

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

Senate Bill 895

By Senators Takubo, Smith (Mr. President), Barnhart,
Deeds, Hamilton, Jeffries, Morris, Weld, Woodrum,
and Z. Maynard

[Introduced February 10, 2026; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §23-4-1, §23-4-6, and §23-4-16 of the Code of West Virginia, 1931,
 2 as amended; and to amend the code by adding a new section, designated §23-4-8e,
 3 relating to workers' compensation claims for progressive massive fibrosis; defining terms;
 4 removing time limits for filing or modifying claims for progressive massive fibrosis; and
 5 providing an impairment rating for progressive massive fibrosis.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-1. To whom compensation fund disbursed; occupational pneumoconiosis and other occupational diseases included in "injury" and "personal injury"; definition of occupational pneumoconiosis and other occupational diseases; rebuttable presumption for cardiovascular injury and disease or pulmonary disease for firefighters.

1 (a) Subject to the provisions and limitations elsewhere in this chapter, workers'
 2 compensation benefits shall be paid to the employees of employers subject to this chapter who
 3 have received personal injuries in the course of and resulting from their covered employment or to
 4 the dependents, if any, of the employees in case death has ensued, according to the provisions
 5 hereinafter made: *Provided*, That in the case of any employees of the state and its political
 6 subdivisions, including: Counties; municipalities; cities; towns; any separate corporation or
 7 instrumentality established by one or more counties, cities or towns as permitted by law; any
 8 corporation or instrumentality supported in most part by counties, cities or towns; any public
 9 corporation charged by law with the performance of a governmental function and whose
 10 jurisdiction is coextensive with one or more counties, cities or towns; any agency or organization
 11 established by the Department of Mental Health, or its successor agencies, for the provision of
 12 community health or intellectual and developmental disability services and which is supported, in
 13 whole or in part, by state, county, or municipal funds; board, agency, commission, department, or
 14 spending unit, including any agency created by rule of the Supreme Court of Appeals, who have

15 received personal injuries in the course of, and resulting from, their covered employment, the
16 employees are ineligible to receive compensation while the employees are at the same time, and
17 for the same reason, drawing sick leave benefits. The state employees may only use sick leave for
18 nonjob-related absences consistent with sick leave use and may draw workers' compensation
19 benefits only where there is a job-related injury. This proviso does not apply to permanent benefits:
20 *Provided, however,* That the employees may collect sick leave benefits until receiving temporary
21 total disability benefits. The Division of Personnel shall propose rules for legislative approval
22 pursuant to §29A-3-1 *et seq.* of this code relating to use of sick leave benefits by employees
23 receiving personal injuries in the course of, and resulting from, covered employment: *Provided*
24 *further,* That if an employee is injured in the course of and resulting from covered employment and
25 the injury results in lost time from work and the employee, for whatever reason, uses or obtains
26 sick leave benefits and subsequently receives temporary total disability benefits for the same time
27 period, the employee may be restored sick leave time taken by him or her as a result of the
28 compensable injury by paying to his or her employer the temporary total disability benefits
29 received or an amount equal to the temporary total disability benefits received. The employee shall
30 be restored sick leave time on a day-for-day basis which corresponds to temporary total disability
31 benefits paid to the employer: *And provided further,* That since the intent of this subsection is to
32 prevent an employee of the state or any of its political subdivisions from collecting both temporary
33 total disability benefits and sick leave benefits for the same time period, nothing in this subsection
34 prevents an employee of the state or any of its political subdivisions from electing to receive either
35 sick leave benefits or temporary total disability benefits, but not both.

36 (b) For the purposes of this chapter, the terms "injury" and "personal injury" include
37 occupational pneumoconiosis and any other occupational disease, as hereinafter defined, and
38 workers' compensation benefits shall be paid to the employees of the employers in whose
39 employment the employees have been exposed to the hazards of occupational pneumoconiosis
40 or other occupational disease and have contracted occupational pneumoconiosis or other

41 occupational disease, or have suffered a perceptible aggravation of an existing pneumoconiosis or
42 other occupational disease, or to the dependents, if any, of the employees, in case death has
43 ensued, according to the provisions hereinafter made: *Provided*, That compensation is not
44 payable for the disease of occupational pneumoconiosis, or death resulting from the disease,
45 unless the employee has been exposed to the hazards of occupational pneumoconiosis in the
46 State of West Virginia over a continuous period of not less than two years during the 10 years
47 immediately preceding the date of his or her last exposure to such hazards, or for any five of the 15
48 years immediately preceding the date of his or her last exposure. An application for benefits on
49 account of occupational pneumoconiosis shall set forth the name of the employer or employers
50 and the time worked for each. The commission may allocate to and divide any charges resulting
51 from such claim among the employers by whom the claimant was employed for as much as 60
52 days during the period of three years immediately preceding the date of last exposure to the
53 hazards of occupational pneumoconiosis. The allocation shall be based upon the time and degree
54 of exposure with employer.

55 (c) For the purposes of this chapter, disability or death resulting from occupational
56 pneumoconiosis, as defined in subsection (d) of this section, shall be treated and compensated as
57 an injury by accident.

58 (d) Occupational pneumoconiosis is a disease of the lungs caused by the inhalation of
59 minute particles of dust over a period of time due to causes and conditions arising out of, and in the
60 course of, the employment. The term "occupational pneumoconiosis" includes, but is not limited
61 to, such diseases as silicosis, anthracosilicosis, coal worker's pneumoconiosis, commonly known
62 as black lung or miner's asthma, silicotuberculosis (silicosis accompanied by active tuberculosis of
63 the lungs), coal worker's pneumoconiosis accompanied by active tuberculosis of the lungs,
64 asbestosis, siderosis, anthrax, and any and all other dust diseases of the lungs and conditions and
65 diseases caused by occupational pneumoconiosis which are not specifically designated in this
66 section meeting the definition of occupational pneumoconiosis set forth in this subsection. The

67 Legislature recognizes the severity of progressive massive fibrosis, as opposed to simple
68 occupational pneumoconiosis, and its progressive nature resulting from exposure to coal and
69 silica dust in the mines of this state. As used in this article, "pulmonary massive fibrosis" means the
70 presence of one or more large opacities (greater than 1 centimeter in diameter) as diagnosed by x-
71 ray or computed tomography scan according to the currently adopted standards for the diagnosis
72 of pneumoconiosis

73 (e) In determining the presence of occupational pneumoconiosis, x-ray evidence may be
74 considered, but may not be accorded greater weight than any other type of evidence
75 demonstrating occupational pneumoconiosis.

76 (f) For the purposes of this chapter, occupational disease means a disease incurred in the
77 course of and resulting from employment. No ordinary disease of life to which the general public is
78 exposed outside of the employment is compensable except when it follows as an incident of
79 occupational disease as defined in this chapter. Except in the case of occupational
80 pneumoconiosis, a disease is considered to have been incurred in the course of, or to have
81 resulted from, the employment only if it is apparent to the rational mind, upon consideration of all
82 the circumstances: (1) That there is a direct causal connection between the conditions under
83 which work is performed and the occupational disease; (2) that it can be seen to have followed as
84 a natural incident of the work as a result of the exposure occasioned by the nature of the
85 employment; (3) that it can be fairly traced to the employment as the proximate cause; (4) that it
86 does not come from a hazard to which workmen would have been equally exposed outside of the
87 employment; (5) that it is incidental to the character of the business and not independent of the
88 relation of employer and employee; and (6) that it appears to have had its origin in a risk connected
89 with the employment and to have flowed from that source as a natural consequence, though it
90 need not have been foreseen or expected before its contraction: *Provided*, That compensation is
91 not payable for an occupational disease or death resulting from the disease unless the employee
92 has been exposed to the hazards of the disease in the State of West Virginia over a continuous

93 period that is determined to be sufficient, by rule of the Insurance Commissioner and Industrial
94 Council, for the disease to have occurred in the course of and resulting from the employee's
95 employment. An application for benefits on account of an occupational disease shall set forth the
96 name of the employer or employers and the time worked for each. The commission may allocate
97 to and divide any charges resulting from the claim among the employers by whom the claimant
98 was employed. The allocation shall be based upon the time and degree of exposure with each
99 employer.

100 (g) No award may be made under the provisions of this chapter for any occupational
101 disease contracted prior to July 1, 1949. An employee has contracted an occupational disease
102 within the meaning of this subsection if the disease or condition has developed to such an extent
103 that it can be diagnosed as an occupational disease.

104 (h) For purposes of this chapter, a rebuttable presumption that a professional firefighter
105 who has developed a cardiovascular or pulmonary disease or sustained a cardiovascular injury or
106 who has developed leukemia, lymphoma, multiple myeloma, bladder cancer, mesothelioma, or
107 testicular cancer arising out of, and in the course of, employment as a firefighter has received an
108 injury or contracted a disease arising out of, and in the course of, his or her employment exists if:
109 (A) The person has been actively employed by a fire department as a professional firefighter for a
110 minimum of two years prior to the cardiovascular injury or onset of a cardiovascular or pulmonary
111 disease or death; (B) the injury or onset of the disease or death occurred within six months of
112 having participated in firefighting or a training or drill exercise which actually involved firefighting;
113 and (C) in the case of the development of leukemia, lymphoma, multiple myeloma, bladder cancer,
114 mesothelioma, or testicular cancer, the person has been actively employed by a fire department as
115 a professional firefighter for a minimum of five years in the state prior to the development of
116 leukemia, lymphoma, multiple myeloma, bladder cancer, mesothelioma, or testicular cancer, has
117 not used tobacco products more than six times in a calendar year for at least 10 years, and is not
118 over the age of 65 years. When the above conditions are met, it shall be presumed that sufficient

119 notice of the injury, disease, or death has been given and that the injury, disease, or death was not
120 self-inflicted. The amendments made to this section during the regular session of the Legislature,
121 2024, to include bladder cancer, mesothelioma or testicular cancer arising out of, and in the course
122 of, employment as a firefighter as a rebuttable presumption expire on July 1, 2027, unless
123 extended by the Legislature.

124 (i) Claims for occupational disease as defined in §23-4-1(f) of this code, except
125 occupational pneumoconiosis for all workers and pulmonary disease and cardiovascular injury
126 and disease for professional firefighters, shall be processed in like manner as claims for all other
127 personal injuries.

§23-4-6. Classification of and criteria for disability benefits.

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

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

8 (b) For all awards made on and after the effective date of the amendment and reenactment
9 of this section during the year 2003, if the injury causes temporary total disability, the employee
10 shall receive during the continuance of the disability a maximum weekly benefit to be computed on
11 the basis of sixty-six and two-thirds percent of the average weekly wage earnings, wherever
12 earned, of the injured employee, at the date of injury, not to exceed one hundred percent of the
13 average weekly wage in West Virginia: *Provided*, That in no event shall an award for temporary
14 total disability be subject to annual adjustments resulting from changes in the average weekly
15 wage in West Virginia: *Provided, however*, in the case of a claimant whose award was granted
16 prior to the effective date of the amendment and reenactment of this section during the year 2003,

17 the maximum benefit rate shall be the rate applied under the prior enactment of this subsection
18 which was in effect at the time the injury occurred. The minimum weekly benefits paid under this
19 subdivision shall not be less than thirty-three and one-third percent of the average weekly wage in
20 West Virginia, except as provided in sections six-d and nine of this article. In no event, however,
21 shall the minimum weekly benefits exceed the level of benefits determined by use of the applicable
22 federal minimum hourly wage: *Provided further*, That any claimant receiving permanent total
23 disability benefits, permanent partial disability benefits or dependents' benefits prior to July 1,
24 1994, shall not have his or her benefits reduced based upon the requirement in this subdivision
25 that the minimum weekly benefit shall not exceed the applicable federal minimum hourly wage.

26 (c) Subdivision (b) of this section is limited as follows: Aggregate award for a single injury
27 causing temporary disability shall be for a period not exceeding two hundred eight weeks;
28 aggregate award for a single injury for which an award of temporary total disability benefits is
29 made on or after the effective date of the amendment and reenactment of this section in the year
30 2003 shall be for a period not exceeding one hundred four weeks. Notwithstanding any other
31 provision of this subdivision to the contrary, no person may receive temporary total disability
32 benefits under an award for a single injury for a period exceeding one hundred four weeks from the
33 effective date of the amendment and reenactment of this section in the year 2003.

34 (d) For all awards of permanent total disability benefits that are made on or after February
35 2, 1995, including those claims in which a request for an award was pending before the division or
36 which were in litigation but not yet submitted for a decision, then benefits shall be payable until the
37 claimant attains the age necessary to receive federal old age retirement benefits under the
38 provisions of the Social Security Act, 42 U.S.C. §§401 and 402, in effect on the effective date of
39 this section. The claimant shall be paid benefits so as not to exceed a maximum benefit of sixty-six
40 and two-thirds percent of the claimant's average weekly wage earnings, wherever earned, at the
41 time of the date of injury not to exceed one hundred percent of the average weekly wage in West
42 Virginia. The minimum weekly benefits paid under this section shall be as is provided for in

43 subdivision (b) of this section. In all claims in which an award for permanent total disability benefits
44 was made prior to February 2, 1995, the awards shall continue to be paid at the rate in effect prior
45 to the effective date of the amendment and reenactment of this section in the year 2003: *Provided,*
46 That the provisions of sections one through eight, inclusive, article four-a of this chapter shall be
47 applied thereafter to all prior awards that were previously subject to its provisions. A single or
48 aggregate permanent disability of eighty-five percent or more entitles the employee to a rebuttable
49 presumption of a permanent total disability for the purpose of paragraph (2), subdivision (n) of this
50 section: *Provided, however,* That the claimant must also be at least fifty percent medically
51 impaired upon a whole body basis or has sustained a thirty-five percent statutory disability
52 pursuant to the provisions of subdivision (f) of this section. The presumption may be rebutted if the
53 evidence establishes that the claimant is not permanently and totally disabled pursuant to
54 subdivision (n) of this section. Under no circumstances may the commission, successor to the
55 commission, other private carrier or self-insured employer, whichever is applicable, grant an
56 additional permanent disability award to a claimant receiving a permanent total disability award:
57 *Provided further,* That if any claimant thereafter sustains another compensable injury and has
58 permanent partial disability resulting from the injury, the total permanent disability award benefit
59 rate shall be computed at the highest benefit rate justified by any of the compensable injuries.

60 (e) (1) For all awards made on or after the effective date of the amendment and
61 reenactment of this section during the year 2003, if the injury causes permanent disability less
62 than permanent total disability, the percentage of disability to total disability shall be determined
63 and the award computed on the basis of four weeks' compensation for each percent of disability
64 determined at the maximum or minimum benefit rates as follows: Sixty-six and two-thirds percent
65 of the average weekly wage earnings, wherever earned, of the injured employee at the date of
66 injury, not to exceed seventy percent of the average weekly wage in West Virginia: *Provided,* That
67 in no event shall an award for permanent partial disability be subject to annual adjustments
68 resulting from changes in the average weekly wage in West Virginia: *Provided, however,* That in

69 the case of a claimant whose award was granted prior to the effective date of the amendment and
70 reenactment of this section during the year 2003, the maximum benefit rate shall be the rate
71 applied under the prior enactment of this section which was in effect at the time the injury occurred.

72 (2) If a claimant is released by his or her treating physician to return to work at the job he or
73 she held before the occupational injury occurred and if the claimant's preinjury employer does not
74 offer the preinjury job or a comparable job to the employee when a position is available to be
75 offered, the award for the percentage of partial disability shall be computed on the basis of six
76 weeks of compensation for each percent of disability.

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

79 (f) If the injury results in the total loss by severance of any of the members named in this
80 subdivision, the percentage of disability shall be determined by the percentage of disability,
81 specified in the following table:

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

83 The loss of a great toe (one phalanx) shall be considered a five percent disability.

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

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

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

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

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

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

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

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

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

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

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

96 The loss of ring or third finger shall be considered a five percent disability.

97 The loss of middle or second finger (one phalanx) shall be considered a three percent

98 disability.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

114 The loss of arm shall be considered a sixty percent disability.

115 The total and irrecoverable loss of the sight of one eye shall be considered a thirty-three

116 percent disability. For the partial loss of vision in one or both eyes, the percentages of disability

117 shall be determined by the commission, using as a basis the total loss of one eye.

118 The total and irrecoverable loss of the hearing of one ear shall be considered a twenty-two

119 and one-half percent disability. The total and irrecoverable loss of hearing of both ears shall be

120 considered a fifty-five percent disability.

121 For the partial loss of hearing in one or both ears, the percentage of disability shall be
122 determined by the commission, successor to the commission, other private carrier or self-insured
123 employer, whichever is applicable, using as a basis the total loss of hearing in both ears.

124 If a claimant sustains a compensable injury which results in the total loss by severance of
125 any of the bodily members named in this subdivision or dies from sickness or noncompensable
126 injury before the commission makes the proper award for the injury, the commission shall make
127 the award to the claimant's dependents as defined in this chapter, if any; the payment to be made
128 in the same installments that would have been paid to claimant if living: *Provided*, That no payment
129 shall be made to any surviving spouse of the claimant after his or her remarriage and that this
130 liability shall not accrue to the estate of the claimant and is not subject to any debts of, or charges
131 against, the estate.

132 (g) If a claimant to whom has been made a permanent partial award dies from sickness or
133 noncompensable injury, the unpaid balance of the award shall be paid to claimant's dependents as
134 defined in this chapter, if any; the payment to be made in the same installments that would have
135 been paid to claimant if living: *Provided*, That no payment shall be made to any surviving spouse of
136 the claimant after his or her remarriage, and that this liability shall not accrue to the estate of the
137 claimant and is not subject to any debts of, or charges against, such estate.

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

140 (i) For the purposes of this chapter, with the exception of those injuries provided for in
141 subdivision (f) of this section and in section six-b of this article, the degree of permanent disability
142 other than permanent total disability shall be determined exclusively by the degree of whole body
143 medical impairment that a claimant has suffered. For those injuries provided for in subdivision (f) of
144 this section and section six-b of this article, the degree of disability shall be determined exclusively
145 by the provisions of said subdivision and said section. The occupational pneumoconiosis board
146 created pursuant to section eight-a of this article shall premise its decisions on the degree of

147 pulmonary function impairment that claimants suffer solely upon whole body medical impairment:
148 Provided, That a diagnosis of progressive massive fibrosis shall be considered a fifteen percent
149 disability. The Workers' Compensation Commission shall adopt standards for the evaluation of
150 claimants and the determination of a claimant's degree of whole body medical impairment. Once
151 the degree of medical impairment has been determined, that degree of impairment shall be the
152 degree of permanent partial disability that shall be awarded to the claimant. This subdivision is
153 applicable to all injuries incurred and diseases with a date of last exposure on or after February 2,
154 1995, to all applications for an award of permanent partial disability made on and after that date
155 and to all applications for an award of permanent partial disability that were pending before the
156 commission or pending in litigation but not yet submitted for decision on and after that date. The
157 prior provisions of this subdivision remain in effect for all other claims.

158 (j) From a list of names of seven persons submitted to the executive director by the health
159 care advisory panel, the executive director shall appoint an interdisciplinary examining board
160 consisting of five members to evaluate claimants, including by examination if the board elects. The
161 interdisciplinary examining board shall terminate upon termination of the commission and all
162 administrative and adjudicatory functions performed by the interdisciplinary examining board shall
163 be performed by the following reviewing bodies for those claims over which they have
164 administrative jurisdiction: (1) The Insurance Commissioner or his or her designated administrator
165 of each of the funds set forth in this chapter; (2) Private carriers; or (3) Self-insured employers. The
166 reviewing bodies shall employ or otherwise engage adequate resources, including medical
167 professionals, to perform the functions of the interdisciplinary examining board. The board shall be
168 composed of three qualified physicians with specialties and expertise qualifying them to evaluate
169 medical impairment and two vocational rehabilitation specialists who are qualified to evaluate the
170 ability of a claimant to perform gainful employment with or without retraining. One member of the
171 board shall be designated annually as chairperson by the executive director. The term of office of
172 each member of the board shall be six years and until his or her successor has been appointed

173 and has qualified. Any member of the board may be appointed to any number of terms. Any two
174 physician members and one vocational rehabilitation specialist member shall constitute a quorum
175 for the transaction of business. The executive director, from time to time, shall fix the
176 compensation to be paid to each member of the board, and the members are also entitled to
177 reasonable and necessary traveling and other expenses incurred while actually engaged in the
178 performance of their duties. The board shall perform the duties and responsibilities assigned by
179 the provisions of this chapter, consistent with the administrative policies developed by the
180 executive director with the approval of the board of managers.

181 (1) The executive director shall establish requirements for the proper completion and
182 support for an application for permanent total disability benefits within an existing or a new rule no
183 later than January 1, 2004. Upon adoption of the rule by the board of managers, no issue of
184 permanent total disability may be referred to the interdisciplinary examining board, or, any other
185 reviewing body, unless a properly completed and supported application for permanent total
186 disability benefits has been first filed. Prior to the referral of any issue to the interdisciplinary
187 examining board, or, upon its termination, prior to a reviewing body's adjudication of a permanent
188 total disability application, the commission, or reviewing body shall conduct examinations of the
189 claimant that it finds necessary and obtain all pertinent records concerning the claimant's medical
190 history and reports of examinations and forward them to the board at the time of the referral. The
191 commission or reviewing body shall provide adequate notice to the employer of the filing of the
192 request for a permanent total disability award and the employer shall be granted an appropriate
193 period in which to respond to the request. The claimant and the employer may furnish all pertinent
194 information to the board or other reviewing body and shall furnish to the board or other reviewing
195 body any information requested. The claimant and the employer may each submit no more than
196 one report and opinion regarding each issue present in a given claim. The employer may have the
197 claimant examined by medical specialists and vocational rehabilitation specialists: *Provided*, That
198 the employer is entitled to only one examination on each issue present in a given claim. Any

199 additional examinations must be approved by the commission or other reviewing body and shall
200 be granted only upon a showing of good cause. The reports from all employer-conducted
201 examinations must be filed with the board or other reviewing body and served upon the claimant.
202 The board or other reviewing body may request that those persons who have furnished reports
203 and opinions regarding a claimant provide it with additional information considered necessary.
204 Both the claimant and the employer, as well as the commission, or other reviewing body may
205 submit or obtain reports from experts challenging or supporting the other reports in the record
206 regardless of whether or not the expert examined the claimant or relied solely upon the evidence
207 of record.

208 (2) If the board or a quorum of the board elects to examine a claimant, the individual
209 members shall conduct any examinations that are pertinent to each of their specialties. If a claim
210 presents an issue beyond the expertise of the board, the board may obtain advice or evaluations
211 by other specialists. In addition, if the board of managers determines that the number of
212 applications pending before the interdisciplinary examining board has exceeded the level at which
213 the board can review and make recommendations within a reasonable time, the board of
214 managers may authorize the executive director to appoint any additional members to the board
215 that are necessary to reduce the backlog of applications. The additional members shall be
216 recommended by the health care advisory panel. The executive director may make any
217 appointments he or she chooses from the recommendations. The additional board members shall
218 not serve a set term but shall serve until the board of managers determines that the number of
219 pending applications has been reduced to an acceptable level.

220 (3) Referrals to the board shall be limited to matters related to the determination of
221 permanent total disability under the provisions of subdivision (n) of this section and to questions
222 related to medical cost containment, utilization review decisions and managed care decisions
223 arising under section three of this article.

224 (4) In the event the board members or other reviewing body elects to examine a claimant,

225 the board or other reviewing body shall prepare a report stating the tests, examinations,
226 procedures and other observations that were made, the manner in which each was conducted and
227 the results of each. The report shall state the findings made by the board or other reviewing body
228 and the reasons for the findings. Copies of the reports of all examinations made by the board or
229 other reviewing body shall be served upon the parties and the commission until its termination.
230 Each shall be given an opportunity to respond in writing to the findings and conclusions stated in
231 the reports.

232 (5) The board or other reviewing body shall state its initial recommendations to the
233 commission in writing with an explanation for each recommendation setting forth the reasons for
234 each. The recommendations shall be served upon the parties and the commission and each shall
235 be afforded a thirty-day opportunity to respond in writing to the board or other reviewing body
236 regarding its recommendations. The board or other reviewing body shall review any responses
237 and issue its final recommendations. The final recommendations shall be effectuated by the entry
238 of an appropriate order by the commission, or, upon its termination, the private carrier or self-
239 insured employer. For all awards for permanent total disability where the claim was filed on or after
240 the effective date of the amendment and reenactment of this section in the year 2003, the
241 commission or other reviewing body shall establish the date of onset of the claimant's permanent
242 total disability as the date when a properly completed and supported application for permanent
243 total disability benefits as prescribed in subdivision (1) of this subsection that results in a finding of
244 permanent total disability was filed with the commission or other reviewing body: *Provided*, That
245 upon notification of the commission or other reviewing body by a claimant or his or her
246 representative that the claimant seeks to be evaluated for permanent total disability, the
247 commission or other reviewing body shall send the claimant or his or her representative the proper
248 application form. The commission or other reviewing body shall set time limits for the return of the
249 application. A properly completed and supported application returned within the time limits set by
250 the commission or other reviewing body shall be treated as if received on the date the commission

251 or other reviewing body was notified the claimant was seeking evaluation for permanent total
252 disability: *Provided, however,* That notwithstanding any other provision of this section to the
253 contrary, the onset date may not be sooner than the date upon which the claimant meets the
254 percentage thresholds of prior permanent partial disability that are established by subsection (n) of
255 this section as a prerequisite to the claimant's qualification for consideration for a permanent total
256 disability award.

257 (6) Except as noted below, objections pursuant to section one, article five of this chapter to
258 any order shall be limited in scope to matters within the record developed before the Workers'
259 Compensation Commission and the board or other reviewing body and shall further be limited to
260 the issue of whether the board or other reviewing body properly applied the standards for
261 determining medical impairment, if applicable, and the issue of whether the board's findings are
262 clearly wrong in view of the reliable, probative and substantial evidence on the whole record. The
263 preponderance of the evidence set forth in article one of this chapter shall apply to decisions made
264 by reviewing bodies other than the commission instead of the clearly wrong standard. If either
265 party contends that the claimant's condition has changed significantly since the review conducted
266 by the board or other reviewing body, the party may file a motion with the administrative law judge,
267 together with a report supporting that assertion. Upon the filing of the motion, the administrative
268 law judge shall cause a copy of the report to be sent to the examining board or other reviewing
269 body asking the board to review the report and provide comments if the board chooses within sixty
270 days of the board's receipt of the report. The board or other reviewing body may either supply
271 comments or, at the board's or other reviewing body's discretion, request that the claim be
272 remanded to the board for further review. If remanded, the claimant is not required to submit to
273 further examination by the employer's medical specialists or vocational rehabilitation specialists.
274 Following the remand, the board or other reviewing body shall file its recommendations with the
275 administrative law judge for his or her review. If the board or other reviewing body elects to
276 respond with comments, the comments shall be filed with the administrative law judge for his or

277 her review. Following the receipt of either the board's or other reviewing body's recommendations
278 or comments, the administrative law judge shall issue a written decision ruling upon the asserted
279 change in the claimant's condition. No additional evidence may be introduced during the review of
280 the objection before the office of judges or elsewhere on appeal: *Provided*, That each party and the
281 commission may submit one written opinion on each issue pertinent to a given claim based upon a
282 review of the evidence of record either challenging or defending the board's or other reviewing
283 body's findings and conclusions. Thereafter, based upon the evidence of record, the
284 administrative law judge shall issue a written decision containing his or her findings of fact and
285 conclusions of law regarding each issue involved in the objection. The limitation of the scope of
286 review otherwise provided in this subsection is not applicable upon termination of the commission
287 and any objections shall be subject to article five of this chapter in its entirety.

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

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

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

300 Loss of both eyes or the sight thereof.

301 Loss of both hands or the use thereof.

302 Loss of both feet or the use thereof.

303 Loss of one hand and one foot or the use thereof.

304 (n) (1) Other than for those injuries specified in subdivision (m) of this section, in order to be
305 eligible to apply for an award of permanent total disability benefits for all injuries incurred and all
306 diseases, including occupational pneumoconiosis, regardless of the date of last exposure, on and
307 after the effective date of the amendment and reenactment of this section during the year 2003, a
308 claimant: (A) Must have been awarded the sum of fifty percent in prior permanent partial disability
309 awards; (B) must have suffered a single occupational injury or disease which results in a finding by
310 the commission that the claimant has suffered a medical impairment of fifty percent; or (C) has
311 sustained a thirty-five percent statutory disability pursuant to the provisions of subdivision (f) of this
312 section. Upon filing an application, the claim will be reevaluated by the examining board or other
313 reviewing body pursuant to subdivision (i) of this section to determine if the claimant has suffered a
314 whole body medical impairment of fifty percent or more resulting from either a single occupational
315 injury or occupational disease or a combination of occupational injuries and occupational diseases
316 or has sustained a thirty-five percent statutory disability pursuant to the provisions of subdivision
317 (f) of this section. A claimant whose prior permanent partial disability awards total eighty-five
318 percent or more shall also be examined by the board or other reviewing body and must be found to
319 have suffered a whole body medical impairment of fifty percent in order for his or her request to be
320 eligible for further review. The examining board or other reviewing body shall review the claim as
321 provided for in subdivision (j) of this section. If the claimant has not suffered whole body medical
322 impairment of at least fifty percent or has sustained a thirty-five percent statutory disability
323 pursuant to the provisions of subdivision (f) of this section, the request shall be denied. Upon a
324 finding that the claimant has a fifty percent whole body medical impairment or has sustained a
325 thirty-five percent statutory disability pursuant to the provisions of subdivision (f) of this section, the
326 review of the application continues as provided for in the following paragraph of this subdivision.
327 Those claimants whose prior permanent partial disability awards total eighty-five percent or more
328 and who have been found to have a whole body medical impairment of at least fifty percent or have

329 sustained a thirty-five percent statutory disability pursuant to the provisions of subdivision (f) of this
330 section are entitled to the rebuttable presumption created pursuant to subdivision (d) of this
331 section for the remaining issues in the request.

332 (2) For all awards made on or after the effective date of the amendment and reenactment
333 of this section during the year 2003, disability which renders the injured employee unable to
334 engage in substantial gainful activity requiring skills or abilities which can be acquired or which are
335 comparable to those of any gainful activity in which he or she has previously engaged with some
336 regularity and over a substantial period of time shall be considered in determining the issue of total
337 disability. The comparability of preinjury income to post-disability income will not be a factor in
338 determining permanent total disability. Geographic availability of gainful employment within a
339 driving distance of seventy-five miles from the residence of the employee or within the distance
340 from the residence of the employee to his or her preinjury employment, whichever is greater, will
341 be a factor in determining permanent total disability. For any permanent total disability award
342 made after the amendment and reenactment of this section in the year 2003, permanent total
343 disability benefits shall cease at age seventy years. In addition, the vocational standards adopted
344 pursuant to subsection (m), section seven, article three of this chapter shall be considered once
345 they are effective.

346 (3) In the event that a claimant, who has been found to have at least a fifty percent whole
347 body medical impairment or has sustained a thirty-five percent statutory disability pursuant to the
348 provisions of subdivision (f) of this section, is denied an award of permanent total disability benefits
349 pursuant to this subdivision and accepts and continues to work at a lesser paying job than he or
350 she previously held, the claimant is eligible, notwithstanding the provisions of section nine of this
351 article, to receive temporary partial rehabilitation benefits for a period of four years. The benefits
352 shall be paid at the level necessary to ensure the claimant's receipt of the following percentages of
353 the average weekly wage earnings of the claimant at the time of injury calculated as provided in
354 this section and sections six-d and fourteen of this article:

355 (A) Eighty percent for the first year;
356 (B) Seventy percent for the second year;
357 (C) Sixty percent for the third year; and
358 (D) Fifty percent for the fourth year: *Provided*, That in no event shall the benefits exceed
359 one hundred percent of the average weekly wage in West Virginia. In no event shall the benefits be
360 subject to the minimum benefit amounts required by the provisions of subdivision (b) of this
361 section.

362 (4) Notwithstanding any provision of this subsection, subsection (d) of this section or any
363 other provision of this code to the contrary, on any claim filed on or after the effective date of the
364 amendment and reenactment of this section in the year 2003:

365 (A) No percent of whole body medical impairment existing as the result of carpal tunnel
366 syndrome for which a claim has been made under this chapter may be included in the aggregation
367 of permanent disability under the provisions of this subsection or subsection (d) of this section; and

368 (B) No percent of whole body medical impairment existing as the result of any occupational
369 disease, the diagnosis of which is based solely upon symptoms rather than specific, objective and
370 measurable medical findings, and for which a claim has been made under this chapter may be
371 included in the aggregation of permanent disability under the provisions of this subsection or
372 subsection (d) of this section.

373 (o) To confirm the ongoing permanent total disability status of the claimant, the
374 commission, successor to the commission, other private carrier or self-insured employer,
375 whichever is applicable, may elect to have any recipient of a permanent total disability award
376 undergo one independent medical examination during each of the first five years that the
377 permanent total disability award is paid and one independent medical examination during each
378 three-year period thereafter until the claimant reaches the age of seventy years: *Provided*, That
379 the commission, successor to the commission, other private carrier or self-insured employer,
380 whichever is applicable, may elect to have any recipient of a permanent total disability award

381 under the age of fifty years undergo one independent medical examination during each year that
382 the permanent total disability award is paid until the recipient reaches the age of fifty years, and
383 thereafter one independent medical examination during each three-year period thereafter until the
384 claimant reaches the age of seventy years.

§23-4-16. Jurisdiction over case continuous; modification of finding or order; time limitation on awards; reimbursement of claimant for expenses; reopening cases involving permanent total disability; promulgation of rules.

1 (a) The power and jurisdiction of the commission, successor to the commission, other
2 private carrier or self-insured employer, whichever is applicable, over each case is continuing and
3 the commission, successor to the commission, other private carrier or self-insured employer,
4 whichever is applicable, may, in accordance with the provisions of this section and after due notice
5 to the employer, make modifications or changes with respect to former findings or orders that are
6 justified. Upon and after February 2, 1995, the period in which a claimant may request a
7 modification, change or reopening of a prior award that was entered either prior to or after that date
8 shall be determined by the following subdivisions of this subsection. Any request that is made
9 beyond that period shall be refused.

10 (1) Except as provided in section twenty-two of this article, in any claim which was closed
11 without the entry of an order regarding the degree, if any, of permanent disability that a claimant
12 has suffered, or in any case in which no award has been made, any request must be made within
13 five years of the closure. During that time period, only two requests may be filed.

14 (2) Except as stated below, in any claim in which an award of permanent disability was
15 made, any request must be made within five years of the date of the initial award. During that time
16 period, only two requests may be filed. With regard to those occupational diseases, including
17 occupational pneumoconiosis, which are medically recognized as progressive in nature, if any
18 such request is granted by the commission, successor to the commission, other private carrier or
19 self-insured employer, whichever is applicable, a new five-year period begins upon the date of the

20 subsequent award. A new five-year period also begins when a person with occupational
21 pneumoconiosis receives an increased percentage of impairment. With the advice of the health
22 care advisory panel, the executive director and the board of managers shall by rule designate
23 those progressive diseases which are customarily the subject of claims.

24 (3) No further award may be made in fatal cases except within two years after the death of
25 the employee.

26 (4) With the exception of the items set forth in subsection (d), section three of this article, in
27 any claim in which medical or any type of rehabilitation service has not been rendered or durable
28 medical goods or other supplies have not been received for a period of five years, no request for
29 additional medical or any type of rehabilitation benefits shall be granted nor shall any medical or
30 any type of rehabilitation benefits or any type of goods or supplies be paid for by the commission,
31 successor to the commission, other private carrier or self-insured employer, whichever is
32 applicable, if they were provided without a prior request. For the exclusive purposes of this
33 subdivision, medical services and rehabilitation services shall not include any encounter in which
34 significant treatment was not performed.

35 (b) In any claim in which an injured employee makes application for a further period of
36 temporary total disability, if the application is in writing and filed within the applicable time limit
37 stated above, the commission, successor to the commission, other private carrier or self-insured
38 employer, whichever is applicable, shall pass upon the request within thirty days of the receipt of
39 the request. If the decision is to grant the request, the order shall provide for the receipt of
40 temporary total disability benefits. In any case in which an injured employee makes application for
41 a further award of permanent partial disability benefits or for an award of permanent total disability
42 benefits, if the application is in writing and filed within the applicable time limit as stated above, the
43 commission, successor to the commission, other private carrier or self-insured employer,
44 whichever is applicable, shall pass upon the request within thirty days of its receipt and, if the
45 commission determines that the claimant may be entitled to an award, the commission, successor

46 to the commission, other private carrier or self-insured employer, whichever is applicable, shall
47 refer the claimant for further examinations that are necessary.

48 (c) If the application is based on a report of any medical examination made of the claimant
49 and submitted by the claimant to the commission, successor to the commission, other private
50 carrier or self-insured employer, whichever is applicable, in support of his or her application and
51 the claim is opened for further consideration and additional award is later made, the claimant shall
52 be reimbursed for the expenses of the examination. The reimbursement shall be made by the
53 commission, successor to the commission, other private carrier or self-insured employer,
54 whichever is applicable, to the claimant, in addition to all other benefits awarded, upon due proof of
55 the amount thereof being furnished by the claimant, but shall in no case exceed the sum fixed
56 pursuant to the applicable schedule of maximum reasonable fees.

57 (d) The commission, successor to the commission, other private carrier or self-insured
58 employer, whichever is applicable, has continuing power and jurisdiction over claims in which
59 permanent total disability awards have been made after April 8, 1993.

60 (1) The commission, successor to the commission, other private carrier or self-insured
61 employer, whichever is applicable, shall continuously monitor permanent total disability awards
62 and may, from time to time, after due notice to the claimant, reopen a claim for reevaluation of the
63 continuing nature of the disability and possible modification of the award. At such times as the
64 commission may determine, the commission may require the claimant to provide documents and
65 other information to the commission, successor to the commission, other private carrier or self-
66 insured employer, whichever is applicable, including, but not limited to, tax returns, financial
67 records and affidavits demonstrating level of income, recreational activities, work activities,
68 medications used and physicians or other medical or rehabilitation providers treating or
69 prescribing medication or other services for the claimant; require the claimant to appear under
70 oath before the commission, successor to the commission, other private carrier or self-insured
71 employer, whichever is applicable, or its duly authorized representative and answer questions;

72 and suspend or terminate any benefits of a claimant who willfully fails to provide the information or
73 appear as required: *Provided*, That the commission shall develop, implement and complete a
74 program as soon as reasonably possible that requires each person receiving permanent total
75 disability benefits on the effective date of the amendment and reenactment of this section in the
76 year 2003, and each person who is awarded those benefits thereafter, to submit the tax returns
77 and the affidavit described herein at least once: *Provided, however*, That this requirement does not
78 restrict the commission's authority to require the information that may be required herein at such
79 other times as the commission may determine. The commission, successor to the commission,
80 other private carrier or self-insured employer, whichever is applicable, may reopen a claim for
81 reevaluation when, in its sole discretion, it concludes that there exists good cause to believe that
82 the claimant no longer meets the eligibility requirements under subdivision (n), section six of this
83 article. The eligibility requirements, including any vocational standards, shall be applied as those
84 requirements are stated at the time of a claim's reopening.

85 (2) Upon reopening a claim under this subsection, the commission, successor to the
86 commission, other private carrier or self-insured employer, whichever is applicable, may take
87 evidence, have the claimant evaluated, make findings of fact and conclusions of law and shall
88 vacate, modify or affirm the original permanent total disability award as the record requires. The
89 claimant's former employer shall not be a party to the reevaluation, but shall be notified of the
90 reevaluation and may submit any information as the employer may elect. In the event the claimant
91 retains his or her award following the reevaluation, the claimant's reasonable attorneys' fees
92 incurred in defending the award shall be paid by the Workers' Compensation Commission,
93 successor to the commission, other private carrier or self-insured employer, whichever is
94 applicable. In addition, the Workers' Compensation Commission, successor to the commission,
95 other private carrier or self-insured employer, whichever is applicable, shall reimburse a prevailing
96 claimant for his or her costs in obtaining one evaluation on each issue during the course of the
97 reevaluation with the reimbursement being made from the fund. The board of managers shall

98 adopt criteria for the determination of reasonable attorneys' fees.

99 (3) This subsection shall not be applied to awards made under the provisions of
100 subdivision (m), section six of this article. The claimant may seek review of the final order as
101 otherwise provided in article five of this chapter for review of orders granting or denying permanent
102 disability awards.

103 (4) The commission shall establish by rule criteria for review, reopening and reevaluating a
104 claim under this subsection. The commission shall at least quarterly provide a report of the
105 exercise of its authority to continuously monitor permanent total disability awards under this
106 section to the Joint Committee on Government and Finance and the Joint Commission on
107 Economic Development.

108 (e) A claimant may have only one active request for a permanent disability award pending
109 in a claim at any one time. Any new request that is made while another is pending shall be
110 consolidated into the former request.

§23-4-8e. No time limit to file or reopen a claim when pulmonary massive fibrosis is present.

1 Notwithstanding the provisions of §23-4-6(i), §23-4-6a, or §23-4-16(a)(2) of this code, a
2 claimant may file an initial claim or a claim for reopening, without time limitation, of an occupational
3 pneumoconiosis claim where evidence demonstrates the presence of pulmonary massive fibrosis.

NOTE: The purpose of this bill is to recognize progressive massive fibrosis claims as more severe than simple occupational pneumoconiosis in the workers' compensation code.

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