

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1957



ENROLLED

HOUSE BILL No. 268

(By Mr. Flannery)



PASSED March 8 1957

In Effect 20 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

2 compensation is due an employee under the provisions
3 of this chapter for a personal injury other than silicosis,
4 such compensation shall be as provided in the following
5 schedule:

6 (a) If the injury causes temporary total disability,

7 the employee shall receive during the continuance there-
8 of sixty-six and two-thirds per cent of his average weekly
9 earnings, not to exceed a maximum of thirty-three dol-
10 lars a week nor to be less than a minimum of twenty
11 dollars a week.

12 (b) Subdivision (a) shall be limited as follows: Ag-
13 gregate award for a single injury causing temporary dis-
14 ability shall be for a period not exceeding two hundred
15 eight weeks.

16 (c) If the injury causes permanent disability, the per-
17 centage of disability to total disability shall be determined
18 and the award computed and allowed as follows:

19 For permanent disability of from one per cent to eighty-
20 four per cent, inclusive, sixty-six and two-thirds per cent
21 of the average weekly earnings for a period to be com-
22 puted on the basis of four weeks compensation for each
23 per cent disability determined.

24 For a disability of eighty-five to one hundred per cent,
25 sixty-six and two-thirds per cent of the average weekly
26 earnings during the remainder of life.

27 (d) If the injury results in the total loss by severance

28 of any of the members named in this subdivision, the per-
29 centage of disability shall be determined in accordance
30 with the following table, and award made as provided in
31 subdivision (c) of this section:

32 The loss of a great toe shall be considered a ten per cent
33 disability.

34 The loss of a great toe (one phalanx) shall be considered
35 a five per cent disability.

36 The loss of other toes shall be considered a four per
37 cent disability.

38 The loss of other toes (one phalanx) shall be considered
39 a two per cent disability.

40 The loss of all toes shall be considered a twenty-five
41 per cent disability.

42 The loss of fore part of foot shall be considered a thirty
43 per cent disability.

44 The loss of foot shall be considered a thirty-five per
45 cent disability.

46 The loss of leg shall be considered a forty-five per cent
47 disability.

48 The loss of thigh shall be considered a fifty per cent
49 disability.

50 The loss of thigh at hip joint shall be considered a sixty
51 per cent disability.

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

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

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

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

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

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

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

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

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

70 The loss of thumb shall be considered a twenty per
71 cent disability.

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

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

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

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

80 The loss of thumb, index, and middle finger shall be
81 considered a forty per cent disability.

82 The loss of index, middle and ring finger shall be con-
83 sidered a thirty per cent disability.

84 The loss of middle, ring and little finger shall be con-
85 sidered a twenty per cent disability.

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

88 The loss of hand shall be considered a fifty per cent
89 disability.

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

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

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

98 For the partial loss of vision in one, or both eyes, the
99 percentage of disability shall be determined by the com-
100 missioner, using as a basis the total loss of one eye.

101 (e) Should a claimant to whom has been made a per-
102 manent partial award of from one per cent to eighty-
103 four per cent, both inclusive, die from sickness of non-
104 compensable injury, the unpaid balance of such award
105 shall be paid to claimant's dependents as defined in this
106 chapter, if any; such payment to be in the same install-
107 ments that would have been paid to claimant if living:
108 *Provided, however,* That no payment shall be made to

109 any widow of such claimant after her remarriage, and
110 that this liability shall not accrue to the estate of such
111 claimant and shall not be subject to any debts of, or
112 charges against, such estate.

113 (f) The award for permanent disabilities intermedi-
114 ate to those fixed by the foregoing schedule and perma-
115 nent disability of from one per cent to eighty-four per
116 cent shall be in the same proportion and shall be com-
117 puted and allowed by the commissioner.

118 (g) The percentage of all permanent disabilities other
119 than those enumerated in subdivisions (c), (d), (e) and
120 (f) of this section shall be determined by the commis-
121 sioner, and award made in accordance with the provi-
122 sions of subdivision (c).

123 (h) Compensation payable under any subdivision of
124 this section shall be limited as follows: Not to exceed a
125 maximum of thirty-three dollars a week, nor to be less
126 than a minimum of twenty dollars a week.

127 (i) Where an injury results in temporary total dis-
128 ability for which compensation is awarded under sub-
129 division (a) of this section and such injury is later de-

130 terminated permanent partial disability under subdivision
131 (c), the amount of compensation so paid shall be con-
132 sidered as payment of the compensation payable for such
133 injury in accordance with the schedule in subdivision
134 (c). Compensation, either total temporary or permanent
135 partial, under this section shall be payable only to the
136 injured employee and the right thereto shall not vest in
137 his or her estate, except that any unpaid compensation
138 which would have been paid or payable to the employee
139 up to the time of his death, if he had lived, shall be paid
140 to the dependents of such injured employee if there be
141 such dependents at the time of death.

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

144 Loss of both eyes or the sight thereof.

145 Loss of both hands or the use thereof.

146 Loss of both feet or the use thereof.

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

148 In all other cases permanent disability shall be deter-
149 mined by the commissioner in accordance with the facts

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150 in the case, and award made in accordance with the pro-
151visions of subdivision (c).

Sec. 10. *Classification of Death Benefits; "Dependent"*

2 *Defined.*—In case a personal injury other than silicosis
3 or other occupational disease, suffered by an employee in
4 the course of and resulting from his employment, causes
5 death within a period of six years and disability is con-
6 tinuous from date of such injury until date of death, or if
7 death results from determined third stage silicosis or from
8 any other occupational disease within six years from the
9 date of the last exposure to the hazard of silicon dioxide
10 dust or to the other particular occupational hazard in-
11 volved, as the case may be, the benefits shall be in the
12 amounts and to the person as follows:

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

16 (b) If the deceased employce leaves a dependent
17 widow or invalid widower, the payment shall be sixty-
18 five dollars a month until death or remarriage of such
19 widow or widower, and in addition seventeen dollars

20 fifty cents a month for each child under eighteen years
21 of age, to be paid until such child reaches such age, or,
22 if an invalid child, twenty dollars a month, to continue as
23 long as such child remains an invalid: *Provided, however,*
24 That if such widow or invalid widower shall remarry
25 within ten years from the date of the death of such em-
26 ployee, such widow or widower shall be paid at the time
27 of remarriage twenty per cent of the amount that would
28 be due for the period remaining between the date of such
29 remarriage and the end of ten years from the date of
30 death of such employee, and such widow or widower
31 shall be advised in writing by the commissioner of his or
32 her rights under this proviso at the time of making the
33 original award: *Provided further,* That if upon investi-
34 gation and hearing, as provided in article five of this
35 chapter, it shall be ascertained that such widow or widow-
36 er is living with a man or woman, as the case may be, as
37 man and wife and not married, or that the widow is liv-
38 ing a life of prostitution, the commissioner shall stop the
39 payments of the benefits herein provided to such widow
40 or widower.

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

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

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

60 (d) If the deceased employee leaves no dependent
61 widow or widower or wholly dependent father or mother

62 but there are other wholly dependent persons, as defined
63 in paragraph (f) of this section, the payment shall be
64 fifty dollars a month, to continue for six years after the
65 death of the deceased, except as otherwise provided
66 herein.

67 (e) If the deceased employee leaves no dependent
68 widow or widower, child under eighteen years of age, or
69 wholly dependent person, but there are partially de-
70 pendent persons at the time of death, the payment shall
71 be twenty dollars a month, to continue for such portion
72 of the period of six years after the death, as the com-
73 missioner may determine, but no such partially dependent
74 person shall receive compensation payments as a result
75 of the death of more than one employee.

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

81 (f) Dependent, as used in this chapter, shall mean a
82 widow, invalid widower, child under eighteen years of

83 age, invalid child or a posthumous child, who, at the time
84 of the injury causing death, is dependent in whole or in
85 part for his or her support upon the earnings of the em-
86 ployee; also the following persons who are and continue
87 to be residents of the United States or its territorial pos-
88 sessions: Stepchild under eighteen years of age, child
89 under eighteen years of age legally adopted prior to the
90 injury causing death, father, mother, grandfather or
91 grandmother, who, at the time of the injury causing death,
92 is dependent in whole or in part for his or her support
93 upon the earnings of the employee; an invalid brother
94 or sister wholly dependent for his or her support upon
95 the earnings of the employee at the time of the injury
96 causing death.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

E. A. McCourt
Chairman Senate Committee

Whitcham
Chairman House Committee

Originated in the House of Delegates

Takes effect *90 days from* passage.

J. Hornum Meyer
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Ralph J. Bean
President of the Senate

W. E. Fleming
Speaker, House of Delegates

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

Jeff A. Hudson
Governor



Filed in the Office of the Secretary of State
of West Virginia, **MAR 15 1957**
D. PITT O'BRIEN
SECRETARY OF STATE