WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1967

ENROLLED

SENATE BILL NO. 224

(By Mr. [Signature], President of the Senate, and Mr. [Signature], Majority Leader)

PASSED March 10, 1967

In Effect July 1, 1967

FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 3-21-67
AN ACT to amend and reenact sections one, four, six, eight, ten, fifteen, fifteen-b and fifteen-c, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to workmen's compensation.

Be it enacted by the Legislature of West Virginia:

That sections one, four, six, eight, ten, fifteen, fifteen-b 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:
ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-1. To whom compensation fund disbursed; silicosis and other occupational diseases included in "injury" and "personal injury"; definition of silicosis and other occupational diseases.

Subject to the provisions and limitations elsewhere in this chapter set forth, the commissioner shall disburse the workmen's compensation fund to the employees of such employers as are not delinquent in the payment of premiums for the quarter in which the injury occurs, and in case of catastrophe, in addition to the employees next above described, to the employees of employers who have elected, under section nine, article two of this chapter, to make payments into the surplus fund as provided in that section, and which employees shall have received personal injuries in the course of and resulting from their employment in this state, or in temporary employment without the state as provided in section one, article two of this chapter, or to the dependents, if any, of such employees in case death has ensued, according to the provisions hereinafter made; and also for the expenses of the administra-
tion of this chapter, as provided in section two, article one
of this chapter.

For the purposes of this chapter the terms "injury" and
"personal injury" shall be extended to include silicosis
and any other occupational disease as hereinafter defined,
and the commissioner shall likewise disburse the work-
men's compensation fund to the employees of such em-
ployers as are not delinquent in the payment of premiums
for the last quarter in which such employees have been
exposed to the hazard of silicon dioxide dust or to any
other occupational hazard, and have contracted silicosis
or other occupational disease, or have suffered a per-
ceptible aggravation of an existing silicosis, in this state
in the course of and resulting from their employment, or
to the dependents, if any, of such employees, in case
death has ensued, according to the provisions hereinafter
made: Provided, however, That compensation shall not
be payable for the disease of silicosis, or death resulting
therefrom, unless in the state of West Virginia the em-
ployee has been exposed to the hazard of silicon dioxide
dust over a continuous period of not less than two years
during the ten years immediately preceding the date of
his last exposure to such hazards. An application for bene-
fits on account of silicosis shall set forth the name of the
employer or employers and the time worked for each, and
the commissioner may allocate to and divide any charges
on account of such claim among the employers by whom
the claimant was employed for as much as sixty days
during the period of three years immediately preceding
the filing of the application. The allocation shall be based
upon the time and degree of exposure with each employer.

For the purpose of this chapter silicosis is defined as an
insidious fibrotic disease of the lung or lungs due to the
prolonged inhalation and accumulation, sustained in the
course of and resulting from employment, of minute par-
ticles of dust containing silicon dioxide (SiO₂) over such
a period of time and in such amounts as result in the
substitution of fibrous tissues for normal lung tissues,
whether or not accompanied by tuberculosis of the lungs.

Whenever the expression “injurious exposure to silicon
dioxide dust”, or “injurious exposure to silicon dioxide
dust in harmful quantities”, or “exposure to the hazard
of silicon dioxide dust", or any similar language shall appear in this chapter, such expression shall be construed to mean the exposure of an employee in the course of his employment to a working condition in which the air contains such a concentration of silicon dioxide dust that the breathing of such air by a person over a long period of time would be likely to cause him to contract the disease of silicosis.

For the purpose of this chapter, occupational disease means a disease incurred in the course of and resulting from employment. No ordinary disease of life to which the general public is exposed outside of the employment shall be compensable except when it follows as an incident of occupational disease as defined in this chapter.

Except in the case of silicosis, a disease shall be deemed to have been incurred in the course of or to have resulted from the employment only if it is apparent to the rational mind, upon consideration of all the circumstances (1) that there is a direct causal connection between the conditions under which work is performed and the occupational disease, (2) that it can be seen to have followed as a
natural incident of the work as a result of the exposure occasioned by the nature of the employment, (3) that it can be fairly traced to the employment as the proximate cause, (4) that it does not come from a hazard to which workmen would have been equally exposed outside of the employment, (5) that it is incidental to the character of the business and not independent of the relation of employer and employee, and (6) that it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a natural consequence, though it need not have been foreseen or expected before its contraction.

Except in the case of silicosis, no award shall be made under the provisions of this chapter for any occupational disease contracted prior to the first day of July, one thousand nine hundred forty-nine. An employee shall be deemed to have contracted an occupational disease within the meaning of this paragraph if the disease or condition has developed to such an extent that it can be diagnosed as an occupational disease.
§23-3-4. Funeral expenses.

1 In case the personal injury causes death, and disability is continuous from the date of such injury to date of death, reasonable funeral expenses, not to exceed five hundred dollars, shall be paid from the fund, payment to be made to the persons who have furnished the services and supplies, or to the persons who have advanced payment for same, as the commissioner may deem proper, in addition to such award as may be made to the employee's dependents.

§23-4-6. Classification of disability benefits.

1 Where compensation is due an employee under the provisions of this chapter for a personal injury other than the 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 forty-seven dollars a week nor to be less than a minimum of twenty-four dollars a week.

(b) Subsection (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 a 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 irrevocable loss of the sight of one eye shall be considered a thirty-three per cent disability.
94 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.
98 The total and irrevocable 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 irrevocable
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.
106 For the partial loss of hearing in one, or both ears,
the percentage of disability shall be determined by the
commissioner, using as a basis the total loss of hearing in
both ears.
110 (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 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 re-marriage, 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 forty-seven dollars a week nor to be less than a minimum of twenty-four 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
determined permanent partial disability under subdi-
vision (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 sub-
division (c): Provided further, That in cases where the
amount of permanent partial disability is specifically
provided for under subdivision (d) of this section, pay-
ments made under subdivision (a) shall not be consid-
ered as payment of the compensation for such injury.
Compensation, either total temporary or permanent par-
tial, 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
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).

§23-4-8. Physical examination of claimant; expenses.

The commissioner shall have authority, after due notice to the employer and claimant, whenever in his opinion it shall be necessary, to order a claimant of compensation for a personal injury other than silicosis or other occupational disease to appear for examination before a medical examiner or examiners selected by the commissioner; and the claimant and employer, respectively, shall each have the right to select a physician of his or its own choosing and at his or its own expense to participate in such examination. The claim-
ant and employer shall, respectively, be furnished with
a copy of the report of examination made by the medi-
cal examiner or examiners selected by the commissioner.
The respective physicians selected by the claimant and
employer shall have the right to concur in any report
made by the medical examiner or examiners selected
by the commissioner, or each may file with the commis-
sioner a separate report, which separate report shall
be considered by the commissioner in passing upon the
claim. If the compensation claimed is for silicosis, the
commissioner shall have the power, after due notice
to the employer, and whenever in his opinion it shall
be necessary, to order a claimant to appear for exami-
nation before the silicosis medical board hereinafter
provided. If the compensation claimed is for an occu-
pational disease other than silicosis, the commissioner
shall have the power after due notice to the employer,
and whenever in his opinion it shall be necessary, to
order a claimant to appear for examination before
the occupational diseases medical board hereinafter pro-
vided. In any case the claimant shall be entitled to
reasonable traveling and other expenses necessarily incurred by him in obeying such order, which shall be paid out of the amount allowed under this chapter for medical, surgical, dental and hospital treatment.

Where the claimant is required to undergo a medical examination or examinations by a physician or physicians selected by the employer, in addition to the reasonable traveling and other expenses, not to exceed the expenses paid when a claimant is examined by a physician or physicians selected by the commissioner, such claimant shall be reimbursed by the employer for loss of wages necessarily incurred by him in connection with such examination or examinations.

§23-4-10. Classification of death benefits; “dependent” defined.

In case a personal injury other than silicosis or other occupational diseases, suffered by an employee in the course of and resulting from his employment, causes death within the period of ten 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 ten years from the date of the last ex-

8  exposure to the hazard of silicon dioxide dust or to the other
9  particular occupational hazard involved, as the case may
10  be, the benefits shall be in the amounts and to the persons
11  as follows:
12  (a) If there be no dependents, the disbursements shall
13  be limited to the expense provided for in sections three
14  and four of this article.
15  (b) If the deceased employee leaves a dependent
16  widow or invalid widower, the payment shall be ninety
17  dollars a month until death or remarriage of such widow
18  or widower, and in addition twenty-five dollars a month
19  for each child under eighteen years of age, to be paid until
20  such child reach such age, or where such child after reaching eighteen years of age continues as a full-time student
21  in an accredited high school, college, university, business
22  or trade school, to be paid until such child reaches the age
23  of twenty-two years, or, if an invalid child, thirty-five
24  dollars and fifty cents a month, to continue as long as
25  such child remains an invalid: Provided, however, That
26  if such widow or invalid widower shall remarry within
27  ten years from the date of the death of such employee,
such widow or widower shall be paid at the time of re-
marriage 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 thirty dollars a month to each child
until he or she reaches the age of eighteen years, or where
such child after reaching eighteen years of age continues
as a full-time student in an accredited high school, college,
university, business or trade school to be paid until such
child reaches the age of twenty-two 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 seventy 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 seventy 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 seventy 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-seven dollars and fifty cents 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 thirty 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, or under twenty-two years of age when a full-time student as provided herein, 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, or under twenty-two years of age when a full-time student as provided herein, child under eighteen years of age legally adopted prior to the injury causing death, or under twenty-two years of age when a full-time student as provided herein, 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.


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 three 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 three 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.

§23-4-15b. Determination of nonmedical questions by commissioner—claims for silicosis; hearing.

If a claim for silicosis benefits be filed by an employee, the commissioner shall determine whether the claimant was exposed to the hazard of silicon dioxide dust for a continuous period of not less than sixty days while in the employ of the employer within three years prior to the filing of his claim, and whether in the state of West Virginia the claimant was exposed to such hazard over a continuous period of not less than two years during the ten years immediately preceding the date of his last exposure.
If a claim for silicosis benefits be filed by a dependent of a deceased employee, the commissioner shall determine whether the deceased employee was exposed to the hazard of silicon dioxide dust for a continuous period of not less than sixty days while in the employ of the employer within ten years prior to the filing of the claim, and whether in the state of West Virginia the deceased employee was exposed to such hazard over a continuous period of not less than two years during the ten years immediately preceding the date of his last exposure thereto. The commissioner shall also determine 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.

§23-4-15c. Same—hearing on 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 three 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 three 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.

William Tampas
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1967.

Joseph Hourigan
Clerk of the Senate

Karl Kinship
Clerk of the House of Delegates

Howard Butcher
President of the Senate

W. Laban White
Speaker House of Delegates

The within approved this the 21

day of March, 1967.

Helen C. Smith
Governor