WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1994

ENROLLED

SENATE BILL NO. 410

(By Senators Burdette, Mr. President, and Boling, By Request of the Executive)

PASSED March 10, 1994
In Effect July 1, 1994
ENROLLED

Senate Bill No. 410

(BY SENATORS BURDETT, MR. PRESIDENT, AND BOLEY,
BY REQUEST OF THE EXECUTIVE)

[Passed March 10, 1994; to take effect July 1, 1994.]

AN ACT to repeal section four-b, article five, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one-c, six, six-d, seven-b, nine and fourteen, article four of said chapter, all relating to workers' compensation; obtaining of wage information; correcting reference to unemployment compensation division; minimum level of temporary total disability benefits; exceptions; the information to be used in determining wages; extending the termination provisions related to trial return to work and to the vocational rehabilitation program; removing the expired time period for the adoption of legislative rules; and repealing the requirement that certain jurisdictional decisions be appealed directly to the appeal board.
Be it enacted by the Legislature of West Virginia:

That section four-b, article five, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one-c, six, six-d, seven-b, nine and fourteen, article four of said chapter be amended and reenacted, all to read as follows: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.

(a) In any claim for benefits under this chapter, the commissioner shall determine whether the claimant has sustained a compensable injury within the meaning of section one of this article and he shall enter an order giving all parties immediate notice of such decision. Any party shall have the right to protest the order of the commissioner and obtain an evidentiary hearing as provided in section one, article five of this chapter.

(b) Where it appears from the employer's report, or from proper medical evidence, that a compensable injury will result in a disability which will last longer than three days as provided in section five of this article, the commissioner may immediately enter an order commencing the payment of temporary total disability benefits to the claimant in the amounts provided for in sections six and fourteen of this article, and the payment of the expenses provided for in subdivision (a), section three of this article, relating to said injury, without waiting for the expiration of the thirty-day period during which objections may be filed to such findings as provided in section one, article five of this chapter. The commissioner shall enter an order commencing the payment of temporary total disability or medical benefits within fifteen days of receipt of either the employee's or employer's report of injury, whichever is received sooner.
and also upon receipt of either a proper physician's report or any other information necessary for a determination. The commissioner shall give to the parties immediate notice of any order granting temporary total disability or medical benefits.

(c) The commissioner may enter orders granting temporary total disability benefits upon receipt of medical evidence justifying the payment of such benefits. In no claim shall the commissioner enter an order granting prospective temporary total disability benefits for a period of more than ninety days: Provided, That when the commissioner determines that the claimant remains disabled beyond the period specified in the prior order granting temporary total disability benefits, the commissioner shall enter an order continuing the payment of temporary total disability benefits for an additional period not to exceed ninety days, and shall give immediate notice to all parties of such decision.

(d) Upon receipt of the first report of injury in claim, the commissioner shall request from the employer or employers any wage information necessary for determining the rate of benefits to which the employee is entitled. If an employer does not furnish the commissioner with this information within fifteen days from the date the commissioner received the first report of injury in the case, the employee shall be paid temporary total disability benefits for lost time at the rate the commissioner obtains from reports made to him or her pursuant to section eleven, article ten, chapter twenty-one-a of this code. If no such wages have been reported, then the commissioner shall make such payments at the rate he or she believes would be justified by the usual rate of pay for the occupation of the injured employee. The commissioner shall adjust the rate of benefits both retroactively and prospectively upon receipt of proper wage information. The commissioner shall have access to all wage information in the possession of any state agency, including wage information received by the unemployment compensation division under said
chapter, pertinent to such determination.

(e) Upon a finding of the commissioner that a claimant who has sustained a previous compensable injury which has been closed by any order of the commissioner, or by the claimant's return to work, suffers further temporary total disability or requires further medical or hospital treatment resulting from the compensable injury, the commissioner shall immediately enter an order commencing the payment of temporary total disability benefits to the claimant in the amount provided for in sections six and fourteen of this article, and the expenses provided for in subdivision (a), section three of this article, relating to said disability, without waiting for the expiration of the thirty-day period during which objections may be filed to such findings as provided in section one, article five of this chapter. The commissioner shall give immediate notice to the parties of his order.

(f) Where the employer is a subscriber to the workers' compensation fund under the provisions of article three of this chapter, and upon the findings aforesaid, the commissioner shall mail all workers' compensation checks paying temporary total disability benefits directly to the claimant and not to the employer for delivery to the claimant.

(g) Where the employer has elected to carry his own risk under section nine, article two of this chapter, and upon the findings aforesaid, the commissioner shall immediately issue a pay order directing the employer to pay such amounts as are due the claimant for temporary total disability benefits. A copy of the order shall be sent to the claimant. The self-insured employer shall commence such payments by mailing or delivering the payments directly to the employee within ten days of the date of the receipt of the pay order by the employer. If the self-insured employer believes that his employee is entitled to benefits, he may start payments before receiving a pay order from the commissioner.
(h) In the event that an employer files a timely objection to any order of the commissioner with respect to compensability, or any order denying an application for modification with respect to temporary total disability benefits, or with respect to those expenses outlined in subdivision (a), section three of this article, the commissioner shall continue to pay to the claimant such benefits and expenses during the period of such disability. Where it is subsequently found by the commissioner that the claimant was not entitled to receive such temporary total disability benefits or expenses, or any part thereof, so paid, the commissioner shall, when the employer is a subscriber to the fund, credit said employer's account with the amount of the overpayment; and, when the employer has elected to carry its own risk, the commissioner shall refund to such employer the amount of the overpayment. The amounts so credited to a subscriber or repaid to a self insurer shall be charged by the commissioner to the surplus fund created in section one, article three of this chapter.

(i) When the employer has protested the compensability or applied for modification of a temporary total disability benefit award or expenses and the final decision in such case determines that the claimant was not entitled to such benefits or expenses, the amount of such benefits or expenses shall be considered overpaid. The commissioner may only recover the amount of such benefits or expenses by withholding, in whole or in part, as determined by the commissioner, future permanent partial disability benefits payable to the individual in the same or other claims and credit such amount against the overpayment until it is repaid in full.

(j) In the event that the commissioner finds that based upon the employer's report of injury, the claim is not compensable, the commissioner shall provide a copy of such employer's report in addition to the order denying the claim.
§23-4-6. Classification of and criteria for disability benefits.

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

(a) The expressions “average weekly wage earnings, wherever earned, of the injured employee, at the date of injury” and “average weekly wage in West Virginia”, as used in this chapter, shall have the meaning and shall be computed as set forth in section fourteen of this article except for the purpose of computing temporary total disability benefits for part-time employees pursuant to the provisions of section six-d of this article.

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

The minimum weekly benefits paid hereunder shall not be less than twenty-six dollars per week for injuries occurring on or after the first day of July, one thousand nine hundred sixty-nine; not less than thirty-five dollars per week for injuries occurring on or after the first day of July, one thousand nine hundred seventy-one; not less than forty dollars per week for injuries occurring on or
after the first day of July, one thousand nine hundred seventy-three; not less than forty-five dollars per week for injuries occurring on or after the first day of July, one thousand nine hundred seventy-four; and for injuries occurring on or after the first day of July, one thousand nine hundred seventy-six, thirty-three and one-third percent of the average weekly wage in West Virginia, except as provided in section six-d of this article. In no event, however, shall such minimum weekly benefits exceed the level of benefits determined by use of the then applicable federal minimum hourly wage: Provided, That any claimant receiving permanent total disability benefits, permanent partial disability benefits or dependents’ benefits prior to the first day of July, one thousand nine hundred ninety-four, shall not have his or her benefits reduced based upon the requirement herein that the minimum weekly benefit shall not exceed the applicable federal minimum hourly wage.

(c) Subdivision (b) of this section shall be limited as follows: Aggregate award for a single injury causing temporary disability shall be for a period not exceeding two hundred eight weeks.

(d) If the injury causes permanent total disability, benefits shall be payable during the remainder of life at the maximum or minimum weekly benefits as provided in subdivision (b) of this section for temporary total disability. A permanent disability of eighty-five percent or more shall entitle the employee to a rebuttable presumption of a permanent total disability for the purpose of this section. Under no circumstances shall the commissioner grant an additional permanent disability award to a claimant receiving a permanent total disability award, or to a claimant who has previously been granted permanent disability awards totaling eighty-five percent or more and has been granted a permanent total disability award: Provided, That if any claimant thereafter sustains another compensable injury and has permanent partial disability resulting therefrom, the total permanent disability award benefit rate shall
be computed at the highest benefit rate justified by any
of the compensable injuries, and the cost of any increase
in the permanent total disability benefit rate shall be
paid from the second injury reserve created by section
one, article three of this chapter. In any claim in which
a claimant aggregates permanent partial disability
awards in the amount of eighty-five percent or more
after the effective date of this subsection, the claimant
shall be entitled to a permanent total disability award
unless the evidence establishes that the claimant is not
permanently and totally disabled pursuant to subdivi-

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

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

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

The loss of a great toe shall be considered a ten percent
disability.

The loss of a great toe (one phalanx) shall be consid-
ered a five percent disability.

The loss of other toes shall be considered a four
percent disability.

The loss of other toes (one phalanx) shall be considered
a two percent disability.

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

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

The loss of a foot shall be considered a thirty-five
percent disability.

The loss of a leg shall be considered a forty-five
percent disability.

The loss of thigh shall be considered a fifty percent
disability.

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

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

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

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

The loss of ring or third finger shall be considered a
five percent disability.
The loss of middle or second finger (one phalanx) shall be considered a three percent disability.

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

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

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

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

The loss of thumb shall be considered a twenty percent disability.

The loss of thumb and index finger shall be considered a thirty-two percent disability.

The loss of index and middle finger shall be considered a twenty percent disability.

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

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

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

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

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

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

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

The loss of forearm shall be considered a fifty-five percent disability.
The loss of arm shall be considered a sixty percent disability.

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

The total and irrecoverable loss of the hearing of one ear shall be considered a twenty-two and one-half percent disability. The total and irrecoverable loss of hearing of both ears shall be considered a fifty-five percent disability.

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

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

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

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

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

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

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

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

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

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

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

(n) A disability which renders the injured employee unable to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he or she has previously engaged with some regularity and over a substantial period of time shall be considered in determining the issue of total disability. In addition, the vocational standards adopted pursuant to subsection (m), section seven, article three, chapter twenty-one-a of this code shall be considered once they are effective.

§23-4-6d. Benefits payable to part-time employees.

(a) For purposes of this section, a part-time employee means an employee who, at the date of injury, is customarily employed twenty-five hours per week or less on a regular basis and is classified by the employer as a part-time employee: Provided, That the term "part-time employee" shall not include an employee who regularly works more than twenty-five hours per week for the employer, nor shall it include an employee who regularly works for more than one employer and whose regular combined working hours total more than twenty-five hours per week when that employee is rendered unable to perform the duties of all such employment as a result
of the injury, nor shall it include any employee in the
construction industry who works less than twenty-five
hours per week.

(b) For purposes of establishing temporary total
disability weekly benefits pursuant to subdivision (b),
section six of this article for part-time employees, the
“average weekly wage earnings, wherever earned, of the
injured person, at the date of injury”, shall be computed:

(1) Until the first day of July, one thousand nine
hundred ninety-four, based upon the average gross pay,
wherever earned, which is received by the employee
during the two months, six months or twelve months
immediately preceding the date of the injury, whichever
is most favorable to the injured employee; or

(2) On and after the first day of July, one thousand nine
hundred ninety-four, based upon the best average
weekly gross pay, wherever earned, which is received by
the employee during the best quarter of wages out of the
preceding four quarters of wages as reported to the
commissioner pursuant to section eleven, article ten,
chapter twenty-one-a of this code: Provided, That for
part-time employees who have been employed less than
two months but more than one week prior to the date of
injury or any employee whose wages have not yet been
reported to the commissioner, the average weekly wage
earnings shall be calculated based upon the average
gross earnings in the weeks actually worked: Provided,
however, That for part-time employees who have been
employed one week or less, the average weekly wage
earnings shall be calculated based upon the average
weekly wage prevailing for the same or similar part-time
employment at the time of injury except that when an
employer has agreed to pay a certain hourly wage to such
part-time employee, the average weekly wage shall be
computed by multiplying such hourly wage by the
regular numbers of hours contracted to be worked each
week: Provided further, That notwithstanding any
provision of this article to the contrary, no part-time
employee shall receive temporary total disability
benefits greater than his or her average weekly wage
earnings as so calculated.

§23-4-7b. Trial return to work.
1 (a) The Legislature hereby finds and declares that it is
2 in the interest of employees, employers and the commis-
3 sioner that injured employees be encouraged to return to
4 work as quickly as possible after an injury and that
5 appropriate protections be afforded to injured employees
6 who return to work on a trial basis.

7 (b) Notwithstanding any other provisions of this
8 chapter to the contrary, the injured employee shall not
9 have his or her eligibility to receive temporary total
10 disability benefits terminated when he or she returns to
11 work on a trial basis as set forth herein. An employee
12 shall be eligible to return to work on a trial basis when
13 he or she is released to work on a trial basis by the
14 treating physician.

15 (c) When an injured employee returns to work on a
16 trial basis, the employer shall provide a trial return to
17 work notification to the commissioner. Upon receipt
18 thereof, the commissioner shall note the date of the first
19 day of work pursuant to the trial return and shall
20 continue the claimant’s eligibility for temporary total
21 disability benefits, but shall temporarily suspend the
22 payment of temporary total disability benefits during the
23 period actually worked by the injured employee. The
24 claim shall be closed on a temporary total disability
25 basis either when the injured employee or the authorized
26 treating physician notifies the commissioner that the
27 injured employee is able to perform his or her job or
automatically at the end of a period of three months
from the date of the first day of work unless the
employee notifies the commissioner that he or she is
unable to perform the duties of the job, whichever occurs
first. If the injured employee is unable to continue
working due to the compensable injury for a three-
month period, the injured employee shall notify the
commissioner and temporary total disability benefits
shall be reinstated immediately and he or she shall be
referred for a rehabilitation evaluation as provided in
section nine of this article. No provision of this section
shall be construed to prohibit the commissioner from
referring the injured employee for any permanent
disability evaluation required or permitted by any other
 provision of this article.

(d) Nothing in this section shall prevent the employee
from returning to work without a trial return to work
period.

(e) Nothing in this section shall be construed to require
an injured employee to return to work on a trial basis.

(f) The provisions of this section shall be terminated
and be of no further force and effect on the first day of
July, one thousand nine hundred ninety-eight.

§23-4-9. Physical and vocational rehabilitation.

(a) The Legislature hereby finds that it is a goal of the
workers' compensation program to assist workers to
return to suitable gainful employment after an injury. In
order to encourage workers to return to employment and
to encourage and assist employers in providing suitable
employment to injured employees, it shall be a priority
of the commissioner to achieve early identification of
individuals likely to need rehabilitation services and to
assess the rehabilitation needs of these injured employ-
ees. It shall be the goal of rehabilitation to return injured
workers to employment which shall be comparable in
work and pay to that which the individual performed
prior to the injury. If a return to comparable work is not
possible, the goal of rehabilitation shall be to return the
individual to alternative suitable employment, using all
possible alternatives of job modification, restructuring,
reassignment and training, so that the individual will
return to productivity with his or her employer or, if
necessary, with another employer. The Legislature
further finds that it is the shared responsibility of the
employer, the employee, the physician and the commis-
sioner to cooperate in the development of a rehabilita-
tion process designed to promote reemployment for the
injured employee.

(b) In cases where an employee has sustained a
permanent disability, or has sustained an injury likely to
result in temporary disability in excess of one hundred
twenty days, and such fact has been determined by the
commissioner, the commissioner shall at the earliest
possible time determine whether the employee would be
assisted in returning to remunerative employment with
the provision of rehabilitation services and if the
commissioner determines that the employee can be
physically and vocationally rehabilitated and returned to
remunerative employment by the provision of rehabilita-
tion services including, but not limited to, vocational or
on-the-job training, counseling, assistance in obtaining
appropriate temporary or permanent work site, work
duties or work hours modification, by the provision of
crutches, artificial limbs, or other approved mechanical
appliances, or medicines, medical, surgical, dental or
hospital treatment, the commissioner shall forthwith
develop a rehabilitation plan for the employee and, after
due notice to the employer, expend such an amount as
may be necessary for the aforesaid purposes: Provided,
that such expenditure for vocational rehabilitation shall
not exceed ten thousand dollars for any one injured
employee: Provided, however, That no payment shall be
made for such vocational rehabilitation purposes as
provided in this section unless authorized by the
commissioner prior to the rendering of such physical or
vocational rehabilitation, except that payments shall be
made for reasonable medical expenses without prior authorization if sufficient evidence exists which would relate the treatment to the injury and the attending physician or physicians have requested authorization prior to the rendering of such treatment: Provided further, That payment for physical rehabilitation, including the purchase of prosthetic devices and other equipment and training in use of such devices and equipment, shall be considered expenses within the meaning of section three of this article and shall be subject to the provisions of sections three, three-a, three-b and three-c of this article. The provision of any rehabilitation services shall be pursuant to a rehabilitation plan to be developed and monitored by a rehabilitation professional for each injured employee.

(c) In every case in which the commissioner shall order physical or vocational rehabilitation of a claimant as provided herein, the claimant shall, during the time he or she is receiving any vocational rehabilitation or rehabilitative treatment that renders him or her totally disabled during the period thereof, be compensated on a temporary total disability basis for such period.

(d) In every case in which the claimant returns to gainful employment as part of a rehabilitation plan, and the employee's average weekly wage earnings are less than the average weekly wage earnings earned by the injured employee at the time of the injury, he or she shall receive temporary partial rehabilitation benefits calculated as follows: The temporary partial rehabilitation benefit shall be seventy percent of the difference between the average weekly wage earnings earned at the time of the injury and the average weekly wage earnings earned at the new employment, both to be calculated as provided in sections six, six-d and fourteen of this article as such calculation is performed for temporary total disability benefits, subject to the following limitations: In no event shall such benefits be subject to the minimum benefit amounts required by the provisions of subdivision (b), section six of this article, nor shall such
benefits exceed the temporary total disability benefits to which the injured employee would be entitled pursuant to sections six, six-d and fourteen of this article during any period of temporary total disability resulting from the injury in the claim: Provided, That no temporary total disability benefits shall be paid for any period for which temporary partial rehabilitation benefits are paid. The amount of temporary partial rehabilitation benefits payable under this subsection shall be reviewed every ninety days to determine whether the injured employee’s average weekly wage in the new employment has changed and, if such change has occurred, the amount of benefits payable hereunder shall be adjusted prospectively. Temporary partial rehabilitation benefits shall only be payable when the injured employee is receiving vocational rehabilitation services in accordance with a rehabilitation plan developed under this section.

(e) The commissioner shall promulgate rules for the purpose of developing a comprehensive rehabilitation program which will assist injured workers to return to suitable gainful employment after an injury in a manner consistent with the provisions and findings of this section. Such rules shall provide definitions for rehabilitation facilities and rehabilitation services pursuant to this section.

(f) The provisions of this section shall be terminated and be of no further force or effect on the first day of July, one thousand nine hundred ninety-eight.


(a) The average weekly wage earnings, wherever earned, of the injured person at the date of injury, and the average weekly wage in West Virginia as determined by the commissioner, in effect at the date of injury, shall be taken as the basis upon which to compute the benefits.

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

(2) In computing benefits payable on account of occupational pneumoconiosis, the commissioner shall deduct the amount of all prior workers' compensation benefits paid to the same claimant on account of silicosis, but a prior silicosis award shall not, in any event, preclude an award for occupational pneumoconiosis otherwise payable under this article.

(b) (1) Until the first day of July, one thousand nine hundred ninety-four, the expression “average weekly wage earnings, wherever earned, of the injured person, at the date of injury”, within the meaning of this chapter, shall be computed based upon the daily rate of pay at the time of the injury or upon the average pay received during the two months, six months or twelve months immediately preceding the date of the injury, whichever is most favorable to the injured employee, except for the purpose of computing temporary total disability benefits for part-time employees pursuant to the provisions of section six-d of this article.

(2) On and after the first day of July, one thousand nine hundred ninety-four, the expression “average weekly wage earnings, wherever earned, of the injured person, at the date of injury”, within the meaning of this chapter, shall be computed based upon the daily rate of pay at the time of the injury or upon the weekly average derived from the best quarter of wages out of the preceding four quarters of wages as reported to the commissioner pursuant to section eleven, article ten, chapter twenty-one-a of this code, whichever is most favorable to the injured employee, except for the purpose of computing temporary total disability benefits for part-time employees pursuant to the provisions of section six-d of this article.

(c) The expression “average weekly wage in West Virginia”, within the meaning of this chapter, shall be the average weekly wage in West Virginia as determined
by the commissioner in accordance with the provisions
of sections ten and eleven, article six, chapter twenty-
one-a of this code, and other applicable provisions of
said chapter.

(d) In any claim for injuries, including occupational
pneumoconiosis and other occupational diseases,
occurring on or after the first day of July, one thousand
nine hundred seventy-one, any award for temporary
total, permanent partial or permanent total disability
benefits or for dependent benefits, shall be paid at the
weekly rates or in the monthly amount in the case of
dependent benefits applicable to the claimant therein in
effect on the date of such injury. If during the life of such
award for temporary total, permanent partial or
permanent total disability benefits or for dependent
benefits, the weekly rates or the monthly amount in the
case of dependent benefits are increased or decreased,
the claimant shall receive such increased or decreased
benefits beginning as of the effective date of said
increase or decrease.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1994.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within is approved this the ......................
day of .............................................., 1994.

[Signature]
Governor
PRESENTED TO THE
GOVERNOR
Date 3-30-94
Time 4:33 p.m.