

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1959



ENROLLED

HOUSE BILL No. 126

(By Mr. Speaker, McPhail)



PASSED March 13 1959

In Effect July 1, 1959 Passage



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JOE F. BURDETT
SECRETARY OF STATE

126

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House Bill No. 126

(By Mr. Speaker, MR. PAULEY)

[Passed March 13, 1959; in effect July 1, 1959.]

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 workmen's compensation.

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 of
3 this chapter for a personal injury other than silicosis, such
4 compensation shall be provided as in the following sched-
5 ule:

6 (a) If the injury causes temporary total disability, the
7 employee shall receive during the continuance thereof

8 sixty-six and two-thirds per cent of his average weekly
9 earnings, not to exceed thirty-five dollars a week nor to
10 be less than twenty-two dollars a week.

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

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

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

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

26 (d) If the injury results in the total loss by severance
27 of any of the members named in this subdivision, the per-
28 centage of disability shall be determined in accordance

29 with the following table, and award made as provided in
30 subdivision (c) of this section:

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

33 The loss of a great toe (one phalanx) shall be consid-
34 ered a five per cent disability.

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

37 The loss of other toes (one phalanx) shall be consid-
38 ered a two per cent disability.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

100 (e) Should a claimant to whom has been made a
101 permanent partial award of from one per cent to eighty-
102 four per cent, both inclusive, die from sickness or non-
103 compensable injury, the unpaid balance of such award
104 shall be paid to claimant's dependents as defined in this
105 chapter, if any such; payment to be in the same install-
106 ments that would have been paid to claimant if living:
107 *Provided, however,* That no payment shall be made to any
108 widow of such claimant after her remarriage, and that
109 this liability shall not accrue to the estate of such claim-

110 ant and shall not be subject to any debts of, or charges
111 against, such estate.

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

117 (g) The percentage of all permanent disabilities other
118 than those enumerated in subdivisions (c), (d), (e), and
119 (f) of this section shall be determined by the commission-
120 er and award made in accordance with the provisions of
121 subdivisions (c).

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

126 (i) Where an injury results in temporary total dis-
127 ability for which compensation is awarded under sub-
128 division (a) of this section and such injury is later deter-
129 mined permanent partial disability under subdivision (c),
130 the amount of compensation so paid under subdivision

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

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

2 *Defined.*---In case a personal injury other than silicosis or
3 other occupational disease, suffered by an employee in the
4 course of and resulting from his employment, causes death
5 within the period of six years and disability is continuous
6 from date of such injury until date of death, or if death
7 results from determined third stage silicosis or from any
8 other occupational disease within six years from the date
9 of the last exposure to the hazard of silicon dioxide dust
10 or to the other particular occupational hazard involved,
11 as the case may be, the benefits shall be in the amounts
12 and to the persons 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 employee leaves a dependent widow
17 or invalid widower, the payment shall be sixty-five dol-
18 lars a month until death or remarriage of such widow or
19 widower, and in addition twenty dollars a month for each
20 child under eighteen years of age, to be paid until such
21 child reaches such age, or, if an invalid child, twenty

22 dollars a month, to continue as long as such child re-
23 mains an invalid: *Provided, however,* That if such widow
24 or invalid widower shall remarry within ten years from
25 the date of the death of such employee, such widow or
26 widower shall be paid at the time of remarriage twenty
27 per cent of the amount that would be due for the period
28 remaining between the date of such remarriage and the
29 end of ten years from the date of death of such employee,
30 and such widow or widower shall be advised in writing
31 by the commissioner of his or her rights under this pro-
32 viso at the time of making the original award: *Provided*
33 *further,* That if upon investigation and hearing, as pro-
34 vided in article five of this chapter, it shall be ascertained
35 that such widow or widower is living with a man or
36 woman, as the case may be, as man and wife and not mar-
37 ried, or that the widow is living a life of prostitution, the
38 commissioner shall stop the payments of the benefits here-
39 in provided to such widow or widower.

40 If the deceased employee be a widow or widower and
41 leaves a child or children under the age of eighteen years,

42 the payments shall be twenty-five dollars a month to each
43 child until he or she reaches the age of eighteen years.

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

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

59 (d) If the deceased employee leaves no dependent
60 widow or widower or wholly dependent father or mother
61 but there are other wholly dependent persons, as defined
62 in paragraph (f) of this section, the payment shall be

63 fifty dollars a month, to continue for six years after the
64 death of the deceased, except as otherwise provided here-
65 in.

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

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

80 (f) Dependent, as used in this chapter, shall mean a
81 widow, invalid widower, child under eighteen years of
82 age, invalid child or a posthumous child, who, at the time
83 of the injury causing death, is dependent in whole or in

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

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

W. N. Jasper Jr.
Chairman Senate Committee

Eudora Andrews
Chairman House Committee

Originated in the House of Delegates

Takes effect July 1, 1959 passage.

D. Howard Thayer
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Ralph J. Bean
President of the Senate

H. R. Pauley
Speaker, House of Delegates

The within approved this the 20th

day of March 1959.

W. H. Underwood
Governor

