WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1961

ENROLLED

SENATE BILL NO. 210

(By Mr. Carson, Mr. President)

PASSED March 18th, 1961

In Effect July 1st, 1961

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of West Virginia MAR 17 1961
JOE F. BURDETT
SECRETARY OF STATE
ENROLLED

Senate Bill No. 210

(By Mr. Carson, Mr. President)

[Passed March 10, 1961; in effect July 1, 1961.]

AN ACT to amend and reenact sections three, six, six-a, eight-c, nine, ten, fifteen and fifteen-c, 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 three, six, six-a, eight-c, nine, ten, fifteen and fifteen-c, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

Section 3. Disbursements for Medicine, Hospital Treatment, Artificial Limbs and Other Appliances; Contract by
Employer with Hospital Prohibited.—Except in case of silicosis, 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 medicines, 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 twenty-four 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 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 this chapter, and no employer shall permit or require any employee to contribute, directly or indirectly, to any fund for the payment of such medical, surgical, dental, or hospital 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 mentioned 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 dollars 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 first stage 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-eight dollars a week nor to be less than a minimum of 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 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.

The total and irrecoverable loss of the hearing of one ear shall be considered a fifteen per cent disability, and the injured employee shall be entitled to compensation for a period of sixty weeks. The total and irrecoverable loss of the hearing of both ears shall be considered a forty-five per cent disability, and the injured employee shall be entitled to compensation for a period of one hundred eighty weeks.

For the partial loss of hearing in one, or both ears, the percentage of disability shall be determined by the com-
missioner, using as a basis the total loss of hearing in both ears.

(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 made 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-eight dollars a week nor to be less than a minimum of twenty-two 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 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 depend-
(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. 6-a. Stages of Silicosis; Benefits and Mode of Payment to Employees and Dependents.—An employee shall, for the purpose hereof, be deemed to have silicosis: (1) In the first stage when it is found by the commissioner that the earliest detectable specific signs of silicosis are present, whether or not capacity for work is or has been impaired by such silicosis; (2) In the advanced stage when it is found by the commissioner that definite and specific physical signs of silicosis are present, and that
capacity for work is or has been impaired by that disease.

Where compensation for silicosis is due an employee under the provisions hereof, such compensation shall be as provided in the following schedule: (a) If the employee is suffering from silicosis in the first stage, the employee shall receive one thousand dollars as compensation in full for silicosis that he has sustained as a result of and in the course of his employment to be payable as a lump sum or in periodic installments in the discretion of the commissioner, which shall be a final payment and operate as a full release by the employee for compensation and for any claim against the employer that the employee may thereafter have for silicosis, and irrespective of whether the employee thereafter continues in the same employment, he shall not have the right to receive any or further compensation or make any claim because of silicosis, either to the compensation commissioner or against his employer, anything to the contrary in this chapter notwithstanding. (b) If the employee is suffering from silicosis in the advanced stage, the percentage of permanent disability shall be determined by
the commissioner in accordance with the facts in the case and with the advice and recommendation of the silicosis medical board. Compensation shall be paid therefor in the same manner and at the same rate as is provided for permanent disability under the provisions of subdivisions (c), (e), (f), (g), and (h) of the preceding section: Provided, That the determination by the commissioner of the percentage of permanent disability and acceptance of the first payment on such award by the claimant shall cause the determination to become final and the claimant, except for the remainder due him under such original award shall not have the right to receive any or further compensation or make any claim because of silicosis irrespective of whether the employee thereafter continues in the same employment, either to the compensation commissioner or against the employer, anything to the contrary in this chapter notwithstanding: Provided further, That in no case shall an award for advanced silicosis be less than the compensation herein provided for first stage silicosis. (c) If the employee dies from silicosis within six years from the date of his last injurious exposure to silicon
dioxide dust in harmful quantities, the benefits shall be
in the amounts and to the persons provided for in section
ten of this article; as to such benefits sections eleven to
fourteen inclusive, of this article shall apply. (d) In cases
of permanent disability or death due to silico-tuberculosis
(tuberculosis accompanied by active tuberculosis of the lungs)
compensation shall be payable as for disability or death
due to silicosis alone.

Sec. 8-c. Silicosis Medical Board; Reports and Distribution Thereof; Findings Required of Board; Objection to Findings; Procedure Thereon.—The silicosis 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 on behalf of the employee or claimant, or employer, and also all medical reports and X-ray ex-
aminations produced by or on behalf of the employee or claimant, or employer.

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

(a) Whether or not the claimant or the deceased employee has contracted silicosis, and, if so, the stage thereof, and in all cases where silicosis is found in an advanced stage, the percentage of permanent disability resulting therefrom.

(b) If the claimant or the deceased employee has contracted such disease, whether or not the exposure in the employment was sufficient to have caused silicosis or to have perceptibly aggravated an existing silicosis.

(c) What, if any, physician appeared before the board on behalf of the claimant, and what, if any, X-rays were produced by or on behalf of the claimant, and what, if any, physician appeared before the board on behalf of the employer, and what, if any, X-rays were produced by or on behalf of the employer.

If either party objects to the whole or any part of such findings and conclusions of the board, he shall file with
the commissioner, within fifteen days of the mailing of such copy to him unless for good cause shown the commissioner extends such time, his objections thereto in 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 joining in such findings and conclusions 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 limited to examination
and cross-examination of the members of the board, and
to the taking of testimony of other qualified physicians
and roentgenologists.

Sec. 9. Physical and Vocational Rehabilitation.—In
cases where an employee has sustained a permanent dis-
ability, or has sustained injuries likely to result in per-
manent disability, and such fact has been determined by
the commissioner, and the employee can be physically and
vocationally rehabilitated and returned to remunerative
employment by vocational training, by the use of crutches,
artificial limbs, or other approved mechanical appliances,
or by medicines, medical, surgical, dental or hospital
treatment, the commissioner shall forthwith, after due
notice to the employer, expend such an amount as may
be necessary for the aforesaid purposes, not, however, in
any case, to exceed the sum of twelve hundred dollars.
No payment, however, shall be made for such purposes
as provided by this section unless authorized by the com-
missioner prior to the rendering of such treatment.

In every case in which the commissioner shall order
physical or vocational rehabilitation of a claimant as provided herein, the claimant shall, during the time he is receiving any vocational rehabilitation or rehabilitative treatment that renders him totally disabled during the period thereof, be compensated on a temporary total disability basis for such period, unless he is being paid compensation under an award granted prior to the time such rehabilitation is authorized by the commissioner.

Sec. 10. Classification of Death Benefits; "Dependents"

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 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
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 seventy-five
18 dollars a month until death or remarriage of such widow
19 or widower, and in addition twenty dollars a month for
20 each child under eighteen years of age, to be paid until
21 such child reaches such age, or, if an invalid child, twen-
22 ty-five dollars a month, to continue as long as such child
23 remains invalid: Provided, however, That if such
24 widow or invalid widower shall remarry within ten years
25 from the date of the death of such employee, such widow
26 or 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
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-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 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 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 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 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.
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 or other occupational disease, 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.

To entitle any employee to compensation for occupational disease other than 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 day on which the employee was last exposed to the particular occupational hazard involved, 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-c. Nonmedical Questions Determined by Commissioner on Hearing of Claim for Occupational Diseases
Other than Silicosis.—On the hearing of a claim for compensation for an occupational disease other than silicosis, the commissioner shall hear, determine and file findings covering, but not limited to, the following nonmedical questions:

(a) Whether the employee was in fact, within two years prior to the filing of his claim, in the employ of the employer, and, if so, the duration of such employment and whether or not such employment was subject to the provisions hereof.

(b) The occupation or occupations, process or processes, in which the employee was engaged during such employment and the approximate periods of work in each such occupation or process.

(c) The employments, previous and subsequent to the employment out of which the claim arose, the duration thereof and the exposure therein to the hazard causing the occupational disease.

(d) Whether the last injurious exposure to the hazard causing occupational disease in the employment with the employer occurred within two years prior to the filing of
the claim, and if the employee is no longer in the service of the employer, the date upon which such employee ceased so to work; and, if the employee has died, the date and place of such death, and the place of interment of the body.

The parties may in writing waive the hearing required by this section, in which case the commissioner shall determine the nonmedical facts listed above, and 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.
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 Senate.


[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 12th day of March, 1961.

[Signature]
Governor

Filed in Office of the Secretary of State of West Virginia MAR 17, 1961
JOE F. BURPEE SECRETARY OF STATE