

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 41

BY SENATORS STOLLINGS, CAPUTO, HAMILTON,

JEFFRIES, LINDSAY, ROMANO

[Introduced February 10, 2021; referred
to the Committee on Banking and Insurance; and then
to the Committee on Finance]

1 A BILL to amend and reenact §23-4-6a of the Code of West Virginia, 1931, as amended; and to
 2 amend said code by adding thereto a new section, designated §23-4-26, all relating to
 3 occupational pneumoconiosis; eliminating the prohibition on permanent partial disability
 4 awards based solely on a diagnosis of occupational pneumoconiosis; declaring that an
 5 employee with occupational pneumoconiosis without measurable pulmonary impairment
 6 shall be paid certain benefits; and requiring certain claimants to receive permanent partial
 7 disability awards that may later be offset from a future disability award.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§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 to occupational pneumoconiosis,
 2 as defined in §23-4-1 of this code, the percentage of permanent disability is determined by the
 3 degree of medical impairment that is found by the Occupational Pneumoconiosis Board. The
 4 commission, successor to the commission, other private carrier, or self-insured employer,
 5 whichever is applicable, shall enter an order setting forth the findings of the occupational
 6 pneumoconiosis board with regard to whether the claimant has occupational pneumoconiosis and
 7 the degree of medical impairment, if any, resulting therefrom. That order is the final decision of
 8 the commission for purposes of §23-5-1 of this code. If a decision is objected to, the office of
 9 judges shall affirm the decision of the Occupational Pneumoconiosis Board made following
 10 hearing unless the decision is clearly wrong in view of the reliable, probative and substantial
 11 evidence on the whole record. Compensation is paid therefor in the same manner and at the
 12 same rate as is provided for permanent disability under the provisions of §23-4-6 of this code:
 13 *Provided, That for any employee who applies for occupational pneumoconiosis benefits whose*
 14 *award was granted on or after the effective date of the amendment and reenactment of this*
 15 *section during the year two thousand three, there shall be no permanent partial disability awarded*

16 ~~based solely upon a diagnosis of occupational pneumoconiosis, it being the intent of the~~
 17 ~~Legislature to eliminate any permanent partial disability awards for occupational pneumoconiosis~~
 18 ~~without a specific finding of measurable impairment if the commissioner determines, in~~
 19 ~~accordance with the facts in the case and with the advice and recommendation of the~~
 20 ~~Occupational Pneumoconiosis Board, that an employee has occupational pneumoconiosis, but~~
 21 ~~without measurable pulmonary impairment therefrom, the employee shall be awarded and paid~~
 22 ~~20 weeks of benefits at the same benefit rate as herein provided.~~

23 If the employee dies from occupational pneumoconiosis, the benefits shall be as provided
 24 for in §23-4-10 of this code; as to the benefits, §23-4-11 through §23-4-14 of this code apply.

25 In cases of permanent disability or death due to occupational pneumoconiosis, as defined
 26 in §23-4-1 of this code, accompanied by active tuberculosis of the lungs, compensation shall be
 27 payable as for disability or death due to occupational pneumoconiosis alone.

28 The provisions of §23-4-16 of this code and §24-5-2 through §24-5-5 of this code providing
 29 for the further adjustment of claims are applicable to the claim of any claimant who receives a
 30 permanent partial disability award for occupational pneumoconiosis.

**§23-4-26. Permanent partial disability awards for workers suffering from pulmonary
 massive fibrosis and/or complicated pneumoconiosis.**

1 In all cases before the Occupational Pneumoconiosis Board where there has been an X-
 2 ray diagnosis of pulmonary massive fibrosis or complicated pneumoconiosis without impairment,
 3 the claimant shall be granted a 25 percent permanent partial disability award by the
 4 commissioner. The award of 25 percent herein shall be offset from any future permanent partial
 5 disability award recommended by the Occupational Pneumoconiosis Board and granted by the
 6 commissioner or claims administrator.

NOTE: The purpose of this bill is to provide benefits to employees with pneumoconiosis under certain circumstances.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.