ENROLLED

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 compensation is due an employee under the provisions of this chapter for a personal injury other than silicosis, such compensation shall be provided as 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 thirty-five dollars a week nor to be less than twenty-two dollars a week.

(b) Subdivision (a) shall be limited as follows: Aggregate award for a single injury causing temporary disability shall be for a period not exceeding two hundred eight weeks.

(c) If the injury causes permanent disability, the percentage 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 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 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 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 or 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 claim-
ant 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 commissi-
er and award made in accordance with the provisions of
subdivisions (c).

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

(i) Where an injury results in temporary total dis-
ability for which compensation is awarded under sub-
division (a) of this section and such injury is later deter-
mined permanent partial disability under subdivision (c),
the amount of compensation so paid under subdivision
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(a) of this section 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 in the case, and award made in accordance with the provisions of subdivision (c).
Sec. 10. *Classification of Death Benefits; “Dependent”*

2 *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-five dollars a month until death or remarriage of such widow or widower, and in addition twenty 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 re-

mains 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 pro-

viso 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

woman, as the case may be, as man and wife and not mar-

ried, or that the widow is living a life of prostitution, the

commissioner shall stop the payments of the benefits here-

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-five 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 there-
to.

(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 sixty 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 sixty 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 sixty 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 here-
in.

(c) If the deceased employee leaves no dependent
widow or widower, child under eighteen years of age, or
wholly dependent person, but there are partially depend-
ent 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 de-
pendent, 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; or 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.

[Signature]

Chairman Senate Committee

[Signature]

Chairman House Committee

Originated in the House of Delegates

Takes effect 5/1/1959

[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 March 1959.

[Signature]

Governor