

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **Senate Bill 494**

**FISCAL  
NOTE**

By Senators Caputo, Hamilton, Stover, and Plymale

[Introduced January 27, 2023; referred  
to the Committee on the Judiciary; 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 proposal of 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 2023, 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 or  
4 her last exposure to such hazard and that the claimant or deceased employee has sustained a  
5 chronic respiratory disability, there is a presumption that the claimant is suffering or the deceased  
6 employee was suffering at the time of his or her death from occupational pneumoconiosis which  
7 arose out of and in the course of his or her employment. This presumption is conclusive for the

8 purpose of establishing an entitlement to pain and suffering.

9 (b) Once proof is provided to establish a miner's 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 full  
5 work year. Any time less than 1000 hours in a calendar year shall be prorated when computing the  
6 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 the  
3 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.