

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 38

BY SENATORS STOLLINGS, CAPUTO, HAMILTON, BALDWIN,

JEFFRIES, SMITH, LINDSAY, IHLENFELD, ROMANO, AND

TAKUBO

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

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §23-4D-1, §23-4D-2, §23-4D-3, §23-4D-4, §23-4D-5, and §23-4D-6, all
 3 relating to creating the West Virginia Black Lung Program; granting entitlement for pain
 4 and suffering for occupational pneumoconiosis; providing that 10 years' exposure as a
 5 miner is a conclusive presumption of entitlement to pain and suffering benefits; calculation
 6 of benefits; tax credit for benefits; imposing additional severance tax and tax on generation
 7 of electricity by solar and wind devices; creating the State Black Lung Fund; requiring the
 8 Governor and Legislature to cooperate with other states to attempt to recoup the federal
 9 excise tax on coal; and proposing rules by the Insurance Commissioner and Tax
 10 Commissioner.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4D. WEST VIRGINIA STATE BLACK LUNG PROGRAM.

§23-4D-1. Black lung program; rules.

1 Notwithstanding any other provision of this code to the contrary, a claim for pain and
 2 suffering for occupational pneumoconiosis shall be governed by this article. Beginning on July 1,
 3 2021, the Insurance Commissioner shall propose rules for legislative approval in accordance with
 4 §29A-3-1 et seq. of this code to implement the purposes of this article and institute the West
 5 Virginia State Black Lung Program.

§23-4D-2. Presumption of black lung; 15 years' exposure.

1 (a) If it is shown that the claimant or deceased employee has been exposed to the hazards
 2 of inhaling minute particles of dust in the course of and resulting from his or her employment in
 3 West Virginia for a period of 10 years during the 15 years immediately preceding the date of his
 4 or her last exposure to such hazard and that the claimant or deceased employee has sustained
 5 a chronic respiratory disability, there is a presumption that the claimant is suffering or the
 6 deceased employee was suffering at the time of his or her death from occupational
 7 pneumoconiosis which arose out of and in the course of his or her employment. This presumption

8 is conclusive for the purpose of establishing an entitlement to pain and suffering.

9 (b) Once proof is provided to establish a miners' 15 years of exposure and presumptive
10 requirement that the miner has occupational pneumoconiosis or black lung the claimant is entitled
11 to monetary benefits for pain and suffering alone. A total disability is not required to receive these
12 benefits and these benefits may be received in addition to any total disability award or federal
13 black lung benefits.

§23-4D-3. Calculation of benefits; claimants receiving federal benefits.

1 A claimant who has established exposure of 15 years is entitled to receive a monthly
2 payment of \$200. A claimant is also entitled to a monthly increase of \$15 for each year in addition
3 to the initial 15 years of exposure. A work year shall be calculated in terms of the number of hours
4 a claimant worked during a calendar year. For this purpose, 1000 hours shall be considered a
5 full work year. Any time less than 1000 hours in a calendar year shall be prorated when computing
6 the award of the monthly benefit.

§23-4D-4. Tax credit for benefits received under this article.

1 Claimants receiving benefits under this article are entitled to claim those benefits as a
2 credit against their state personal income tax. The Tax Commissioner shall propose rules for
3 legislative approval in accordance with §29A-3-1 et seq. of this code to implement this section.

§23-4D-5. Additional tax imposed on severance of natural resources; and generation of electricity by wind or solar devices.

1 In addition to the taxes imposed under §11-13A-1 et seq. of this code or in any other
2 chapter of this code, there is hereby levied and shall be collected from every person exercising
3 the privilege of severing, extracting, reducing to possession, and producing for sale, profit or
4 commercial use, coal, natural gas or oil, or for the generation of electricity by wind or solar devices
5 equal to one tenth of the existing tax on each such person. The additional revenue generated by
6 these taxes shall be deposited into the "State Black Lung Fund" which is hereby created in the
7 general revenue account to be used exclusively to offset the cost of the Black Lung Program.

8 The Tax Commissioner shall propose rules for legislative approval in accordance with
9 §29A-3-1 et seq. of this code to implement this section.

§23-4D-6. Governor and Legislature to attempt to recoup current tax on coal.

1 The Governor and Legislature shall cooperate with other coal producing states in order to
2 attempt to recoup a portion of the current federal tax on coal as a means to offset the cost of the
3 black lung benefits under this article.

NOTE: The purpose of this bill is to create the West Virginia Black Lung Program and granting entitlement for pain and suffering for occupational pneumoconiosis.

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