WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1957

ENROLLED

HOUSE BILL No. 268

(By Mr. Flannery)

PASSED March 8, 1957

In Effect 90 days from Passage
ENROLLED

House Bill No. 268
(By Mr. Speaker, Mr. Flannery)

[Passed March 8, 1957; in effect ninety days from passage.]

AN ACT to amend and reenact sections six and ten, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to benefits and procedures under the workmen's compensation law.

Be it enacted by the Legislature of West Virginia:

That sections six and ten, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, to read as follows:

Section 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 there-
of sixty-six and two-thirds per cent of his average weekly
earnings, not to exceed a maximum of thirty-three dol-
ars a week nor to be less than a minimum of twenty
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 determined
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 com-
puted on the basis of four weeks compensation for each
per cent 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 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 per cent disability.

The loss of index, middle and ring finger shall be considered a thirty per cent 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 of non-compensable 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-three dollars a week, nor to be less than a minimum of twenty 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 de-
terminated 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 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 conclusively 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 determined by the commissioner in accordance with the facts.
Sec. 10. Classification of Death Benefits; “Dependent”

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 a 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 person 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-five dollars a month until death or remarriage of such widow or widower, and in addition seventeen dollars
fifty cents 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 widower shall be paid at the time of remarriage twenty per cent of the amount that would be due for the period remaining 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 provided in article five of this chapter, it shall be ascertained that such widow or widower is living with a man or woman, as the case may be, as man and wife and not married, or that the widow is living a life of prostitution, the commissioner 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 otherwise 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 possessions: Stepchild under eighteen years of age, child under eighteen years of age legally adopted prior to the injury causing death, father, mother, grandfather or grandmother, 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; an invalid brother or sister wholly dependent for his or her support upon the earnings of the employee at the time of the injury causing death.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

E. H. McCourt
Chairman Senate Committee

Chairman House Committee

Originated in the House of Delegates

Takes effect 90 days from passage.

J. T. Turner, Speaker
Clerk of the Senate

C.W. Cawthenshi
Clerk of the House of Delegates

Ralph J. Beall
President of the Senate

W. C. Combs
Speaker, House of Delegates

The within approved this the 15th day of March, 1957.

Governor

Filed in the Office of the Secretary of State of West Virginia, MAR 1 5 1957, by PITT O'BRIEN
SECRETARY OF STATE