

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1978



ENROLLED

Committee Substitute for
SENATE BILL NO. 476

(By Mr. *Davis & Mr. Hoffmann*)



PASSED *March 11,* 1978

In Effect *July 1, 1978* ~~Passage~~



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ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 476

(MR. DAVIS and MR. HUFFMAN, *original sponsors*)

[Passed March 11, 1978; in effect July 1, 1978.]

AN ACT to amend and reenact sections one-c, five, six, six-a, eight-c, ten and sixteen, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section seven; to amend and reenact sections one and two, article four-a of said chapter; and to further amend said chapter, by adding thereto a new article, designated article five-a, all relating to workmen's compensation; providing for payment of medical benefits; payment of benefits after the first three days of disability; increasing maximum benefits; statutory amount of hearing loss; providing of benefits for occupational pneumoconiosis without pulmonary impairment; time for filing objections to findings and conclusions of the occupational pneumoconiosis board; increased age limits for certain dependents and providing for a lump sum payment to dependent's survivors; time limitation on filing for awards; providing for release of medical information to employers and their representatives; providing that children of disabled employees receiving benefits from the disabled workman's relief fund may receive such benefits to age twenty-three under certain circumstances; and prohibiting certain discriminatory practices.

Be it enacted by the Legislature of West Virginia:

That sections one-c, five, six, six-a, eight-c, ten and sixteen, article four, chapter twenty-three of the code of West Vir-

ginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto a new section, designated section seven; that sections one and two, article four-a of said chapter be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article five-a, all to read as follows:

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-1c. Payment of temporary total disability benefits directly to claimant; payment of medical benefits; 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 and
9 fourteen of this article, and payment of the expenses pro-
10 vided for in subdivision (a), section three of this article
11 relating to said injury without waiting for the expiration
12 of the thirty-day period during which objections may be
13 filed to such findings as provided in section one, article
14 five of this chapter. The commissioner shall give immedi-
15 ate notice to the employer of his findings and of the com-
16 mencement of such payments.

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

26 Upon receipt of the first report of injury in a claim,
27 the commissioner shall request from the employer or
28 employers any wage information necessary for determin-

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

45 Upon a finding of the commissioner that a claimant,
46 who has sustained a previous compensable injury which
47 has been closed by an award of total temporary disability
48 or permanent partial disability, suffers further temporary
49 total disability or requires further medical or hospital
50 treatment resulting from the compensable injury giving
51 rise to the former award, the commissioner shall immedi-
52 ately commence payment of temporary total disability
53 benefits to the claimant in the amounts provided for in
54 sections six and fourteen of this article, and the expenses
55 provided for in subdivision (a), section three of this
56 article, relating to said disability, without waiting for
57 the expiration of the thirty-day period during which
58 objections may be filed to such findings as provided in
59 section one, article five of this chapter. The commissioner
60 shall give immediate notice to the employer of his find-
61 ings and of the commencement of such payment.

62 Where the employer is a subscriber to the workmen's
63 compensation fund under the provisions of article three
64 of this chapter, and upon the findings aforesaid, the
65 commissioner shall mail all workmen's compensation
66 checks paying temporary total disability benefits directly
67 to the claimant and not to the employer for delivery to
68 the claimant.

69 Where the employer has elected to carry his own risk
70 under section nine, article two of this chapter, and upon
71 the findings aforesaid, the commissioner shall immedi-
72 ately issue a pay order directing the employer to pay such
73 amounts as are due the claimant for temporary total dis-
74 ability benefits. A copy of the order shall be sent to the
75 claimant. The self-insured employer shall commence such
76 payments by mailing or delivering the payments directly
77 to the employee within ten days of the date of the receipt
78 of the pay order by the employer. If the self-insured em-
79 ployer believes that his employee is entitled to benefits, he
80 may start payments before receiving a pay order from the
81 commissioner.

82 In the event that an employer files a timely objection to
83 any finding or order of the commissioner, as provided in
84 section one, article five of this chapter, with respect to the
85 payment or continued payment of temporary total disabili-
86 ty benefits and those expenses as outlined in subdivision
87 (a), section three of this article, as provided herein, the
88 commissioner shall continue to pay to the claimant such
89 benefits and expenses during the period of such disability
90 unless it is subsequently found by the commissioner that
91 the claimant was not entitled to receive the temporary
92 total disability benefits and the expenses provided for in
93 subdivision (a), section three of this article, or any part
94 thereof, so paid, in which event the commissioner shall,
95 where the employer is a subscriber to the fund, credit said
96 employer's account with the amount of the overpayment;
97 and, where the employer has elected to carry his own risk,
98 the commissioner shall refund to such employer the
99 amount of the overpayment. The amounts so credited to a
100 subscriber or repaid to a self-insurer shall be charged by
101 the commissioner to the surplus fund created by section
102 one, article three of this chapter. If the final decision in
103 any case determines that a claimant was not lawfully en-
104 titled to benefits paid to him pursuant to a prior decision,
105 such amount of benefits so paid shall be deemed overpaid.
106 The commissioner may recover such amount by civil
107 action or in any manner provided in this code for the
108 collection of past-due payment and shall withhold, in
109 whole or in part, as determined by the commissioner,

110 any future benefits payable to the individual and credit
 111 such amount against the overpayment until it is repaid
 112 in full.

§23-4-5. Benefits for first three days after injury.

1 If the period of disability does not last longer than
 2 three days from the day the employee leaves work as
 3 the result of the injury, no award shall be allowed,
 4 except the disbursements provided for in the two next
 5 preceding sections, but if the period of disability lasts
 6 longer than seven days from the day the employee
 7 leaves work as a result of the injury, an award shall be
 8 allowed for the first three days of such disability.

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

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

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

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

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

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

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

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

69 nine hundred seventy-five, sixty-six and two-thirds
70 percent.

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

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

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

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

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

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

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

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

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

98 The loss of a leg shall be considered a forty-five per-
99 cent disability.

100 The loss of thigh shall be considered a fifty percent dis-
101 ability.

102 The loss of thigh at hip joint shall be considered a
103 sixty percent disability.

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

106 The loss of little or fourth finger shall be considered
107 a five percent disability.

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

110 The loss of ring or third finger shall be considered
111 a five percent disability.

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

114 The loss of middle or second finger shall be considered
115 a seven percent disability.

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

118 The loss of index or first finger shall be considered a
119 ten percent disability.

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

122 The loss of thumb shall be considered a twenty per-
123 cent disability.

124 The loss of thumb and index finger shall be con-
125 sidered a thirty-two percent disability.

126 The loss of index and middle finger shall be con-
127 sidered a twenty percent disability.

128 The loss of middle and ring finger shall be considered
129 a fifteen percent disability.

130 The loss of ring and little finger shall be considered
131 a ten percent disability.

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

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

136 The loss of middle, ring and little finger shall be
137 considered a twenty percent disability.

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

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

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

144 The loss of arm shall be considered a sixty percent
145 disability.

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

152 The total and irrecoverable loss of the hearing of one
153 ear shall be considered a twenty-five percent disability.
154 The total and irrecoverable loss of hearing of both ears
155 shall be considered a sixty-five percent disability.

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

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

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

185 (h) For the purposes of this chapter, a finding of

186 the occupational pneumoconiosis board shall have the
187 force and effect of an award.

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

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

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

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

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

221 Loss of both eyes or the sight thereof.

222 Loss of both hands or the use thereof.

223 Loss of both feet or the use thereof.

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

225 In all other cases permanent disability shall be deter-

226 mined by the commissioner in accordance with the facts
227 in the case, and award made in accordance with the
228 provisions of subdivision (d) or (e).

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

§23-4-6a. Benefits and mode of payment to employees and dependents for occupational pneumoconiosis; further adjustment of claim for occupational pneumoconiosis.

1 If an employee is found to be permanently disabled due
2 to occupational pneumoconiosis, as defined in section one
3 of this article, the percentage of permanent disability
4 shall be determined by the commissioner in accordance
5 with the facts in the case and with the advice and recom-
6 mendation of the occupational pneumoconiosis board.
7 Compensation shall be paid therefor in the same manner
8 and at the same rate as is provided for permanent disa-
9 bility under the provisions of subdivisions (d), (e), (g),
10 (h), (i), (j), (k), (m) and (n) of the preceding sec-
11 tion of this article: *Provided*, That if it shall be deter-
12 mined by the commissioner in accordance with the facts
13 of the case and with the advice and recommendation of
14 the occupational pneumoconiosis board that an employee
15 has occupational pneumoconiosis, but without measurable
16 pulmonary impairment therefrom, such employee shall
17 be awarded and paid twenty weeks of benefits at the same
18 benefit rate as herein above provided.

19 If the employee dies from occupational pneumoconiosis,
20 the benefits shall be as provided for in section ten of this
21 article; as to such benefits sections eleven to fourteen,
22 inclusive, of this article shall apply.

23 In cases of permanent disability or death due to occu-
24 pational pneumoconiosis, as defined in section one of this
25 article, accompanied by active tuberculosis of the lungs,
26 compensation shall be payable as for disability or death
27 due to occupational pneumoconiosis alone.

28 The provisions of section sixteen, article four and
29 sections one-a, one-b, one-c and one-d, article five of this
30 chapter providing for the further adjustment of claims
31 shall be applicable to the claim of any claimant who re-
32 ceives a permanent partial disability award for occupa-
33 tional pneumoconiosis.

**§23-4-7. Release of medical information to employer; legisla-
tive findings; effect of application for benefits; duty
of employer.**

1 (a) The Legislature hereby finds and declares that two
2 of the primary objectives of the workmen's compensation
3 system established by this chapter are to provide bene-
4 fits to an injured claimant promptly and to effectuate his
5 return to work at the earliest possible time; that the
6 prompt dissemination of medical information to the com-
7 missioner and employer as to diagnosis, treatment and
8 recovery is essential if these two objectives are to be
9 achieved; that claimants are increasingly burdened with
10 the task of contacting their treating physicians to request
11 the furnishing of detailed medical information to the
12 commissioner and their employers; that the commissioner
13 is increasingly burdened with the administrative respon-
14 sibility of providing copies of medical reports to the
15 employer involved, whereas in other states the employer
16 can obtain the necessary medical information direct from
17 the treating physician; that much litigation is occasioned
18 in this state because of a lack of medical information
19 having been received by the employer as to the continuing
20 disability of a claimant; and that detailed narrative re-
21 ports from the treating physician are often necessary in
22 order for the commissioner, the claimant's representatives
23 and the employer to evaluate a claim and determine
24 whether additional or different treatment is indicated.

25 (b) In view of the foregoing findings, on and after the
26 effective date of this section, a claimant shall irrevocably
27 agree by the filing of his application for benefits that any
28 physician may release, to the claimant's employer or its
29 representative, from time to time to such claimant's em-
30 ployer medical reports containing detailed information as
31 to the claimant's condition, treatment, prognosis and

32 anticipated period of disability and dates as to when
33 the claimant will reach or has reached his maximum de-
34 gree of improvement or will be or was released to return
35 to work. Whenever a copy of any such medical report is
36 obtained by the employer or their representative and the
37 physician has not also forwarded a copy of the same to
38 the commissioner, the employer shall forward a copy of
39 such medical report to the commissioner within ten days
40 from the date such employer received the same from
41 such physician.

**§23-4-8c. Occupational pneumoconiosis board—Reports and
distribution thereof; presumption; findings re-
quired of board; objection to findings; procedure
thereon.**

1 (a) The occupational pneumoconiosis board, as soon
2 as practicable, after it has completed its investigation,
3 shall make its written report, to the commissioner, of its
4 findings and conclusions on every medical question in
5 controversy, and the commissioner shall send one copy
6 thereof to the employee or claimant and one copy to the
7 employer, and the board shall also return to and file
8 with the commissioner all the evidence as well as all
9 statements under oath, if any, of the persons who ap-
10 pear before it on behalf of the employee or claimant,
11 or employer and also all medical reports and x ray
12 examinations produced by or on behalf of the employee
13 or claimant, or employer.

14 (b) If it can be shown that the claimant or deceased
15 employee has been exposed to the hazard of inhaling
16 minute particles of dust in the course of and resulting
17 from his employment for a period of ten years during
18 the fifteen years immediately preceding the date of his
19 last exposure to such hazard and that such claimant or
20 deceased employee has sustained a chronic respiratory
21 disability, then it shall be presumed that such claimant
22 is suffering or such deceased employee was suffering at
23 time of his death from occupational pneumoconiosis
24 which arose out of and in the course of his employment.
25 This presumption shall not be conclusive.

26 (c) The findings and conclusions of the board shall
27 set forth, among other things, the following:

28 (1) Whether or not the claimant or the deceased em-
29 ployee has contracted occupational pneumoconiosis, and,
30 if so, the percentage of permanent disability resulting
31 therefrom.

32 (2) Whether or not the exposure in the employment
33 was sufficient to have caused the claimant's or deceased
34 employee's occupational pneumoconiosis or to have per-
35 ceptibly aggravated an existing occupational pneu-
36 moconiosis, or other occupational disease.

37 (3) What, if any, physician appeared before the board
38 on behalf of the claimant or employer, and what, if any,
39 medical evidence was produced by or on behalf of the
40 claimant or employer.

41 If either party objects to the whole or any part of
42 such findings and conclusions of the board, he shall file
43 with the commissioner, within fifteen days from receipt
44 of such copy to him, unless for good cause shown, the
45 commissioner extends such time, his objections thereto
46 in writing, specifying the particular statements of the
47 board's findings and conclusions to which he objects.
48 After the time has expired for the filing of objections to
49 the findings and conclusions of the board, the commis-
50 sioner shall proceed to act as provided in this chapter.
51 If after the time has expired for the filing of objections
52 to the findings and conclusions of the board no objections
53 have been filed, the report of a majority of the board
54 of its findings and conclusions on any medical question
55 shall be taken to be plenary and conclusive evidence of
56 the findings and conclusions therein stated. If objection
57 has been filed to the findings and conclusions of the
58 board, notice thereof shall be given to the board, and
59 the members thereof joining in such findings and con-
60 clusions shall appear at the time fixed by the commis-
61 sioner for the hearing to submit to examination and
62 cross-examination in respect to such findings and con-
63 clusions. At such hearing evidence to support or con-
64 trovert the findings and conclusions of the board shall
65 be limited to examination and cross-examination of the

66 members of the board, and to the taking of testimony of
67 other qualified physicians and roentgenologists.

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

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

9 (a) If there be no dependents, the disbursements
10 shall be limited to the expense provided for in sections
11 three and four of this article.

12 (b) If there be dependents as defined in subdivision
13 (d) of this section, such dependents shall be paid for
14 as long as their dependency shall continue in the same
15 amount as was paid or would have been paid the de-
16 ceased employee for total disability had he lived. The
17 order of preference of payment and length of depen-
18 dence shall be as follows:

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

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

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

34 (c) If the deceased employee leaves no wholly de-
35 pendent person, but there are partially dependent per-
36 sons at the time of death, the payment shall be fifty
37 dollars a month, to continue for such portion of the

38 period of six years after the death, as the commissioner
39 may determine, but no such partially dependent person
40 shall receive compensation payments as a result of the
41 death of more than one employee.

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

46 (d) Dependent, as used in this chapter, shall mean
47 a widow, widower, child under eighteen years of age,
48 or under twenty-five years of age when a full-time
49 student as provided herein, invalid child or posthumous
50 child, who, at the time of the injury causing death, is
51 dependent in whole or part for his or her support upon
52 the earnings of the employee, stepchild under eighteen
53 years of age, or under twenty-five years of age when a
54 full-time student as provided herein, child under eigh-
55 teen years of age legally adopted prior to the injury
56 causing death, or under twenty-five years of age when
57 a full-time student as provided herein, father, mother,
58 grandfather or grandmother, who at the time of the
59 injury causing death, is dependent in whole or in part
60 for his or her support upon the earnings of the employee;
61 and invalid brother or sister wholly dependent for his
62 or her support upon the earnings of the employee at
63 the time of the injury causing death.

64 (e) If a person receiving permanent total disability
65 benefits dies from a cause other than a disabling injury
66 leaving any dependents as defined in subdivision (d) of
67 this section, a lump sum payment shall be made to such
68 dependents in an amount equal to one hundred four
69 times the weekly benefit the worker was receiving at
70 the time of his death.

**§23-4-16. Commissioner's jurisdiction over case continuous;
modification of finding or order; time limitation
on awards; reimbursement of claimant for ex-
penses.**

1 The power and jurisdiction of the commissioner over
2 each case shall be continuing and he may from time to
3 time, after due notice to the employer, make such modi-

4 fications or changes with respect to former findings or
5 orders as may be justified: *Provided*, That no further
6 award may be made in fatal cases arising after March
7 seventh, one thousand nine hundred twenty-nine, except
8 within two years after the death of the employee, or in
9 case of nonfatal injuries, on and after March seventh,
10 one thousand nine hundred twenty-nine, except within
11 five years after payments for temporary disability shall
12 have ceased or not more than two times within five years
13 after the commissioner shall have made the last payment
14 in the original award or any subsequent increase thereto
15 in any permanent disability case: *Provided, however*,
16 That no such modification or change may be made in
17 any case in which no award has been made, except within
18 five years after the date of injury: *Provided further*, That
19 a further award may be made for medical benefits only
20 at any time. In any case in which an injured employee
21 shall make application for a further adjustment of his
22 claim, if such application be in writing and filed within
23 the applicable time limit as prescribed herein, the com-
24 missioner shall pass upon and determine the merits of
25 such application within thirty days after the filing
26 thereof.

27 If such application is based on a report of any medical
28 examination made of the claimant and submitted by the
29 claimant to the commissioner in support of his applica-
30 tion, and the claim is opened for further consideration
31 and additional award is later made, the claimant shall
32 be reimbursed for the expenses of such examination.
33 Such reimbursement shall be made by the commissioner
34 to the claimant, in addition to all other benefits awarded,
35 upon due proof of the amount thereof being furnished
36 the commissioner by the claimant, but shall in no case
37 exceed the sum of one hundred dollars.

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
3 amounts less than two hundred seventy-four dollars
4 per month, and for the relief of widows who are re-

5 ceiving benefits on account of the death of an employee
6 in amounts less than two hundred sixty dollars per
7 month, and for the relief of children of employees de-
8 ceased before one thousand nine hundred sixty-seven
9 who are under the age of twenty-three and who are
10 full-time students, and for the relief of other persons
11 who are receiving dependents' benefits on account of
12 the death of an employee in amounts less than the
13 specific monetary amounts set forth in section ten,
14 article four of this chapter and in effect as of July one,
15 one thousand nine hundred seventy-three, there is hereby
16 created a separate fund to be known as the "Disabled
17 Workmen's Relief Fund," which fund shall consist of
18 such sums as are from time to time made available to
19 carry out the objects and purposes of this article. Said
20 fund shall be in the custody of the state treasurer and
21 disbursements therefrom shall be made upon requisition
22 signed by the commissioner to those persons entitled to
23 participate therein and in such amounts to each par-
24 ticipant 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
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 receiving
7 such benefits because of the death of an employee: *Pro-*
8 *vided*, That a child of an employee deceased before the
9 first day of July, one thousand nine hundred sixty-seven,
10 who is under the age of twenty-three and is a full-time
11 student, and, who, at the time of injury causing death,
12 was dependent in whole or part upon the earnings of
13 the deceased employee, shall be eligible for benefits
14 payable from the fund established by this article in the
15 same manner and amount as if death had occurred after
16 the first day of July, one thousand nine hundred sixty-
17 seven.

ARTICLE 5A. DISCRIMINATORY PRACTICES.

§23-5A-1. Discriminatory practices prohibited.

1 No employer shall discriminate in any manner against
2 any of his present or former employees because of such
3 present or former employee's receipt of or attempt to
4 receive benefits under this chapter.

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

James L. Davis
Chairman Senate Committee

Clarence T. Chestnut Jr.
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1978.

J. H. Wilson Jr.
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

W. T. Beetham Jr.
President of the Senate

Donald L. Topp
Speaker House of Delegates

The within is approved this the 27
day of March, 1978.

John J. P. Dwyer
Governor

APPROVED AND SIGNED BY THE GOVERNOR

Date March 28, 1978

Time 9:00 A.M.

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OFFICE OF THE GOVERNOR

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SECY. OF STATE