case death has ensued, ac-
8 cording to the provisions hereinafter made; and also for
9 the expenses of the administration of this chapter, as
10 provided in section two, article one of this chapter.

11 For the purposes of this chapter the terms "injury"
12 and "personal injury" shall include occupational pneumo-

13 coniosis and any other occupational disease, as herein-
14 after defined, and the commissioner shall likewise dis-
15 burse the workmen's compensation fund to the employees
16 of such employers in whose employment such employees
17 have been exposed to the hazards of occupational pneumo-
18 coniosis or other occupational disease and in this state
19 have contracted occupational pneumoconiosis or other
20 occupational disease, or have suffered a perceptible ag-
21 gravation of an existing pneumoconiosis or other occupa-
22 tional disease, or to the dependents, if any, of such em-
23 ployees, in case death has ensued, according to the pro-
24 visions hereinafter made: *Provided*, That compensation
25 shall not be payable for the disease of occupational
26 pneumoconiosis, or death resulting therefrom, unless the
27 employee has been exposed to the hazards of occupational
28 pneumoconiosis in the state of West Virginia over a
29 continuous period of not less than two years during the
30 ten years immediately preceding the date of his last
31 exposure to such hazards, or for any five of the fifteen
32 years immediately preceding the date of such last ex-
33 posure. An application of benefits on account of occupa-
34 tional pneumoconiosis shall set forth the name of the
35 employer or employers and the time worked for each,
36 and the commissioner may allocate to and divide any
37 charges resulting from such claim among the employers
38 by whom the claimant was employed for as much as sixty
39 days during the period of three years immediately preced-
40 ing the date of last exposure to the hazards of occupational
41 pneumoconiosis. The allocation shall be based upon the
42 time and degree of exposure with each employer.

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

47 Occupational pneumoconiosis is a disease of the lungs
48 caused by the inhalation of minute particles of dust over
49 a period of time due to causes and conditions arising out
50 of and in the course of the employment. The term "oc-
51 cupational pneumoconiosis" shall include, but shall not
52 be limited to, such diseases as silicosis, anthracosilicosis,
53 coal worker's pneumoconiosis, commonly known as black

54 lung or miner's asthma, silio-tuberculosis (silicosis ac-
55 companied by active tuberculosis of the lungs), coal work-
56 er's pneumoconiosis accompanied by active tuberculosis
57 of the lungs, asbestosis, siderosis, anthrax and any and
58 all other dust diseases of the lungs and conditions and
59 diseases caused by occupational pneumoconiosis which
60 are not specifically designated herein meeting the defini-
61 tion of occupational pneumoconiosis set forth in the im-
62 mediately preceding sentence.

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

67 For the purposes of this chapter, occupational disease
68 means a disease incurred in the course of and resulting
69 from employment. No ordinary disease of life to which
70 the general public is exposed outside of the employment
71 shall be compensable except when it follows as an incident
72 of occupational disease as defined in this chapter. Except
73 in the case of occupational pneumoconiosis, a disease shall
74 be deemed to have been incurred in the course of or to
75 have resulted from the employment only if it is ap-
76 parent to the rational mind, upon consideration of all the
77 circumstances (1) that there is a direct causal connection
78 between the conditions under which work is performed
79 and the occupational disease, (2) that it can be seen to
80 have followed as a natural incident of the work as a
81 result of the exposure occasioned by the nature of the
82 employment, (3) that it can be fairly traced to the em-
83 ployment as the proximate cause, (4) that it does not
84 come from a hazard to which workmen would have
85 been equally exposed outside of the employment, (5)
86 that it is incidental to the character of the business
87 and not independent of the relation of employer and
88 employee, and (6) that it must appear to have had its
89 origin in a risk connected with the employment and to
90 have flowed from that source as a natural consequence,
91 though it need not have been foreseen or expected
92 before its contraction.

93 No award shall be made under the provisions of this
94 chapter for any occupational disease contracted prior to

95 the first day of July, one thousand nine hundred forty-
96 nine. An employee shall be deemed to have contracted
97 an occupational disease within the meaning of this para-
98 graph if the disease or condition has developed to such
99 an extent that it can be diagnosed as an occupational
100 disease.

101 Claims for occupational disease as hereinbefore defined,
102 except occupational pneumoconiosis, shall be processed
103 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.**

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
9 and fourteen of this article, without waiting for the
10 expiration of the thirty-day period during which ob-
11 jections may be filed to such findings as provided in
12 section one, article five of this chapter. The commissioner
13 shall give immediate notice to the employer of his find-
14 ings and of the commencement of such payments.

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

24 Upon receipt of the first report of injury in a claim,
25 the commissioner shall request from the employer or
26 employers any wage information necessary for deter-
27 mining the rate of benefits to which the employee is

28 entitled. If an employer does not furnish the com-
29 missioner with this information within fifteen days from
30 the date the commissioner received the first report on
31 injury in the case, the employee shall be paid total
32 temporary disability benefits for lost time at the maxi-
33 mum rate. The commissioner shall adjust the rate pros-
34 pectively upon receipt of proper information; however,
35 notwithstanding any other provision of this section, the
36 employer shall not be entitled to a credit or refund for
37 previous overpayments caused by his failure to provide
38 proper wage information. If the employee had more than
39 one employer during the twelve months preceding the
40 injury, any overpayment resulting from the provisions of
41 this paragraph shall be charged only against the em-
42 ployer or employers who failed to supply wage informa-
43 tion.

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

51 Where the employer has elected to carry his own
52 risk under section nine, article two of this chapter, and
53 upon the findings aforesaid, the commissioner shall im-
54 mediately issue a pay order directing the employer to
55 pay such amounts as are due the claimant for temporary
56 total disability benefits. The self-insured employer shall
57 commence such payments by mailing or delivering the
58 payments directly to the employee within ten days of
59 the date of the receipt of the pay order by the employer.
60 If the self-insured employer believes that his employee is
61 entitled to benefits, he may start payments before receiv-
62 ing a pay order from the commissioner.

63 In the event that an employer files a timely objection
64 to any finding or order of the commissioner, as provided
65 in section one, article five of this chapter, with respect
66 to the payment or continued payment of temporary total
67 disability benefits, as provided herein, the commissioner
68 shall continue to pay to the claimant such benefits during

69 the period of such disability unless it is subsequently
70 found by the commissioner that the claimant was not
71 entitled to receive the temporary total disability bene-
72 fits, or any part thereof, so paid, in which event the
73 commissioner shall, where the employer is a subscriber
74 to the fund, credit said employer's account with the
75 amount of the overpayment; and, where the employer has
76 elected to carry his own risk, the commissioner shall
77 refund to such employer the amount of the overpayment.
78 The amounts so credited to a subscriber or repaid to a
79 self-insurer shall be charged by the commissioner to the
80 surplus fund created by section one, article three of this
81 chapter. If the final decision in any case determines
82 that a claimant was not lawfully entitled to benefits
83 paid to him pursuant to a prior decision, such amount of
84 benefits so paid shall be deemed overpaid. The com-
85 missioner may recover such amount by civil action or in
86 any manner provided in this code for the collection of
87 past-due payment and shall withhold, in whole or in part,
88 as determined by the commissioner, any future benefits
89 payable to the individual and credit such amount against
90 the overpayment until it is repaid in full.

**§23-4-1d. Method and time of payments for permanent dis-
ability.**

1 (a) If the commissioner makes an award for per-
2 manent partial or permanent total disability, the com-
3 missioner or self-insured employer shall start payment
4 of benefits by mailing or delivering the amount due
5 directly to the employee within fifteen days from the
6 date of the award.

7 (b) If the employer files a timely protest to the
8 award, as provided in section one of article five, the
9 commissioner or self-insured employer shall continue
10 to pay to the claimant such benefits during the period
11 of such disability unless it is subsequently found
12 by the commissioner that the claimant was not entitled
13 to receive the benefits, or any part thereof, so paid, in
14 which event the commissioner shall, where the em-
15 ployer is a subscriber to the fund, credit said employer's
16 account with the amount of the overpayment; and,

17 where the employer has elected to carry his own
18 risk, the commissioner shall refund to such employer
19 the amount of the overpayment. The amounts so cred-
20 ited to a subscriber or repaid to a self-insurer shall
21 be charged by the commissioner to the surplus fund
22 created by section one, article three of this chapter. If
23 the final decision in any case determines that a claim-
24 ant was not lawfully entitled to benefits paid to him
25 pursuant to a prior decision, such amount of benefits
26 so paid shall be deemed overpaid. The commissioner
27 may recover such amount by civil action or in any man-
28 ner provided in this code for the collection of past-due
29 payment and shall withhold, in whole or in part, as
30 determined by the commissioner, any future benefits
31 payable to the individual and credit such amount against
32 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-
tract by employer with hospital, physician, etc.,
prohibited; 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
4 to physicians, surgeons, hospitals or other persons,
5 firms or corporations for the rendering of treatment to
6 injured 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 ap-
13 pliances and devices, as may be reasonably required.

14 (b) Payment for such medicine, medical, surgical,
15 dental and hospital treatment, crutches, artificial limbs
16 and such other and additional approved mechanical
17 appliances and devices authorized under subdivision
18 (a) hereof may be made to the injured employee,
19 or to the person, firm or corporation who or which has

20 rendered such treatment or furnished any of the items
21 specified above, or who has advanced payment for same,
22 as the commissioner may deem proper, but no such
23 payments or disbursements shall be made or awarded
24 by him unless duly verified statements on forms pre-
25 scribed by the commissioner shall be filed with the
26 commissioner within two years after the cessation of
27 such treatment or the delivery of such appliances:
28 *Provided*, That no payment hereunder shall be made un-
29 less such verified statement shows no charge for or with
30 respect to such treatment or for or with respect to any
31 of the items specified above has been or will be made
32 against the injured employee or any other person, firm
33 or corporation, and when an employee covered under
34 the provisions of this chapter is injured in the course
35 of and as a result of his employment and is accepted
36 for medical, surgical, dental or hospital treatment, the
37 person, firm or corporation rendering such treatment
38 is hereby prohibited from making any charge or charges
39 therefor or with respect thereto against the injured
40 employee or any other person, firm or corporation
41 which would result in a total charge for the treat-
42 ment rendered in excess of the maximum amount set
43 forth therefor in the commissioner's schedule established
44 as aforesaid.

45 (c) No employer shall enter into any contracts with
46 any hospital, its physicians, officers, agents or employees
47 to render medical, dental or hospital service or to give
48 medical or surgical attention therein to any em-
49 ployee for injury compensable within the purview
50 of this chapter, and no employer shall permit or require
51 any employee to contribute, directly or indirectly, to
52 any fund for the payment of such medical, surgical, dental
53 or hospital service within such hospital for such com-
54 pensable injury. Any employer violating this section
55 shall be liable in damages to his employees as pro-
56 vided in section eight, article two of this chapter, and
57 any employer or hospital or agent or employee thereof
58 violating the provisions of this section shall be guilty
59 of a misdemeanor, and, upon conviction thereof, shall
60 be sentenced to pay a fine not exceeding one thousand

61 dollars or undergo imprisonment not exceeding one year,
62 or both.

63 (d) When an injury has been reported to the com-
64 missioner by the employer without protest, the com-
65 missioner may pay, or order an employer who or which
66 made the election and who or which received the per-
67 mission mentioned in section nine, article two of this
68 chapter to pay, within the maximum amount pro-
69 vided by schedule established by the commissioner
70 as aforesaid, bills for medical or hospital services
71 without requiring the injured employee to file an appli-
72 cation for benefits.

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

§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 schedule:

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

10 (b) If the injury causes temporary total disability,
11 the employee shall receive during the continuance there-
12 of weekly benefits as follows: A maximum weekly
13 benefit to be computed on the basis of sixty-six and
14 two-thirds percent of the average weekly earnings,
15 wherever earned, of the injured employee, at the date
16 of injury, not to exceed the percentage of the average

17 weekly wage in West Virginia, as follows: On or after
18 July one, one thousand nine hundred sixty-nine, forty-
19 five percent; on or after July one, one thousand nine
20 hundred seventy, fifty percent; on or after July one,
21 one thousand nine hundred seventy-one, fifty-five per-
22 cent; on or after July one, one thousand nine hundred
23 seventy-three, sixty percent; on or after July one, one
24 thousand nine hundred seventy-four, eighty percent;
25 on or after July one, one thousand nine hundred seventy-
26 five, one hundred percent.

27 The minimum weekly benefits paid hereunder shall
28 not be less than twenty-six dollars per week for in-
29 juries occurring on or after July one, one thousand
30 nine hundred sixty-nine; not less than thirty-five dollars
31 per week for injuries occurring on or after July one,
32 one thousand nine hundred seventy-one; not less than
33 forty dollars per week for injuries occurring on or after
34 July one, one thousand nine hundred seventy-three, not
35 less than forty-five dollars per week for injuries oc-
36 ccurring on or after July one, one thousand nine hundred
37 seventy-four, and for injuries occurring on or after July
38 one, one thousand nine hundred seventy-six, thirty-three
39 and one-third percent of the average weekly wage in
40 West Virginia.

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

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

52 (e) If the injury causes permanent disability less
53 than permanent total disability, the percentage of dis-
54 ability to total disability shall be determined and the
55 award computed on the basis of four weeks compensa-
56 tion for each percent of disability determined, at the

57 following maximum or minimum benefit rates: Sixty-
58 six and two-thirds percent of the average weekly earn-
59 ings, wherever earned, of the injured employee, at the
60 date of injury, not to exceed the percentage of the
61 average weekly wage in West Virginia, as follows: On
62 or after July one, one thousand nine hundred sixty-nine,
63 forty-five percent; on or after July one, one thousand
64 nine hundred seventy, fifty percent; on or after July
65 one, one thousand nine hundred seventy-one, fifty-five
66 percent; on or after July one, one thousand nine hun-
67 dred seventy-three, sixty percent; on or after July one,
68 one thousand nine hundred seventy-five, sixty-six and
69 two-thirds percent.

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

73 (f) If the injury results in the total loss by severance
74 of any of the members named in this subdivision, the
75 percentage of disability shall be determined by the com-
76 missioner, with the following table establishing the
77 minimum percentage of disability. In determining the
78 percentage of disability, the commissioner may be guided
79 by but shall not be limited to the disabilities enumer-
80 ated in the following table, and in no event shall the
81 disability be less than that specified in the following
82 table:

83 The loss of a great toe shall be considered a ten per-
84 cent disability.

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

87 The loss of other toes shall be considered a four per-
88 cent disability.

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

91 The loss of all toes shall be considered a twenty-five
92 percent disability.

93 The loss of forepart of foot shall be considered a thirty
94 percent disability.

95 The loss of foot shall be considered a thirty-five per-
96 cent disability.

- 97 The loss of a leg shall be considered a forty-five percent
98 disability.
- 99 The loss of thigh shall be considered a fifty percent
100 disability.
- 101 The loss of thigh at hip joint shall be considered a sixty
102 percent disability.
- 103 The loss of a little or fourth finger (one phalanx)
104 shall be considered a three percent disability.
- 105 The loss of little or fourth finger shall be considered
106 a five percent disability.
- 107 The loss of ring or third finger (one phalanx) shall
108 be considered a three percent disability.
- 109 The loss of ring or third finger shall be considered a
110 five percent disability.
- 111 The loss of middle or second finger (one phalanx) shall
112 be considered a three percent disability.
- 113 The loss of middle or second finger shall be consid-
114 ered a seven percent disability.
- 115 The loss of index or first finger (one phalanx) shall be
116 considered a six percent disability.
- 117 The loss of index or first finger shall be considered a
118 ten percent disability.
- 119 The loss of thumb (one phalanx) shall be considered
120 a twelve percent disability.
- 121 The loss of thumb shall be considered a twenty per-
122 cent disability.
- 123 The loss of thumb and index finger shall be considered
124 a thirty-two percent disability.
- 125 The loss of index and middle finger shall be con-
126 sidered a twenty percent disability.
- 127 The loss of middle and ring finger shall be considered
128 a fifteen percent disability.
- 129 The loss of ring and little finger shall be considered a
130 ten percent disability.
- 131 The loss of thumb, index and middle finger shall be
132 considered a forty percent disability.
- 133 The loss of index, middle and ring finger shall be
134 considered a thirty percent disability.

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

137 The loss of four fingers shall be considered a thirty-
138 two percent disability.

139 The loss of hand shall be considered a fifty percent
140 disability.

141 The loss of forearm shall be considered a fifty-five
142 percent disability.

fe
143 The loss of arm shall, considered a sixty percent dis-
ok
Jew
144 ability.

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

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

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

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

174 the estate of such claimant and shall not be subject to
175 any debts of, or charges against, such estate.

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

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

191 (i) The award for permanent disabilities intermedi-
192 ate to those fixed by the foregoing schedule and perma-
193 nent disability of from one percent to eighty-four per-
194 cent shall be the same proportion and shall be computed
195 and allowed by the commissioner.

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

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

210 (l) Temporary total disability benefits payable under
211 subdivision (b) of this section shall not be deductible
212 from permanent partial disability awards payable under
213 subdivision (e) or (f) of this section. Compensation,

214 either total temporary or permanent partial, under this
215 section shall be payable only to the injured employee
216 and the right thereto shall not vest in his or her estate,
217 except that any unpaid compensation which would have
218 been paid or payable to the employee up to the time of
219 his death, if he had lived, shall be paid to the dependents
220 of such injured employee if there be such dependents at
221 the time of death.

222 (m) The following permanent disabilities shall be con-
223 clusively presumed to be total in character:

224 Loss of both eyes or the sight thereof.

225 Loss of both hands or the use thereof.

226 Loss of both feet or the use thereof.

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

228 In all other cases permanent disability shall be deter-
229 mined by the commissioner in accordance with the facts
230 in the case, and award made in accordance with the pro-
231 visions of subdivision (d) or (e).

232 (n) A disability which renders the injured employee
233 unable to engage in substantial gainful activity requiring
234 skills or abilities comparable to those of any gainful
235 activity in which he has previously engaged with some
236 regularity and over a substantial period of time shall be
237 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
2 disability, or has sustained injuries likely to result in per-
3 manent disability, and such fact has been determined by
4 the commissioner, and the employee can be physically and
5 vocationally rehabilitated and returned to remunerative
6 employment by vocational training, by the use of crutches,
7 artificial limbs, or other approved mechanical ap-
8 pliances, or by medicines, medical, surgical, dental or
9 hospital treatment, the commissioner shall forthwith, after
10 due notice to the employer, expend such an amount as
11 may be necessary for the aforesaid purposes: *Provided*,
12 That such expenditure for vocational rehabilitation shall
13 not exceed ten thousand dollars for any one injured em-
14 ployee: *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
17 of such physical or vocational rehabilitation.

18 In every case in which the commissioner shall order
19 physical or vocational rehabilitation of a claimant as pro-
20 vided 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 dis-
24 ability basis for such period.

§23-4-14. Computation of benefits.

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

7 In cases involving occupational pneumoconiosis or other
8 occupational diseases, the "date of injury" shall be the
9 date of the last exposure to the hazards of occupational
10 pneumoconiosis or other occupational diseases.

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

18 The expression "average weekly wage earnings, wher-
19 ever earned, of the injured person, at the date of injury,"
20 within the meaning of this chapter, shall be computed
21 based upon the daily rate of pay at the time of
22 the injury or upon the average pay received dur-
23 ing the two months, six months or twelve months
24 immediately preceding the date of the injury, whichever
25 is most favorable to the injured employee.

26 The expression "average weekly wage in West Vir-
27 ginia," within the meaning of this chapter, shall be the
28 average weekly wage in West Virginia as determined by

29 the commissioner of employment security in accordance
30 with the provisions of sections ten and eleven, article six,
31 chapter twenty-one-a of the code of West Virginia, one
32 thousand nine hundred thirty-one, as amended, and other
33 applicable provisions of said chapter twenty-one-a.

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

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

1 Except by this section provided compensation shall be
2 paid only to such employees or their dependents, and
3 shall be exempt from all claims of creditors and from any
4 attachment, execution or assignment other than compen-
5 sation to counsel for legal services, under the provisions
6 of, and subject to the limitations contained in section five,
7 article five of this chapter. Payments may be made in
8 such periodical installments as may seem best to the
9 commissioner in each case but in no event less frequently
10 than semimonthly for any temporary award and monthly
11 for any permanent award. Payment for permanent disa-
12 bility shall be paid on or before the third day of the
13 month in which they are due. In all cases where compen-
14 sation is awarded or increased, the amount thereof shall
15 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
 2 pursuant to a permanent total disability award in amounts
 3 less than two hundred twenty-four dollars per month,
 4 and for the relief of widows who are receiving benefits on
 5 account of the death of an employee in amounts less than
 6 two hundred ten dollars per month, and for the relief of
 7 other persons who are receiving dependents' benefits
 8 on account of the death of an employee in amounts less
 9 than the specific monetary amounts set forth in
 10 section ten of article four of this chapter and in effect
 11 as of July one, one thousand nine hundred seventy-
 12 three, there is hereby created a separate fund to be
 13 known as the "Disabled Workmen's Relief Fund," which
 14 fund shall consist of such sums as are from time to time
 15 made available to carry out the objects and purposes
 16 of this article. Said fund shall be in the custody of
 17 the state treasurer and disbursements therefrom shall
 18 be made upon requisition signed by the commissioner
 19 to those persons entitled to participate therein and in
 20 such amounts to each participant as is provided in sec-
 21 tion three of this article.

§23-4A-2. To whom benefits paid.

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

§23-4A-3. Computation of benefits.

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

8 tue 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.

James L. Davis

Chairman Senate Committee

Clarence L. Christensen Jr.

Chairman House Committee

Originated in the Senate.

To take effect July 1, 1976.

J. McEllen, Jr.

Clerk of the Senate

A. Blankenship

Clerk of the House of Delegates

W. B. Johnston

President of the Senate

Lewis F. McManus

Speaker House of Delegates

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

Arch A. Moore, Jr.

Governor



PRESENTED TO THE
GOVERNOR

ate 3/24/76

me 3:45 p.m.