WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1953

ENROLLED

HOUSE BILL No. 272

(By Mr. [Signature])

PASSED March 15, 1953

In Effect July 1, 1953
AN ACT to amend chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by amending and reenacting sections one, three, six, eight-f, ten and fifteen, article four thereof, and section three, article five thereof, all relating to workmen's compensation.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by amending and reenacting sections one, three, six, eight-f, ten, and fifteen, article four thereof, and section three, article five thereof, to read as follows:

Article 4. Disability and Death Benefits.

Section 1. To Whom Compensation Fund Disbursed;

2 Silicosis and Other Occupational Diseases Included in
“Injury” and “Personal Injury”; Definition of Silicosis and Other Occupational Diseases.—Subject to the provisions and limitations elsewhere in this chapter set forth, the commissioner shall disburse the workmen’s compensation fund to the employees of such employers as are not delinquent in the payment of premiums for the quarter in which the injury occurs, and in case of catastrophe, in addition to the employees next above described, to the employees of employers who have elected, under section nine, article two of this chapter, to make payments into the surplus fund as provided in that section, and which employees shall have received personal injuries in the course of and resulting from their employment in this state, or in temporary employment without the state as provided in section one, article two of this chapter, or to the dependents, if any, of such employees in case death has ensued, according to the provisions hereinafter made; and also for the expenses of the administration of this chapter, as provided in section two, article one of this chapter.

For the purposes of this chapter the terms “injury” and
“personal injury” shall be extended to include silicosis and any other occupational disease as hereinafter defined, and the commissioner shall likewise disburse the workmen’s compensation fund to the employees of such employers as are not delinquent in the payment of premiums for the last quarter in which such employees have been exposed to the hazard of silicon dioxide dust or to any other occupational hazard, and have contracted silicosis or other occupational disease, or have suffered a perceptible aggravation of an existing silicosis, in this state in the course of and resulting from their employment, or to the dependents, if any, of such employees, in case death has ensued, according to the provisions hereinafter made: Provided, however, That compensation shall not be payable for the disease of silicosis, or death resulting therefrom, unless in the state of West Virginia the employee has been exposed to the hazard of silicon dioxide dust over a continuous period of not less than two years during the ten years immediately preceding the date of his last exposure to such hazards. An application for benefits on account of silicosis shall set forth
the name of the employer or employers and the time worked for each, and the commissioner may allocate to and divide any charges on account of such claim among the employers by whom the claimant was employed for as much as sixty days during the period of two years immediately preceding the filing of the application. The allocation shall be based upon the time and degree of exposure with each employer.

For the purpose of this chapter silicosis is defined as an insidious fibrotic disease of the lung or lungs due to the prolonged inhalation and accumulation, sustained in the course of and resulting from employment, of minute particles of dust containing silicon dioxide (SiO₂) over such a period of time and in such amounts as result in the substitution of fibrous tissues for normal lung tissues, whether or not accompanied by tuberculosis of the lungs.

Whenever the expression “injurious exposure to silicon dioxide dust”, or “injurious exposure to silicon dioxide dust in harmful quantities”, or “exposure to the hazard of silicon dioxide dust”, or any similar language shall appear in this chapter, such expression shall be
construed to mean the exposure of an employee in the course of his employment to a working condition in which the air contains such a concentration of silicon dioxide dust that the breathing of such air by a person over a long period of time would be likely to cause him to contract the disease of silicosis.

For the purpose of this chapter, occupational disease means a disease incurred in the course of and resulting from employment. No ordinary disease of life to which the general public is exposed outside of the employment shall be compensable except when it follows as an incident of occupational disease as defined in this chapter.

Except in the case of silicosis, a disease shall be deemed to have been incurred in the course of or to have resulted from the employment only if it is apparent to the rational mind, upon consideration of all the circumstances (1) that there is a direct causal connection between the conditions under which work is performed and the occupational disease, (2) that it can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment, (3)
that it can be fairly traced to the employment as the proximate cause, (4) that it does not come from a hazard to which workmen would have been equally exposed outside of the employment, (5) that it is incidental to the character of the business and not independent of the relation of employer and employee, and (6) that it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a natural consequence, though it need not have been foreseen or expected before its contraction.

Except in the case of silicosis, no award shall be made under the provisions of this chapter for any occupational disease contracted prior to the first day of July, one thousand nine hundred forty-nine. An employee shall be deemed to have contracted an occupational disease within the meaning of this paragraph if the disease or condition has developed to such an extent that it can be diagnosed as an occupational disease.

Sec. 3. Disbursements for Medicine, Hospital Treatment, Artificial Limbs and Other Appliances; Contract by Employer with Hospital Prohibited.—Except in case of sili-
cosis, the commissioner shall disburse and pay from the fund for such personal injuries to such employees as may be entitled thereto hereunder as follows:

(a) Such sums for medicine, medical, surgical, dental and hospital treatment, crutches, artificial limbs and such other and additional approved mechanical appliances and devices as may be reasonably required, but in no case to exceed the sum of sixteen hundred dollars: Provided, however, That in exceptional cases where the treatment required, in the opinion of competent medical authority, is such as to necessitate an expenditure in excess of such amount, the commissioner may, with the approval of the employer, pay out of any available funds, such additional sum as may be necessary, not to exceed an additional sum of eight hundred dollars, but such additional sum shall not be charged to the account of the employer.

(b) Payment for such medicine, medical, surgical, dental and hospital treatment, crutches, artificial limbs and such other and additional approved mechanical appliances and devices authorized under subdivision (a) hereof may be made to the injured employee, or to the
person or persons who have furnished such service, or who have advanced payment for same, as the commissioner may deem proper, but no such payments or disbursements shall be made or awarded by him unless duly verified statements on forms prescribed by the commissioner shall be filed with the commissioner within six months after the cessation of such treatment or the delivery of such appliances: Provided, however, That no payment hereunder shall be made unless such verified statement shows no other or additional charge for such treatment, appliance or device has been or will be made against any person, firm or corporation. Failure on the part of the doctor or hospital to submit to the commissioner within such six months' period bills for services rendered to an injured employee shall preclude collection thereof from the injured employee.

(c) No employer shall enter into any contracts with any hospital, its physicians, officers, agents or employees, to render medical, dental or hospital service or to give medical or surgical attention therein to any employee for injury compensable within the purview of his chap-
ter, and no employer shall permit or require any emp-
ployee to contribute, directly or indirectly, to any fund
for the payment of such medical, surgical, dental or hos-
pital service within such hospital for such compensable
injury. Any employer violating this section shall be
liable in damages to his or its employees and shall not
avail himself of any of the common law defenses men-
tioned in section eight, article two of this chapter, and
any employer or hospital or agent or employee thereof
violating the provisions of this section shall be guilty
of a misdemeanor and upon conviction thereof shall be
sentenced to pay a fine not exceeding one thousand dol-
ars or to undergo imprisonment not exceeding one year,
or both.

Sec. 6. Classification of Disability Benefits.—Where
compensation is due an employee under the provisions
of this chapter for a personal injury other than silicosis,
such compensation shall be as provided in the following
schedule:
(a) If the injury causes temporary total disability, the
employee shall receive during the continuance thereof
sixty-six and two thirds per cent of his average weekly
earnings, not to exceed a maximum of thirty dollars a
week nor to be less than a minimum of eighteen dollars
a week.
(b) Subdivision (a) shall be limited as follows: Ag-
gregate award for a single injury causing temporary dis-
ability shall be for a period not exceeding two hundred
eight weeks.
(c) If the injury causes permanent disability, the per-
centage of disability to total disability shall be deter-
mined and the award computed and allowed as follows:
For permanent disability of from one per cent to
eighty-four per cent, inclusive, sixty-six and two-thirds
per cent of the average weekly earnings for a period to
be computed on the basis of four weeks' compensation
for each per cent of disability determined.
For a disability of eighty-five to one hundred per cent,
sixty-six and two-thirds per cent of the average weekly
earnings during the remainder of life.
(d) If the injury results in the total loss by severance
of any of the members named in this subdivision, the per-
The percentage of disability shall be determined in accordance with the following table, and award made as provided in subdivision (c) of this section:

- The loss of a great toe shall be considered a ten per cent disability.
- The loss of a great toe (one phalanx) shall be considered a five per cent disability.
- The loss of other toes shall be considered a four per cent disability.
- The loss of other toes (one phalanx) shall be considered a two per cent disability.
- The loss of all toes shall be considered a twenty-five per cent disability.
- The loss of fore part of foot shall be considered a thirty per cent disability.
- The loss of foot shall be considered a thirty-five per cent disability.
- The loss of leg shall be considered a forty-five per cent disability.
- The loss of thigh shall be considered a fifty per cent disability.
The loss of thigh at hip joint shall be considered a sixty per cent disability.

The loss of little or fourth finger (one phalanx) shall be considered a three per cent disability.

The loss of little or fourth finger shall be considered a five per cent disability.

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

The loss of ring or third finger shall be considered a five per cent disability.

The loss of middle or second finger (one phalanx) shall be considered a three per cent disability.

The loss of middle or second finger shall be considered a seven per cent disability.

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

The loss of index or first finger shall be considered a ten per cent disability.

The loss of thumb (one phalanx) shall be considered a twelve per cent disability.
The loss of thumb shall be considered a twenty per cent disability.

The loss of thumb and index finger shall be considered a thirty-two per cent disability.

The loss of index and middle finger shall be considered a twenty per cent disability.

The loss of middle and ring finger shall be considered a fifteen per cent disability.

The loss of ring and little finger shall be considered a ten per cent disability.

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

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

The loss of middle, ring and little finger shall be considered a twenty per cent disability.

The loss of four fingers shall be considered a thirty-two per cent disability.

The loss of hand shall be considered a fifty per cent disability.
The loss of forearm shall be considered a fifty-five per cent disability.

The loss of arm shall be considered a sixty per cent disability.

The total and irrecoverable loss of the sight of one eye shall be considered a thirty-three per cent disability, and the injured employee shall be entitled to compensation for a period of one hundred and thirty-two weeks.

For the partial loss of vision in one, or both eyes, the percentage of disability shall be determined by the commissioner, using as a basis the total loss of one eye.

(e) Should a claimant to whom has been made a permanent partial award of from one per cent to eighty-four per cent, both inclusive, die from sickness or noncompensable injury, the unpaid balance of such award shall be paid to claimant’s dependents as defined in this chapter, if any; such payment to be in the same installments that would have been paid to claimant if living; Provided, however, that no payment shall be made to any widow of such claimant after her remarriage, and that this liability shall not accrue to the estate of such claimant and shall not be
subject to any debts of, or charges against, such estate.

(f) The award for permanent disabilities intermediate to those fixed by the foregoing schedule and permanent disability of from one per cent to eighty-four per cent shall be in the same proportion and shall be computed and allowed by the commissioner.

(g) The percentage of all permanent disabilities other than those enumerated in subdivisions (c), (d), (e) and (f) of this section shall be determined by the commissioner, and award made in accordance with the provisions of subdivision (c).

(h) Compensation payable under any subdivision of this section shall be limited as follows: Not to exceed a maximum of thirty dollars a week, nor to be less than a minimum of eighteen dollars a week.

(i) Where an injury results in temporary total disability for which compensation is awarded under subdivision (a) of this section and such injury is later determined permanent partial disability under subdivision (c), the amount of compensation so paid shall be considered as payment of the compensation payable for such injury in accordance
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with the schedule in subdivision (c). Compensation, either
total temporary or permanent partial, under this section
shall be payable only to the injured employee and the
right thereto shall not vest in his or her estate, except that
any unpaid compensation which would have been paid or
payable to the employee up to the time of his death, if he
had lived, shall be paid to the dependents of such injured
employee if there be such dependents at the time of death.

(j) The following permanent disabilities shall be con-
clusively presumed to be total in character:

Loss of both eyes or the sight thereof.
Loss of both hands or the use thereof.
Loss of both feet or the use thereof.
Loss of one hand and one foot or the use thereof.

In all other cases permanent disability shall be de-
termined by the commissioner in accordance with the
facts in the case, and award made in accordance with the
provisions of subdivision (c).

Sec. 8-f. Occupational Diseases Medical Board; Reports
and Distribution Thereof; Findings Required of Board;
Objection to Findings; Procedure Thereon.—The occupa-
tional diseases medical board, as soon as practicable, after it has completed its investigation, shall make its written report, to the commissioner, of its findings and conclusions on every medical question in controversy, and the commissioner shall send one copy thereof to the employee or claimant and one copy to the employer, and the board shall also return to and file with the commissioner all the evidence, as well as all statements under oath, if any, of the persons who appeared before it or before any examiner appointed by it on behalf of the employee or claimant, or employer, and also all medical reports and X-ray examinations produced by or on behalf of the employee or claimant, or the employer.

The findings and conclusions of the board shall set forth, among other things, the following:

(a) Does the claimant suffer from a disease or infection? If so, what?

(b) When was such disease or infection, if any, contracted and approximately how long has claimant suffered therefrom?

(c) Is such disease or infection, if any, incidental to
25 the industrial process, trade or occupation in which claimant has been last employed?
26 (d) Was such disease or infection, if any, incurred in
27 the course of and did it result from the claimant's regular
28 employment in such industrial process, trade or occupa-
29 tion?
30 (e) Is such disease, if any, disabling to the claimant?
31 (f) If so, to what degree is claimant disabled by such
32 occupational disease?
33 (g) Any other matter deemed pertinent by the board.
34 If the claim be for death benefits under the provisions
35 of this chapter, the medical board shall find on each of
36 the above questions as of a date immediately preceding
37 the employee's death, and in addition shall find the cause
38 of death.
39 If either party objects to the whole or any part of such
40 findings and conclusions of the board, he shall file with
41 the commissioner, within fifteen days of the mailing of
42 such copy to him, unless for good cause shown the com-
43 missioner extends such time, his objections thereto in
44 writing, specifying the particular statements of the
board's findings and conclusions to which he objects.

After the time has expired for the filing of objections to the findings and conclusions of the board, the commissioner shall proceed to act as provided in this chapter.

If after the time has expired for the filing of objections to the findings and conclusions of the board no objections have been filed, the report of a majority of the board of its findings and conclusions on any medical question shall be taken to be plenary and conclusive evidence of the findings and conclusions therein stated. If objection has been filed to the findings and conclusions of the board, notice thereof shall be given to the board, and the members thereof who joined in such findings and conclusions, and any examiner who filed a report in the case, shall appear at the time fixed by the commissioner for the hearing to submit to examination and cross-examination in respect to such findings and conclusions. At such hearing evidence to support or controvert the findings and conclusions of the board shall be heard.

Sec. 10. Classification of Death Benefits; "Dependent" Defined.—In case a personal injury other than silicosis
or other occupational disease, suffered by an employee in the course of and resulting from his employment, causes death within the period of six years and disability is continuous from date of such injury until date of death, or if death results from determined third stage silicosis or from any other occupational disease within six years from the date of the last exposure to the hazard of silicon dioxide dust or to the other particular occupational hazard involved, as the case may be, the benefits shall be in the amounts and to the persons as follows:

(a) If there be no dependents, the disbursements shall be limited to the expense provided for in sections three and four of this article.

(b) If the deceased employee leaves a dependent widow or invalid widower, the payment shall be sixty dollars a month until death or remarriage of such widow or widower, and in addition fifteen dollars a month for each child under eighteen years of age, to be paid until such child reaches such age, or, if an invalid child, twenty dollars a month, to continue as long as such child remains an invalid: Provided, however, That if such widow or
invalid widower shall remarry within ten years from the
date of the death of such employee, such widow or wid-
ower shall be paid at the time of remarriage twenty per
cent of the amount that would be due for the period re-
maining between the date of such remarriage and the end
of ten years from the date of death of such employee, and
such widow or widower shall be advised in writing by
the commissioner of his or her rights under this proviso
at the time of making the original award: Provided
further, That if upon investigation and hearing, as pro-
vided in article five of this chapter, it shall be ascertained
that such widow or widower is living with a man or wom-
an, as the case may be, as man and wife and not married,
or that the widow is living a life of prostitution, the com-
misssioner shall stop the payments of the benefits herein
provided to such widow or widower.

If the deceased employee be a widow or widower and
leaves a child or children under the age of eighteen years,
the payments shall be twenty dollars a month to each
child until he or she reaches the age of eighteen years.

In all awards of compensation to children, unless other-
wise provided herein, the award shall be until they reach
the age of eighteen years or until their death prior
thereto.

(c) If the deceased employee leaves no dependent
widow or widower and leaves a wholly dependent father
or mother, he or she shall be paid the sum of fifty dollars
a month, payments to continue until death, and if there
be no widow or widower and both the father and mother
are wholly dependent, then a joint award shall be made
to the father and mother in the sum of fifty dollars a
month until death. Upon the death of either the father
or mother in any case in which a joint award has been
made to them, the full award of fifty dollars a month shall
be paid to the survivor until his or her death.

(d) If the deceased employee leaves no dependent
widow or widower or wholly dependent father or mother
but there are other wholly dependent persons, as defined
in paragraph (f) of this section, the payment shall be
fifty dollars a month, to continue for six years after the
death of the deceased, except as otherwise provided
herein.
(e) If the deceased employee leaves no dependent widow or widower, child under eighteen years of age, or wholly dependent person, but there are partially dependent persons at the time of death, the payment shall be twenty dollars a month, to continue for such portion of the period of six years after the death, as the commissioner may determine, but no such partially dependent person shall receive compensation payments as a result of the death of more than one employee.

Compensation under subdivisions (b), (c), (d) and (e) hereof shall, except as may be specifically provided to the contrary therein, cease upon the death of the dependent, and the right thereto shall not vest in his or her estate.

(f) Dependent, as used in this chapter, shall mean a widow, invalid widower, child under eighteen years of age, invalid child or a posthumous child, who, at the time of the injury causing death, is dependent in whole or in part for his or her support upon the earnings of the employee; also the following persons who are and continue to be residents of the United States or its territorial pos-
Sec. 15. Application for Benefits; Report of Injuries by Employer.—To entitle any employee or dependent of a deceased employee to compensation under this chapter, other than for silicosis, the application therefor must be made on the form or forms prescribed by the commissioner and filed in the office of the commissioner within one year from and after the injury or death, as the case may be, and all proofs of dependency in fatal cases must likewise be filed with the commissioner within one year from and after the death. In case the employee is mentally or physically incapable of filing such application, it may be filed by his attorney or by a member of his
family. It shall be the duty of every employer to report to the commissioner every injury sustained by any person in his employ. Such report shall be on forms prescribed by the commissioner and shall be made within sixty days from the date the employer first receives knowledge of such injury.

To entitle any employee to compensation for silicosis under the provisions hereof, the application therefor must be made on the form or forms prescribed by the commissioner and filed in the office of the commissioner within two years from and after the last day of the last continuous period of sixty days or more during which the employee was exposed to the hazard of silicon dioxide dust or to the other particular occupational hazard involved, as the case may be, or, in the case of death, the application shall be filed as aforesaid by the dependent of such employee within one year from and after such employee's death.

Sec. 15-b. Nonmedical Questions Determined by the Commissioner in Silicosis Cases; Hearing.—If a claim for silicosis benefits be filed by an employee, the commis-
sioner shall determine whether the claimant's appli-
cation was filed within two years from and after the
last day of the last continuous period of sixty days
or more during which the claimant was exposed to the
hazard of silicon dioxide dust, and whether in the state
of West Virginia the claimant was exposed to such
hazard over a continuous period of not less than two
years during the ten years immediately preceding the
date of his last exposure thereto. If a claim for silicosis
benefits be filed by a dependent of a deceased employee,
the commissioner shall determine whether the deceased
employee's death occurred within six years from the
last day of the last continuous period of sixty days or
more during which the employee was exposed to the
hazard of silicon dioxide dust, and whether in the state
of West Virginia the deceased employee was exposed
to such hazard over a continuous period of not less than
two years during the ten years immediately preceding
the date of his last exposure thereto. The commissioner
shall also determine such other nonmedical facts as
may in his opinion be pertinent to a decision on the validity of the claim.

The commissioner shall give each interested party notice in writing of his findings with respect to all such nonmedical facts and such findings shall be subject to objection and hearing as provided in section one, article five of this chapter.

Article 5. Review.

Sec. 3. Appeal to Board; Procedure.—Any employer, employee, claimant, or dependent, who shall feel aggrieved at any final action of the commissioner taken after a hearing held in accordance with the provisions of section one of this article, and any claimant or employer who shall feel aggrieved at any action of the commissioner in refusing to reopen a claim under the provisions of sections one-b and one-d of this article, shall have the right to appeal to the board created in section two of this article for a review of such action. The aggrieved party shall file a written notice of appeal with the compensation commissioner, directed to such board, within thirty days after receipt of notice of the
action complained of, or in any event, regardless of notice, within sixty days after the date of the action complained of, and the commissioner shall notify the other party immediately upon the filing of a notice of appeal. The commissioner shall forthwith make up a transcript of the proceedings before him and certify and transmit the same to the board. In such certificate, he shall incorporate a brief recital of the proceedings therein had and recite each order entered and the date thereof. The board shall review the action of the commissioner complained of at its next meeting after the filing of notice of appeal, provided such notice of appeal shall have been filed thirty days before such meeting of the board, unless such review be postponed by agreement of parties or by the board for good cause. The board shall set a time and place for the hearing of arguments on each claim and shall notify the interested parties thereof, and briefs may be filed by the interested parties in accordance with the rules of procedure prescribed by the board. And thereupon, after a review of the case, the board shall sustain the finding of the commissioner or
enter such order or make such award as the commis-
36 sioner should have made, stating in writing its reasons
therefor, and shall thereupon certify the same to the
38 commissioner, who shall proceed in accordance there-
39 with. Or, instead of affirming or reversing the com-
missioner as aforesaid, the board may, upon motion of
40 either party or upon its own motion, for good cause
41 shown, to be set forth in the order of the board, remand
42 the case to the commissioner for the taking of such new,
43 additional or further evidence as in the opinion of the
44 board may be necessary for a full and complete de-
45 velopment of the facts of the case. In the event the
47 board shall remand the case to the commissioner for
48 the taking of further evidence therein, the commissioner
49 shall proceed to take such new, additional or further
evidence in accordance with any instructions given by
50 the board, and shall take the same within thirty days
52 after receipt of the order remanding the case, giving
53 to the interested parties at least ten days' written notice
54 of such supplemental hearing, unless the taking of
55 evidence shall be postponed by agreement of parties, or
by the commissioner for good cause. After the completion of such supplemental hearing, the commissioner shall, within sixty days, render his decision affirming, reversing or modifying his former action, which decision shall be appealable to, and proceeded with by the appeal board in like manner as in the first instance. The board may remand any case as often as in its opinion is necessary for a full development and just decision of the case. The board may take evidence or consider ex parte statements furnished in support of any motion to remand the case to the commissioner. All evidence taken by or filed with the board shall become a part of the record. All appeals from the action of the commissioner shall be decided by the board at the same session at which they are heard, unless good cause for delay thereof be shown and entered of record. In all proceedings before the board, either party may be represented by counsel.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the House of Delegates

Takes effect July 1, 1953

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within approved this the 20th
day of December, 1953.

[Signature]
Governor

[Signature]
In the Office of the Secretary of State

MAR 20 1953

D. Pitt O'Brien,
Secretary of State