

Senate Bill No. 51

(By Senator Yost)

[Introduced January 14, 2015; referred to the Committee on Banking and Insurance; then to the Committee on the Judiciary; and then to the Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §23-4-6a of the Code of West Virginia, 1931, as amended, relating to workers' compensation benefits; and providing an award for occupational pneumoconiosis when there is a finding of no measurable pulmonary impairment.

Be it enacted by the Legislature of West Virginia:

That §23-4-6a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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.

If an employee is found to be permanently disabled due to occupational pneumoconiosis, as defined in section one of this article, the percentage of permanent disability is determined by the degree of medical impairment that is found by the Occupational Pneumoconiosis Board. The commission, successor to the commission, other private carrier or self-insured employer, whichever

1 is applicable, shall enter an order setting forth the findings of the Occupational Pneumoconiosis
2 Board with regard to whether the claimant has occupational pneumoconiosis and the degree of
3 medical impairment, if any, resulting therefrom. That order is the final decision of the commission
4 for purposes of section one, article five of this chapter. If a decision is objected to, the office of
5 judges shall affirm the decision of the Occupational Pneumoconiosis Board made following hearing
6 unless the decision is clearly wrong in view of the reliable, probative and substantial evidence on the
7 whole record. Compensation is paid therefor in the same manner and at the same rate as is provided
8 for permanent disability under the provisions of subdivisions (d), (e), (g), (h), (i), (j), (k), (m) and
9 (n), section six of this article: *Provided, That for any employee who applies for occupational*
10 ~~pneumoconiosis benefits whose award was granted on or after the effective date of the amendment~~
11 ~~and reenactment of this section during the year two thousand three, there shall be no permanent~~
12 ~~partial disability awarded based solely upon a diagnosis of occupational pneumoconiosis, it being~~
13 ~~the intent of the Legislature to eliminate any permanent partial disability awards for occupational~~
14 ~~pneumoconiosis without a specific finding of measurable impairment~~ if it is determined by the
15 division in accordance with the facts of the case and with the advice and recommendation of the
16 Occupational Pneumoconiosis Board that an employee has occupational pneumoconiosis, but
17 without measurable pulmonary impairment therefrom, the employee shall be awarded and paid
18 twenty weeks of benefits at the same benefits rate as provided herein.

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

22 In cases of permanent disability or death due to occupational pneumoconiosis, as defined in

1 section one of this article, accompanied by active tuberculosis of the lungs, compensation shall be
2 payable as for disability or death due to occupational pneumoconiosis alone.

3 The provisions of section sixteen of this article and sections two, three, four and five, article
4 five of this chapter providing for the further adjustment of claims are applicable to the claim of any
5 claimant who receives a permanent partial disability award for occupational pneumoconiosis.

NOTE: The purpose of this bill is to provide an employee, without measurable pulmonary impairment, twenty weeks of benefits at the same benefits rate as otherwise provided in this section which is a five percent benefit.

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